



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.04.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.7225 of 2019

and

W.M.P (MD)No.5785 of 2019

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K.Mayandisamy

... Petitioner

Vs.

1.The District Collector,
Theni District, Theni.

2.The Assistant Director of Panchayats,
Collectorate Complex,
Theni District, Theni.

3.The Block Development Officer,
K.Mayiladumparai Panchayat Union,
Andipatti Taluk,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent in Na.Ka.No.8711/2018/Vu.Va.8, dated 31.12.2018, quash the same and direct the respondents to reinstate the petitioner as Panchayat Assistant in Ettapparajapuram Panchayat, K.Mayiladumparai Panchayat Union, Theni District within the time stipulated by this Court.

For Petitioner in

: Mr.P.Kalaiyarasi Bharathi

For Respondents

: Mr.AK.Manikkam,

Special Government Pleader

ORDER

The order impugned dated 31.12.2018 rejecting the representation submitted by the writ petitioner for reinstatement, is under challenge in the present writ petition.

2.The petitioner was appointed as part time Panchayat Clerk in November 1996. Admittedly, he was terminated from service on 28.03.1998, on account of the fact that a criminal case was registered against him and the petitioner was arrested. In view of the fact that the petitioner was terminated from service on 28.03.1998 from the post of part-time Panchayat Clerk, another person viz., Sekar was appointed in the said post by the Panchayat. The petitioner was acquitted on the ground of benefit of doubt on 19.08.2009. The petitioner filed a writ petition in W.P(MD)No.13100 of 2009 before this Court and this Court directed the first respondent therein to consider the representation dated 11.10.2009 on merits and in accordance with law. Pursuant to which, the



petitioner submitted the representation on 09.01.2010 and the second respondent has given a reply on 12.02.2010 stating that one Mr.Sekar was appointed in the place of the writ petitioner and therefore, his case cannot be considered. The writ petitioner filed another writ petition in W.P(MD)No.19379 of 2013 with a prayer to direct the first respondent therein to appoint the petitioner as Panchayat Assistant in any one of the existing vacancy in G.Usilampatti of Chitharapatti, based on his representation. The writ petition was disposed of on 27.02.2018 with a direction to the first respondent therein to consider the representation submitted by the petitioner on 28.10.2013 and pass orders on merits and in accordance with law. Therefore, the authorities, in compliance with the directions issued by the High Court, passed the impugned order in proceedings dated 13.12..2018 rejecting the representation of the writ petitioner on the ground that the petitioner was over aged and further, he was terminated from service in the year 1998 and in his place, one Mr.Sekar was appointed and he is working for several years.

3.The fact remains that the petitioner was appointed as part-time Panchayat Clerk on temporary basis. He was not even a regular employee of the Panchayat and therefore, he cannot claim any right in respect of the said post. He was an accused in criminal case and he was terminated from service in the year 1998 itself and acquitted by the criminal Court on the ground of benefit of doubt in the year 2009 and hence, he has not challenged the termination order, during the relevant point of time. He was arrested and facing the criminal trial and after an order of acquittal, he filed a writ petition, this Court directed the authority to consider his case. However, his claim was rejected on the ground that one Mr.Sekar was appointed as part-time Clerk.

4.The learned Special Government Pleader appearing for the respondents brought to the notice of this Court that the service of Mr.Sekar was regularized subsequently. The petitioner filed second writ petition in the year 2013 for a direction to appoint him, then this Court directed the first respondent therein to consider his case. The respondents, in the order impugned, has stated that the petitioner has already over-aged and therefore, he cannot be appointed. The age limit for appointment to the post of Panchayat Clerk is 35 years and the petitioner has crossed the minimum age limit.

5.This Court is of the considered opinion that the cause arose for the petitioner in the year 1998, when he was terminated from service. However he filed a writ petition to consider the representation, instead of challenging the order of dismissal during the appropriate time. Though this Court granted a direction, the respondents have rejected the same. Again he filed another writ petition in the year 2013 to appoint him. Such a prayer is absolutely misconceived. In view of the fact that the terminated



appointments are considered in accordance with the recruitment rules in force. The manner in which, the writ petitions are filed for the purpose of restoration of lapses, cause of action and the relief occurred, which resulted in denial of appropriate relief to the petitioner for the past several years, are the unfortunate affairs

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6. Any employee, who was terminated from service, has got right to challenge the termination order in a proper manner, by way of appeal or alternative remedy contemplated under the Statute or the rules in force. In spite of knowing the cause, different writ petitions are filed to consider the representations. The High Court can also issue a direction to consider the representation even ultimately, the litigant is denied the justice in accordance with law.

7. This is exactly the reason why the Courts have held that mere direction to consider the representation would not do any service to the cause of justice and the issues are to be decided on merits and in accordance with law, which alone will provide justice to all the parties, who all are approaching the Court of law. The litigant files a writ petition for a direction to consider the representation, by that time, many years have been passed and ultimately, the aggrieved person is unable to get appropriate relief within reasonable period of time.

8. The case on hand is a classic case, where the petitioner was holding the post of part-time Clerk and terminated from service in the year 1998, on account of the fact that he was an accused in a criminal case. Though the criminal case was ended with an order of acquittal in the year 2009, he has not agitated the matter in a proper manner. Beyond all these things, part-time employee will not have any right for regular absorption or otherwise. Fresh appointments as such sought for by the petitioner was rejected on the ground that the petitioner was over-aged and the appointments are to be made in accordance with the recruitments rules in force.

9. This being the factum, this Court do not find any reason to interfere with the reasons furnished in the order impugned and accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /2022

Sub Assistant Registrar(CS)



To

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Theni District, Theni.

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3.The Block Development Officer,
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+1 CC to M/s.SPL.GP (SR-19382[F] dated 19/04/2022)

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SS/11.05.2022 : 4P/5C