



W.P(MD)No.16546 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16546 of 2021

and

W.M.P.(MD)Nos.13423 & 13425 of 2021

M.Sureshkumar

... Petitioner

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Assistant Director of Town Panchayat,
Office of the Assistant Director of Town Panchayats,
Sivagangai Region,
Sivagangai.

3.The Executive Officer,
Kamuthi Special Grade Town Panchayat,
Kamuthi,
Ramanathapuram District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to call for the records relating to the seniority list dated 01.07.2021 issued by the 3rd respondent, quash the same and consequently direct the respondents to promote the petitioner as per the judgment dated 14.07.2017 made in W.A.(MD) No.699 of 2017 on the file of this Court.



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For Petitioner : Mr.V.Palpandi
For Respondents : Mr.J.K.Jayaseelan
Government Advocate

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2. The writ petitioner was appointed as Sweeper in the 3rd respondent Panchayat on 26.04.2007. He was regularized in the said post on 03.05.2009. He had completed the pre-foundation course conducted by Madurai Kamaraj University in the year 2008. Vacancy arose in the promotion post of Health Supervisor in the year 2010. The writ petitioner was overlooked. Hence, he filed W.P.(MD)No.13343 of 2010. The said Writ Petition was disposed of on 28.01.2013. Challenging the same, the writ petitioner herein filed W.A.No.699 of 2017. The petitioner was aggrieved that one S.Vinodh Kumar stole a march over him. The said Vinodh Kumar was impleaded as third respondent. After hearing the learned counsel on either side, the Hon'ble Division Bench to which I was a party held that the writ petitioner was very much eligible to be promoted to the post of Health Supervisor and that he was erroneously overlooked. Hence, the order impugned in the writ petitioner was quashed and



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the writ appeal was allowed by setting aside the order of the learned Single Judge and the Executive Officer, Kamuthi Town Panchayat, Kamuthi was directed to promote the petitioner herein to the post of Health Supervisor. It was also further directed that he should be placed above the said Vinodh Kumar. His seniority in the said post will be determined by the employer in accordance with law. Even though the order of the Hon'ble Division Bench was passed as early as on 14.07.2017, till date, it has not been complied with. The stand of the employer is that the writ petitioner declined to receive the order whereby the direction of the Hon'ble Division Bench was complied with.

3. This stand of the third respondent cannot be believed. No person will decline to receive an order of promotion. The third respondent is coming out with a cock and bull story. The petitioner having filed the writ petition and then the writ appeal would definitely not have said “no” to an order promoting him as Health Supervisor. Be that as it may, the petitioner could have very well filed a contempt petition. The petitioner has not done so. Probably, since more than five years have elapsed, the petitioner could not have filed a contempt petition after the expiry of the limitation period. That was probably the reason why the present writ petition has been filed.



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4. The learned Government Advocate appearing for the respondents 1 to 3 wanted to justify the stand taken in the counter affidavit. I am not inclined to consider the same. I posed a simple question to the learned Government Advocate. I wanted to know if the order dated 14.07.2017 allowing W.A. (MD)No.699 of 2017 filed by Thiru.M.Suresh Kumar is still holding good or whether it has been put to challenge before the Hon'ble Apex Court. Obviously, the review petition has not been filed. The petitioner's counsel also states that no SLP has been filed.

5. So long as the said order passed by the Hon'ble Division Bench is holding good, it is the duty of the third respondent to comply with the same in letter and spirit. When the Hon'ble Division Bench had categorically stated that the petitioner is qualified to be promoted to the post of Health Supervisor, it is not open to the employer to now take the stand that the petitioner is not qualified. If the third respondent felt aggrieved, the remedy open to them was to file SLP before the Hon'ble Apex Court or file a review petition. Such a course of action was not adopted. I cannot approve the conduct of the third respondent. It *prima facie* constitutes contempt. The respondents 2 & 3 are directed to issue proceedings complying with the order passed by the Hon'ble Division Bench in W.A.(MD)No.699 of 2017 within 7 days from the date of



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receipt of a copy of this order. I make it clear that if this order is not complied with, the respondents 2 & 3 will have to face the necessary consequences.

6. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11.10.2022

Index : Yes / No
Internet : Yes/ No
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NOTE:Issue Order Copy on 13.10.2022



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G.R.SWAMINATHAN, J.

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