



W.P(MD)No.22166 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22166 of 2022

and

W.M.P.(MD)No.16311 of 2022

C.Vadivel

... Petitioner

Vs.

1.The Director of Town Panchayat,
O/o. the Director of Town Panchayat,
Chennai-600 028.

2.The District Collector,
Theni District,
Theni.

3.The Executive Officer,
Kombai Town Panchayat,
Theni District,
Madurai Zone.

4.The Assistant Director of Town Panchayat,
O/o. the Director of Town Panchayat,
Theni Zone,
Theni.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent vide his



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proceedings in Na.Ka.No. 52/2022/A1 dated 06.09.2022 and quash the same as illegal and consequently to direct the respondents to appoint the petitioner to the post of Office Assistant/Junior Assistant in the 3rd respondent Town Panchayat commensurate with the qualification of the petitioner and to regularize the service of the petitioner in the post of Office Assistant/Junior Assistant w.e.f 05.06.2013 within the period that may be stipulated by this Court.

For Petitioner : Mr.S.Mohamed Suhail
for M/s.Ajmal Associates

For R1, R2 & R4 : Mr.R.Suresh Kumar
Additional Government Pleader

For R3 : Mr.S.Jeyapriya
Government Advocate

ORDER

Heard the learned counsel on either side.

2. The petitioner's father Chinnakaliyappan was working as Sanitary Worker in the third respondent Panchayat. He passed away while in service on 26.03.2013. The petitioner was appointed as Sanitary Worker on compassionate ground on 05.06.2013 itself. His grievance is that even in the year 2013, he was having HSC qualification and that therefore, he should have been appointed to the post of Junior Assistant as per G.O.Ms.No.1499, Labour and Employment Department, dated 03.08.1989. He submitted a representation



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seeking appointment as Junior Assistant. Since it was not considered, he filed

W.P.(MD)No.14141 of 2022. The said writ petition was disposed of on

05.07.2022 in the following terms:-

“4.In the light of the above observations, there shall be a direction to the third respondent herein to consider the petitioner's representation dated 16.06.2022 on its own merits and pass appropriate orders in accordance with law, within period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any of its view with regard to the merits of the claim of the petitioner and that it is open to the concerned respondent to consider the same on its own merits.”

Pursuant to the aforesaid direction, the impugned letter dated 06.09.2022 was issued rejecting the petitioner's request. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned order and grant relief as prayed for.

4. The respondents have filed detailed counter affidavit and the learned Additional Government Pleader appearing for the respondents took me through its contents. He pressed for dismissal of the same.



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5. The primary contention of the learned counsel appearing for the petitioner is that as per qualification possessed by him, he could have been appointed as Junior Assistant as per G.O.Ms.No.1499, Labour and Employment Department, dated 03.08.1989. No doubt, the learned counsel appearing for the petitioner is right in his contention. But then, during the relevant time, there was no vacancy in the post of Junior Assistant. When the petitioner was therefore offered the post of sanitary worker and the petitioner accepted the same, he did not demure. He came to this Court only in the year 2022. This Court while disposing of the writ petition had made it clear that this Court had not expressed its view on the merits of the petitioner's claim and left it to the discretion of the authority to consider the case on its own merit. By then, the Government had already issued G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020 setting forth comprehensive guidelines to regulate appointment on compassionate ground. Paragraph No.4 of the said G.O clearly reads that all the earlier orders issued in the references 1 to 46 stood superseded. G.O.Ms.No.1499 is finding reference at Serial No.12. There cannot be any doubt that G.O. on which, the petitioner is placing heavy reliance had already been superseded by the latest G.O. It is well settled that in such matters, the Court will go by the decision that is obtaining now.



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6. The learned counsel appearing for the petitioner places reliance on clause 9 occurring under the caption “Procedure for Processing Applications”.

It reads as follows:-

“(ix) Whenever a vacancy in the category of Office Assistant / Record Clerk / Junior Assistant / Typist, etc., arises in any Department including that of the Head of the Department referred to in instruction above, the Head of the Department should first address the Collector of the District in which the vacancy has arisen and find out whether any dependent of a deceased Government servant is available for consideration for appointment to that post.”

In my view, this clause can be invoked only by those dependents of the deceased employee who had not been already obtained appointment on compassionate ground. It will not apply to the person who had already been appointed.

7. Looked at from any angle, the petitioner has not made out a case for interference. The learned counsel appearing for the petitioner relies on the order dated 14.03.2022 made in W.P.No.15057 of 2011. Paragraph Nos.6 to 11 of the said order read as follows:-

“6. G.O.Ms.No.1179 provides that when a dependant of the deceased Government servant cannot be appointed in the department where the deceased Government servant worked, the names of such dependants of the deceased Government servant, who is qualified, should be furnished to the Collector of the Districts concerned, for the purpose of maintaining a list and sponsor them whenever suitable vacancy arises.



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7.The procedure adopted by the respondents in regularizing the petitioner's services is against G.O.Ms.No.1499, dated 03.08.1989 and G.O.Ms.No.1179, dated 17.10.1979, which mandates that the dependant should be appointed on compassionate appointment either in the department in which the deceased Government servant was employed or in case there are no vacancies, they ought to have furnished a list of the dependants to the Collector concerned, for the purpose of appointment, whenever suitable vacancies arises. This procedure was not followed by the respondents. Owing to their fault, they cannot now claim that the petitioner would be entitled for regularization only from the date on which he was promoted to the post of Junior Assistant. Consequently, it requires to be held that the petitioner herein would be entitled for regularization from 16.06.1986, when he was initially appointed to the post of a temporary Mazdoor.

8. In similar circumstances, this Court, in the case of C.Prabakaran and another Vs. The Secretary to Government, Department of Commercial Taxes and Registration passed in W.P.(MD)Nos.13354 & 13355 of 2013 dated 06.12.2018, had placed reliance on G.O.Ms.No.1499 and granted similar relief. It is submitted by the learned counsel for the petitioner that the direction issued in the aforesaid order came to be implemented by the Government.

9. This apart, the respondents contend that the petitioner would not be entitled for regularization from the date of his initial appointment is that, on the date of the petitioner's original appointment, there were no vacancies. However, such a statement seems to be in contradiction to the counter affidavit filed by the third respondent herein dated 29.11.2021. As per paragraph 6 of the counter, out of the 13 vacancies allotted by the Tamil Nadu Public Service Commission, 9 Junior Assistants were appointed upto 13.04.1986 and one Junior Assistant was appointed on 09.06.1986. Apparently, 3 posts of Junior Assistants were available on the date when the petitioner was appointed on compassionate grounds and he was also fully qualified to hold the post of Junior Assistant. Hence, the statement that there were no vacancies as on the date when the petitioner was appointed, seems to be factually incorrect.



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11. In the light of the above observations and findings, the impugned order passed by the third respondent dated 23.09.2005 is quashed. Consequently, there shall be a direction to the first respondent to pass appropriate orders, granting notional promotion to the petitioner to the post of Junior Assistant with effect from 16.06.1986 and regularize his services from 16.06.1986 onwards, together with all consequential service and monetary benefits, within a period of six weeks from the date of receipt of a copy of this order.”

8. I am however not inclined to follow the aforesaid order because of the contra decision of the Hon'ble Division Bench in W.A.No.317 of 2014, dated 22.09.2017. The Hon'ble Division Bench held as follows:-

“4. At this juncture, it is to be noted that appointment on compassionate ground is based upon rules and regulations governing the same. In other words, the appellant cannot seek as a matter of right, that he should be appointed in a particular post. Admittedly, the post of Record Clerk was vacant at the relevant point of time and the appellant was appointed to the said post. Having voluntarily accepted such appointment, the appellant is estopped from making a higher claim without any legal basis. Merely because others have been given the benefit of appointment to other post, the appellant cannot claim the same as a matter of right. In such view of the matter, the stand taken by the learned counsel for the appellant cuts no ice with us. Accordingly, the writ appeal is dismissed. However, it is made clear that the dismissal of this writ appeal will not stand in the way of the respondents in taking appropriate steps, in accordance with law, as indicated in the order dated 04.06.2007 impugned in the writ petition.”

9. When before me the orders of a single Judge as well as the Division Bench are placed, I am duty bound to follow the order of Division Bench. In



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that view of the matter, the impugned order does not call for interference. The

Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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