



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.04.2022
PRONOUNCED ON : 14.06.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.17032 of 2016
and
W.M.P. (MD)No.12351 of 2016

Mohideen Abdul Khadar

... Petitioner

Vs.

1.The Secretary to Government
Revenue Department,
Government of Tamilnadu,
Secretariat, Fort.St.George,
Chennai.

2.The Secretary,
Tamilnadu Public Services Commission,
Chennai.

3.The District Collector,
Tuticorin District,
Tuticorin.

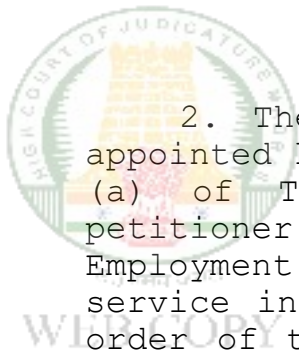
... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued by the third respondent in his proceedings ROC A-7/39630/2011 dated 23.01.2016 and quash the same and consequently direct the respondents herein to regularize the services of the petitioner as a Junior Assistant from the date of his initial appointment.

For Petitioner : Mr. G.Kannan
for Veera Associates
For R1 & R3 : Mr.D.Farjana Ghoushia
Special Government Pleader
For R2 : Mr.J.Anandkumar

ORDER

This Writ Petition is filed to quash the impugned order issued by the third respondent in his proceedings ROC A-7/39630/2011 dated 23.01.2016, consequently to regularize the service of the petitioner as a Junior Assistant from the date of his initial appointment.

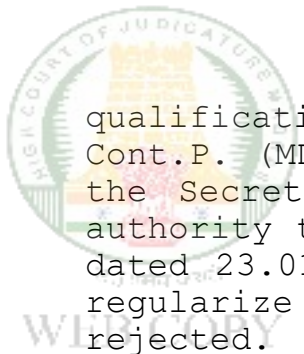


2. The brief facts of the case are that the petitioner was appointed by the third respondent as Junior Assistant under Rule 11 (a) of Tamil Nadu State and Subordinate Service Rules. The petitioner's initial appointment was made through District Employment Exchange. The petitioner has completed six years of service in the said post. Therefore the third respondent issued an order of termination. Aggrieved over the same, he filed W.P.(MD) No.1466 of 2008 and this Court vide order dated 28.02.2008, set aside the order and directed the third respondent to issue consequential order as per final orders of this Court. Aggrieved over the same, the respondents filed W.A.No.535 of 2008 and the same was also dismissed. Thereafter the petitioner was allowed to join duty and the petitioner is continued in the said post.

3. During the interregnum period, the third respondent sponsored temporary Junior Assistants for the special selection conducted by the second respondent. The petitioner was not sponsored by the third respondent. Even though, the petitioner was allowed to join duty as per the proceedings of the third respondent dated 10.10.2008, the petitioner was not allowed to participate in the special selection by the third respondent. All other similarly placed temporary Junior Assistants in the Districts, were allowed to participate during the non employment period. The petitioner was reinstated as per the orders of this Court. Then, the petitioner approached the second respondent to sponsor the petitioner's name to participate in the selection process, conducted by the second respondent, for the purpose of regularization of petitioner's service. The said application is pending. The other candidates who were sponsored by the department were regularized as per the orders of the second respondent and more than 3000 persons were regularized.

4. The contention of the petitioner is that when the order of termination of contract was set aside, the petitioner is entitled to equal treatment along with other Junior Assistant who are similarly placed persons. Since the petitioner was not allowed to participate in the special selection, even though the order of termination of contract was set aside, the petitioner's opportunity of getting into permanent post was prevented. The petitioner submitted a representation stating that the respondents have not sponsored the petitioner's name in the special selection process. The non sponsoring of the petitioner's name is not a fault of the petitioner, but the fault of the respondent.

5. In such circumstances, the petitioner filed W.P.(MD)No.10111 of 2009 and this Court vide order dated 16.04.2014, directed the third respondent to consider the claim of the petitioner for regularization and passed orders on merits and in accordance with law. Wherein, the Joint Secretary of the Revenue Department has sent a reply dated 08.09.2015 stating that for regularization, some



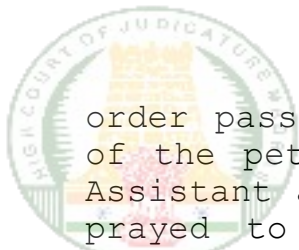
qualification and roster. The petitioner filed Contempt Petition in Cont.P. (MD)No.1556 of 2015. Wherein this Court suo motu impleaded the Secretary to the Revenue Department and further directed the authority to pass orders on merits. Thereafter, the impugned order dated 23.01.2016 was passed whereby the claim of the petitioner to regularize the service to the post of Junior Assistant, was rejected. Based on the order, the contempt petition was closed with liberty to challenge the said order. Hence, this writ petition is filed, challenging the said order dated 23.01.2016.

6.The second respondent filed counter affidavit and the contention of the second respondent is that the petitioner joined duty in the post of Junior Assistant, temporarily, on contract basis in Revenue unit at Thoothukudi District on 09.07.2003 and he was unauthorizedly absent from 30.08.2006 without giving any intimation. Due to unauthorized absence from duty, he was terminated from the temporary service from the post of Junior Assistant on 18.10.2006. The petitioner challenged the termination order in W.P. (MD) No. 1466 of 2008 and based on the order of the Court, the petitioner was reinstated in the same post and still he is continuing in the service. On the date of Commission's Notification on 06.12.2007 for recruitment to Group-IV service by means of Special Competitive Examination - 2007, for the limited persons who were working on contract basis, the petitioner was not in service in the post of Junior Assistant on temporary contract basis. Therefore, no application was received from the petitioner by the TNPSC through the District Collector, Thoothukudi, for the said examination. The petitioner's temporary service has been terminated already before the date of notification i.e., 18.10.2006. As no application was received from the petitioner, he did not take part in the said Special Competitive Examination held on 17.02.2008, which was conducted to regularize the temporary services of persons appointed under contract basis.

7. The notification No.142 dated 06.12.2007 for the said recruitment had been issued in accordance with the Government Orders in G.O.Ms.No.84 and 85 Personnel and Administrative Reforms (Per.G) Department dated 04.07.2003, for the persons working on contract basis and continuing in service on 06.12.2007. The said recruitment had been issued in accordance with the Government Orders in G.O.Ms.No.84 and 85 Personnel & Administrative Reforms (Per.G) Department dated 04.07.2003, for the persons working on contract basis and continuing in service on 06.12.2007 with the condition that:-

".....Applications will not be received direct from the candidates, Applications which are received through the Head of the Department in which candidates are employed, alone will be entertained".

8. The petitioner had filed W.P.(MD)No.17032 of 2016 with the <https://hccasescourts.gov.in/services> for the records of the third respondent to quash the



order passed by the third respondent, was ordered that the service of the petitioner could not be regularized in the cadre of Junior Assistant and his requisition is rejected. The petitioner has also prayed to regularize his service from the date of his initial appointment which could not be accepted, since the petitioner failed to apply and had not written the required Special Competitive Examination - 2007, meant for regularization of the temporary services of those persons who were serving as temporary Junior Assistant under contract appointment. Therefore, the claim of the petitioner cannot be entertained. Hence, the respondents pray to reject the writ petition.

9. Heard Mr. G.Kannan, the learned counsel for the petitioner, Mr.D.Farjana Ghoushia, the Special Government Pleader for respondents 1 and 3 and Mr.J.Anandkumar for the 2nd respondent and perused the records.

10. It is seen from records that the petitioner's initial appointment is under Rule 11(a) of Tamil Nadu State and Subordinate Service Rules, which is a temporary contract appointment. There were several persons like that of the petitioner who were recruited on contract basis. The Government, in order to regularize their services, conducted a Special Competitive Examination in the year 2007. The petitioner was appointed on 09.07.2003. Since the petitioner unauthorizedly absent from 30.08.2006, the petitioner's service was terminated on 18.10.2006. When the Special Competent Examination, 2007, notification dated 06.12.2007 was issued, the petitioner was not in service. Therefore, the petitioner has not submitted any application through the Head of the Department in order to attend the Special Competitive Examination. The petitioner has not even submitted an application and in such circumstances, the petitioner's claim cannot be accepted. However, based on the order of this Court passed in W.P.(MD)No.1466 of 2008, the petitioner was reinstated and he is continuing in service, without regularization.

11. In these circumstances, the respondents cannot be directed to regularize without any Special Competitive Examination. The Government is empowered to regularize the age, qualification, etc. But if the Special Competitive Examination is conducted, without attending the said examination, granting regularization, will be a wrong precedent. Therefore, the claim of the petitioner to regularize his service without competitive examination, is not legally sustainable. The respondents cannot be directed to conduct special competitive examination for a single person.

12. Therefore, this Court is of the considered view that the petitioner shall be allowed to continue in service in contract basis. In future as and when any special competitive examination is conducted, the petitioner shall be allowed to participate in the examination. In the meanwhile, the government shall consider the



petitioner's service with a condition that the petitioner should participate in any examination that would be conducted for direct recruitment and pass the examination.

13. With this direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

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To

1. The Secretary to Government,
Revenue Department, Government of Tamilnadu,
Secretariat, Fort.St.George, Chennai.

2. The Secretary, Tamilnadu Public Services Commission, Chennai.

3. The District Collector, Tuticorin District, Tuticorin.

+1 CC to M/s.J. ANANDKUMAR, Advocate (SR-25547[F] dated
14/06/2022)

+1 CC to M/s.SPL.GP (SR-25884[F] dated 15/06/2022)

W.P (MD) No.17032 of 2016
and

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