



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos. 27186 of 2019

and

W.M.P. (MD) No. 23496 of 2019

N.P.Latha,
D/o.Palanisamy,
Office Assistant,
Nilakottai Town Panchayat,
Nilakottai,
Dindigul District.

... Petitioner

Vs.

1. The District Collector,
Dindigul District,
Dindigul.

2. The Assistant Director of Town Panchayats,
Collectorate Campus,
Dindigul.

3. The Executive Officer,
Nilakkottai Town Panchayat,
Nilakkottai,
Dindigul District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari Mandamus calling for the records relating to the impugned order passed by the third respondent in Na.Ka.No.666-4/2019/Tha.A dated 27.11.2019 and quash the same as illegal and consequently direct the respondents to permit the petitioner to work as Office Assistant in the third respondent Town Panchayat will all service and attendant benefits.

For Petitioner : Mr.R.R.Kannan

For Respondents : Mr.N.Satheesh Kumar
Addl. Govt. Pleader for R1 & R2
A.K.Manikkam
Special Government Pleader for R3



O R D E R

The order of reversion dated 27.11.2019 is under challenge in the present Writ Petition.

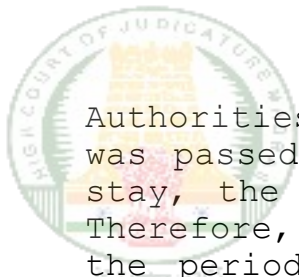
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2. The petitioner was appointed as Sanitary Worker, as per the resolution passed by the Town Panchayat on 02.11.2000. Subsequently, she was promoted to the post of Office Assistant, as per the resolution of the Town Panchayat held on 07.10.2020. The petitioner states that she is working as Office Assistant with effect from 07.10.2010 onwards.

3. The audit objection was raised for the financial year 2009-10 and the objection was raised regarding the promotion of the writ petitioner to the post of Office Assistant from the post of Sanitary Worker as there is no rule to grant such promotion. Accordingly, the third respondent has passed an order of reversion in proceedings dated 26.09.2012 and the said order was challenged by the writ petitioner in W.P. (MD) No. 13736 of 2012 and interim order was granted by this Court. With the benefit of interim order, the petitioner continued in the post of Office Assistant till the year 2019 and this Court has passed the final order remanding the matter back to the Authorities for providing an opportunity to the writ petitioner to defend her case. Thus, after providing an opportunity and considering the explanation submitted by the writ petitioner, the impugned order of reversion has been passed which is now under challenge in the present Writ Petition.

4. The learned counsel for the petitioner mainly contended that as per the Tamil Nadu Town Panchayats (Establishment) Rules, 1988, the post of Office Assistants shall be filled by direct recruitment or by transfer from among menials paid from contingencies. When there is a provision to appoint the Office Assistants by way of transfer from among menials paid from contingencies and the petitioner was holding the regular post of Sweeper, there is no error in the matter of grant of promotion to the writ petitioner from the post of Sweeper to Office Assistant. It is further contended that the scale of pay for both the posts are identical and there is no loss to the Town Panchayat. This apart, the petitioner is already working for more than ten years in the post of Office Assistant and therefore, the Writ Petition is to be considered.

5. The learned counsel for the respondents made a submissions that the Rule does not contemplate any such promotion from the post of Sweeper to Office Assistant. The promotion was granted irregularly by passing a resolution by the Town Panchayat and therefore, the audit objection was raised by the Competent



Authorities. Based on the audit objection, the order of reversion was passed in the year 2012 and by virtue of the interim order of stay, the petitioner was allowed to continue as Office Assistant. Therefore, the petitioner is not entitled to claim any benefit for the period in which she served as Office Assistant based on the interim order of this Court. The learned counsel further contended that the Rule does not contemplate any such promotion from the post of Sweeper to the post of Office Assistant as both of the posts are carrying identical scale of pay. When identical scale of pay is prescribed, the question of promotion would not arise at all. Thus, the very resolution passed by the Town Panchayat is irregular and in violation of Rules-in-force.

6. Considering the arguments, this Court is of the opinion that the Rule provides the method of recruitment for appointment to the post of Office Assistant. Accordingly, by direct recruitment or by transfer from among the menials paid from contingencies, the petitioner was not appointed to the post of Office Assistant. She was promoted to the post of Office Assistant from the post of Sweeper. Further, she was not transferred from among menials paid from contingencies as she was a regular employee in the post of Sweeper. Therefore, the petitioner has not satisfied the conditions for recruitment of appointment to the post of Office Assistant as per the Rules-in-force.

7. When the posts of Sweeper and Office Assistant carry identical scale of pay, grant of promotion from the post of Sweeper to Office Assistant does not arise at all. The promotion can be granted only to the higher post carrying higher scale of pay and not in respect of identical categories. Thus, both the recruitment for appointment to the post of Office Assistant as well as scale of pay fixed for the post of Office Assistant do not permit to grant of promotion from the category of Sweeper, which is identical.

8. The learned counsel for the petitioner further made an attempt to refer the Tamil Nadu Town Panchayat Office Assistant and menials (Leave) Rules, 1988, wherein the Sweeper-cum-Scavenger has been prescribed. However, the said Rules have no application in respect of the regular employees as the Rules shall apply to all Office Assistants and menials paid from contingencies in employment of the Town Panchayat. When the Rules have no application, the reference cannot be made by the petitioner regarding the categories mentioned in the said Leave rules.

9. A perusal of the order of promotion reveals that the petitioner was regularly appointed as Sweeper and the post of Office Assistant became vacant in the Town Panchayat. The Town Panchayat



passed a resolution to promote the writ petitioner from the post of Sweeper to Office Assistant. Such a resolution is in violation of the recruitment Rules in force. Even, if a vacancy arises, such posts are to be filled up as per the method of recruitment contemplated under the Rules. When the method of recruitment does not contemplate the promotion from the post of Sweeper, such promotion cannot be granted and audit objection has rightly been raised. Thus, there is no infirmity as such in respect of the objections raised by the audit party.

10. The Town Panchayat passed a resolution probably in order to favour the petitioner to accommodate her in the post of Office Assistant. Such order can never be approved by the Court as it is directly in violation of the recruitment Rules in force. But the Town Panchayat cannot pass such resolution which is in violation of the Act and Rules in force. The Authorities of the Town Panchayat are bound to raise objections in this regard or bring the irregularity to the knowledge of the District Collector, who is the Inspector of Town Panchayat under the Act. Therefore, all such actions are to be monitored properly in order to avoid irregularities and illegalities in the matter of appointments, promotions and dealing with the administrative affairs of Town Panchayat.

11. A perusal of the promotion order reveals that it was passed on extraneous consideration and in violation of the Rules. This being the factum established, this Court do not find any infirmity or perversity in respect of the order of reversion passed. The petitioner was allowed to continue in the post of Office Assistant for about seven years by virtue of the interim order granted by this Court and such "litigious employment" cannot be a ground to consider the case of the writ petitioner for her continuance in the post of Office Assistant. Thus, the Writ Petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2022

Sub Assistant Registrar(CS)

vji



To

1. The District Collector,
Dindigul District,
Dindigul.

2. The Assistant Director of Town Panchayats,
Collectorate Campus,
Dindigul.

3. The Executive Officer,
Nilakkottai Town Panchayat,
Nilakkottai,
Dindigul District.

+1 CC to M/s.RR.KANNAN, Advocate (SR-13790[F] dated 23/03/2022)

+1 CC to M/s.SPL GP (SR-13850,SR-14350[F] dated 23/03/2022)

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RD(19.04.2022) 5P 6C