



W.A.No.217 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.217 of 2023
and
C.M.P. No. 2220 of 2023

1.The Secretary to Government
Municipal Administration and Water
Supply Department
Fort St.George, Chennai

2. The Director of Town Panchayats
Kuralagam, Chennai – 108

3. The Collector
Krishnagiri District, Krishnagiri

.. Appellants

Versus

S.Afsal Baig
S/o.Late Mohamed Syifullah Baig
No.25, Kareem Sahib Street
Bargur, Krishnagiri District

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 09.03.2021 passed in W.P. No. 31056 of 2012 on the file of this Court.



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For Appellants : Mr. Silambannan
Additional Advocate General
assisted by Mr. Babu Barveez
Government Advocate
For Respondent : Mr. V. Vijay Shankar

JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

Challenging the order dated 09.03.2021 passed by the learned Judge in W.P. No. 31056 of 2012 filed by the respondent herein, the appellants have preferred the present intra court appeal.

2. The respondent has filed WP No. 31056 of 2012 praying to issue a Writ of Certiorari calling for the records relating to the proceedings dated 23.08.2012 of the third appellant, communicating the order dated 04.11.2011 of the first appellant and to quash both the orders.

3. In the affidavit filed in support of the writ petition, it was stated by the respondent that his father Mr. Mohammed Syifullah Baig was employed as Head Clerk at Bargur Selection Grade Town Panchayat, Krishnagiri District, but during the course of his employment, he died in harness on 04.06.1996 leaving behind his legal heirs, including the



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respondent herein. On the death of his father, the respondent submitted an application dated 14.12.1998 seeking appointment on compassionate grounds. In consideration of the application submitted by the respondent, an order dated 27.08.2009 was passed appointing him as Junior Assistant in the same Town Panchayat where his father was employed. The respondent also joined the post of Junior Assistant and after two years of his continuous employment, the first appellant passed an order dated 04.11.2011 stating that the appointment of the respondent in the post of Junior Assistant was irregular because, he was not having the qualification prescribed for holding such post. The proceedings dated 04.11.2011 was communicated to the respondent by the third appellant on 23.08.2012, thereby cancelling the appointment of the respondent to the post of Junior Assistant and re-appointing him to the post of Office Assistant in the same Town Panchayat. Aggrieved by the same, the respondent has filed the writ petition before the learned Judge.

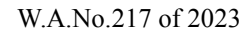
4. The learned Judge, on consideration of the rival submissions, concluded that the respondent was appointed to the post of Junior Assistant



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in the year 2009 and for nearly two years or more he was working in the said post. It was further held that at the time of submission of the application on 14.12.1998 seeking appointment on compassionate grounds, the respondent did not possess the requisite qualification. However, when he was appointed on 27.08.2009 he was in possession of the prescribed qualification for appointment to the post of Junior Assistant. Therefore, the learned Judge quashed the orders, impugned in the writ petition and allowed the writ petition filed by the respondent on 09.03.2021. Aggrieved by the said order, the appellants have filed the present writ appeal.

5. The learned Additional Advocate General appearing for the appellant submitted that pursuant to the order dated 04.11.2011 of the first appellant, which was communicated by the order dated 23.08.2012 of the third appellant, the appellant was reverted to the post of Office Assistant with effect from 01.04.2013. From that date onwards, the appellant is only working as Office Assistant. Therefore, the respondent may not be entitled to the monetary benefits attached to the post of Junior Assistant as per the order of the learned Judge. It is further submitted that the probation of the



6. The learned counsel for the respondent submitted that the father of the respondent died on 09.09.1996 and at that time, the respondent was 13 years old and studying VIII Standard. Since the application for compassionate appointment has to be submitted within three years of the death of government servant, an application was submitted on 14.12.1998. At that time the respondent was studying X Standard. The appellants did not consider the application seeking compassionate appointment immediately, but only on 27.08.2009, after 11 years, the respondent was appointed to the post of Junior Assistant. At the time of his appointment, he had S.S.L.C. and is fully qualified for holding the post of Junior



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Assistant. However, on 27.03.2010, when proposal was sent for declaring the probation of the respondent, the first respondent, without application of mind, has noticed that on the date when the application seeking compassionate appointment was made, the respondent did not possess S.S.L.C. qualification and therefore reverted him to the lowest post of Office Assistant. The fact remains that on the date when the respondent was appointed on compassionate grounds, he passed S.S.L.C. and therefore his appointment is proper. The respondent also, in para No.5 of the affidavit filed in support of the writ petition, has clearly stated that he passed X Standard at the time of his appointment as Junior Assistant and that was not taken note of by the appellants.

7. The learned counsel for the respondent further submitted that before passing the orders, which were impugned in the writ petition, reverting the respondent from the post of Junior Assistant to Office Assistant, he was not put on notice. Had a show cause notice been issued before reverting him to the lower post, he will be in a position to substantiate that at the time of his appointment on compassionate grounds,



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he passed S.S.L.C. and there may not be any necessity to pass the order of reversion. In any event, the appellants, by taking note of the qualification acquired by the respondent at the time of submission of the application seeking compassionate grounds, have passed the orders of reversion without considering that the respondent had passed S.S.L.C. at the time of his appointment as Junior Assistant. Therefore, it is submitted that the respondent was fully qualified to hold the post of Junior Assistant and the order of reversion is not warranted. The learned Judge also, taking note of the fact that the respondent had acquired the requisite qualification at the time of appointment, has allowed the writ petition filed by him, thus, the learned counsel for the respondent prayed for dismissal of the writ appeal.

8. We have heard the learned Additional Advocate General appearing for the appellants as well as the learned counsel for the respondent and perused the materials on record.

9. It is no doubt true that at the time when the application seeking appointment on compassionate grounds was made, the respondent did not



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pass S.S.L.C. However, when he was appointed to the post of Junior Assistant on 27.08.2009, he passed S.S.L.C. Therefore, the appointment of the respondent to the post of Junior Assistant as on 27.08.2009 is proper. The appellants, without application of mind, have stated that at the time of submission of the application on 14.12.1998, seeking appointment on compassionate grounds, the respondent did not possess the requisite qualification. When the respondent had subsequently acquired the requisite qualification for holding the post of Junior Assistant on 27.08.2009, his appointment is proper and he ought not to have been reverted to the post of Office Assistant for want of qualification. The learned Judge, on appreciation of the aforesaid facts, has rightly allowed the writ petition filed by the respondent and we find no reason to interfere with the same.

10. At this stage, the learned Additional Advocate General submitted that the appellants are inclined to confer all the attendant benefits payable to the respondent in the post of Junior Assistant, as directed by the learned Judge, except back wages for the period during which he discharged his duties as Office Assistant, after his reversion.



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11. In reply, the learned counsel for the respondent also submitted that the respondent is not pressing for back wages for the period during which he discharged his duties as Office Assistant, upon reversion. However, the respondent is entitled for continuity of service, promotion, pay fixation etc., in the cadre of Junior Assistant .

12. In the light of the above submission, this writ appeal stands disposed of directing the appellants to place the respondent in the post of Junior Assistant, with all consequential benefits such as continuity of service, pay fixation, promotion etc., except back wages for the period during which he discharged his duties as Office Assistant. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J] [M.S.Q., J]
06.03.2023

Index: Yes / No

Speaking order/ Non-speaking order

Neutral Citation: Yes / No

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