



W.P.Nos.3330 & 3331 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.3330 and 3331 of 2017

and

W.M.P.Nos.3300 & 3301 of 2017

M.Sivasubramanian

... Petitioner in W.P.No.3330 of 2017

M.Nithyanandam

... Petitioner in W.P.No.3331 of 2017

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Secretariat,
Chennai-600 009.

2.The District Collector,
Chennai District,
Rajaji Salai,
Chennai-600 001.



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3. Personnel Assistant (General) to the Collector,
Chennai District,
Chennai-600 001.

4. Tahsildar,
Mambalam Taluk Office,
Chennai-600 078.

... Respondents in W.P.No.3330 of 2017

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Secretariat,
Chennai-600 009.

2. The District Collector,
Chennai District,
Rajaji Salai,
Chennai-600 001.

3. Personnel Assistant (General) to the Collector,
Chennai District,
Chennai-600 001.

4. Tahsildar,
Aminjikarai Taluk Office,
Chennai-600 078.

... Respondents in W.P.No.3331 of 2017

Common prayer : Writ Petitions filed under Article 226 of the Constitution



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of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent pertaining to his order which is made in his proceedings in A4/26420/2009 B1/602/17 and A4/26420/2009 respectively dated 30.01.2017 and signed dated 31.01.2017 and quash the same consequent to direct the respondents to reinstate the petitioners into service and further direct to grant all service benefits to the petitioners at par with his juniors.

For Petitioners : Mr.R.Malaichamy
in both petitions

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
in both petitions

COMMON ORDER

These Writ Petitions have been filed to quash the orders of the 3rd respondent dated 30.01.2017 and to direct the respondents to reinstate the petitioners into service and to grant all service benefits on par with his juniors.

2.The learned counsel appearing for the petitioners would submit that



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the petitioner in W.P.No.3330 of 2017 was appointed as temporary Junior Assistant on contract basis in supernumerary post and allotted to the office of the Chief Engineer (General) Highways and Rural Service, Chepauk, Chennai-600 005. As ordered by the 2nd respondent dated 22.08.2003, the petitioner joined duty in the Highways Department at Divisional Office, Anna Salai, Chennai. Thereafter, the petitioner was transferred and posted at Mylapore, Triplicane Taluk Office by the 3rd respondent vide his proceedings dated 07.11.2005 and again transferred and posted at 2nd respondent office. The petitioner in W.P.No.3331 of 2017 was appointed as temporary Junior Assistant on contract basis in supernumerary post and allotted to the office of the Registrar of Co-operative Societies, Kilpauk, Chennai. As ordered by the 2nd respondent dated 22.08.2003, the petitioner joined duty in the office of the Registrar of Co-operative Societies, Kilpauk, Chennai. Thereafter, the petitioner and some others found surplus in the said office. Hence, they were re-alloted to the office of the Tahsildar, Egmore-Nungambakkam Taluk at Chetpet. In the meanwhile, the Government wanted to regularize the service of the petitioners and others



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who were appointed on contract basis in the year 2003 by way of Special Test through TNPSC. The petitioners appeared and declared pass and eligible for regularization according to his turn comes. Hence, they are deemed regular employee of the 2nd respondent office. He further submit that on 08.09.2008, the DVAC conducted a surprise visit in the Tahsildar Office, Egmore-Nungambakkam Taluk at Chetpet. But, the petitioners were unaware of any adverse remark against them. Thereafter, they were transferred and posted to the 4th respondent office by the 3rd respondent. The petitioners were issued a show cause notice dated 02.12.2015 by the 3rd respondent for the incident alleged to be taken place on 08.09.2008 at Egmore Nungambakkam Taluk Office. It has been alleged that the petitioner in W.P.No.3330 of 2017 while working in Egmore-Nungambakkam Taluk as temporary Junior Assistant, he had engaged a private individual, namely, R.Selvi, D/o.Ravi for his assistance and paid at Rs.100/- per day to her as remuneration from his pocket. The petitioner in W.P.No.3331 of 2017 while working in Egmore-Nungambakkam Taluk office, he had kept 13 Community Certificates without issuing the same to the concerned. After



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submitting their explanation, the 3rd respondent terminated the petitioners from service with immediate effect vide order dated 30.01.2017, without affording reasonable opportunity to the petitioners to prove their innocence with regard to the charge and it was served on them on 01.02.2017. The petitioner in W.P.No.3330 of 2017 is about to retire on superannuation on 31.03.2017 by attaining the age of retirement. A specific allegation has been made against the petitioners for the incident said to be happened in the year 2008. A show cause notice has been issued dated 02.12.2015 to the petitioners by the 3rd respondent. The petitioners successfully came out in the test conducted by the TNPSC for regularization of their service. But, they wantonly delayed to regularize their service for the reasons best known to them. Therefore, the petitioners are entitled a regular inquiry to prove their innocence. Hence, this Writ Petition.

3.The learned Additional Government Pleader appearing for the



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respondents would submit that the petitioners along with others were appointed as Junior Assistant on contract basis and Thereafter, transferred and posted at Egmore-Nungambakkam Taluk office, While the petitioners were working as temporary Junior Assistant, a joint surprise check was conducted by the Additional Personal Assistant to the Collector and Officers of the Directorate of Vigilance and Anti-Corruption, City Special Unit III, on 08.09.2008. Based on the complaint of Mr/S.Balasubramaniam, Additional Personal Assistant to the Collector, Chennai Collectorate, Chennai. a case in Chennai City-II Cr.No. 18/AC/2008/CC-II under Section 41 and 102 Cr.P.C. was registered on 10.09.2008. Thereafter, a show cause notice dated 02.12.2015 was issued to the petitioners for their irregularity. The petitioners gave their written explanation. It is further submitted that petitioners were appointed by agreement as temporary Junior Assistant under General Rule 11 of Tamil Nadu State and Subordinate Service Rules. The appointment of the petitioners is purely temporary on contract basis and shall not confer any right of membership of Tamil Nadu Ministerial Service, since the petitioner is not a member of Tamil Nadu Ministerial service. The



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Tamil Nadu Civil Services (Discipline and Appeal) Rules could not be invoked against them as per the letter No. 58460/G/2004-1, dated 19.03.2005 of the Personal and Administrative Reforms (G) Department, Secretariat, Chennai. However, following the principles of natural justice, the petitioners were given an opportunity to submit their explanation and peruse the records of enquiry on 07.10.2016. After careful and independent examination of the allegations and defense submitted by the petitioners, the order was passed by the 3rd respondent in accordance with rules as there is no violation of principles of natural justice.

4. On a perusal of the documents, it is seen that the petitioners were appointed as temporary Junior Assistant on contract basis in supernumerary post. Thereafter, they were transferred and posted at Egmore-Nungambakkam Taluk office, While they were working, a joint surprise check was conducted by the Additional Personal Assistant to the Collector and Officers of the Directorate of Vigilance and Anti-Corruption, City Special Unit III, on 08.09.2008. Based on the complaint of



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Mr/S.Balasubramaniam, Additional Personal Assistant to the Collector, Chennai Collectorate, Chennai. a case in Chennai City-II Cr.No. 18/AC/2008/CC-II under Section 41 and 102 Cr.P.C. was registered on 10.09.2008. Thereafter, a show cause notice dated 02.12.2015 was issued to the petitioners for their irregularity and the petitioners gave their written explanation.

5.Further, the petitioner in W.P.No.3330 of 2017 was appointed by agreement as temporary Junior Assistant under General Rule 11 of Tamil Nadu State and Subordinate Service Rules. The appointment of the petitioner is purely temporary on contract basis and shall not confer any right of membership of Tamil Nadu Ministerial Service since the petitioner is not a member of Tamil Nadu Ministerial service. The Tamil Nadu Civil Services (Discipline and Appeal) Rules could not be invoked against him as per the letter dated 19.03.2015. Further, as per the instructions of the learned Additional Government pleader, the petitioner in W.P.No.3330 of 2017 was not appointed as Government Servant. In this regard, he has



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produced a letter dated 28.11.2023 issued by the 2nd respondent/District Collector stating that the petitioner in W.P.No.3330 of 2017 was not appointed as Government Servant and the petitioner was appointed as temporary Junior Assistant on agreement basis under General Rule 11 of Tamil Nadu State and Subordinate Service Rules. Therefore, the claim of the petitioner in W.P.No.3330 of 2017 to reinstate him into service and claiming other benefits does not arise. Hence, W.P.No.3330 of 2017 is dismissed. No costs.

6.The petitioner in W.P.No.3331 of 2017 was appeared for special examination conducted by TNPSC as per Notification dated 06.12.2007 and qualified in the test, Now the petitioner is working in the 4th respondent office as temporary Assistant. The 3rd respondent terminated the petitioner from service without affording reasonable opportunity to him.

After dictating the orders, this Court intervenes to consider the request



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of the petitioner, if the petitioner is successful in the disciplinary proceedings, liberty may be given to the petitioner to approach the Authorities in accordance with Law. Accordingly, W.P.No.3331 of 2017 is dismissed with liberty to the petitioner to approach the Authorities, if he succeeds. No costs. Consequently, connected Miscellaneous Petitions are closed.

15.12.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

1. The Secretary,
Revenue Department,
Secretariat,
Chennai-600 009.

2. The District Collector,
Chennai District,

11/13



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Rajaji Salai,
Chennai-600 001.

3.Personnel Assistant (General) to the Collector,
Chennai District,
Chennai-600 001.

4.Tahsildar,
Mambalam Taluk Office,
Chennai-600 078.

5.Tahsildar,
Aminjikarai Taluk Office,
Chennai-600 078.

V.BHAVANI SUBBAROYAN, J.



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