



W.P.(MD)No.13446 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:24.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.13446 of 2020

S.Lathan

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District.

2.The Assistant Director of Rural
Development (Panchayat)
Nagercoil, Kanyakumari District.

3.The Block Development Officer,
Kurunthancode Panchayat Union,
Kanyakumari District.

4.The President cum Executive Officer,
Kattimancode Panchayat,
Kattimancode Post,
Kanyakumari District.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent pertaining to the order bearing Che.Mu.No.Va3/46722/2018 dated 08.05.2019 and to quash the same



W.P.(MD)No.13446 of 2020

and consequently directing the third respondent to permit the petitioner to discharge his duties as an overhead tank operator in the fourth respondent Panchayat.

For Petitioner	: Mr.S.C.Herold Singh
For Respondents	: Mr.S.P.Maharajan Special Government Pleader for R1 to R3 Mr.G.V.Vairom Santhosh Additional Government Pleader for R4

ORDER

This writ petition has been filed to call for the records pertaining to the order bearing Che.Mu.No.Va3/46722/2018 dated 08.05.2019 passed by the first respondent, quash the same and consequently, direct the third respondent to permit the petitioner to discharge his duties as Overhead Tank Operator in the fourth respondent Panchayat.

2. The case of the petitioner is that the petitioner joined the service in the fourth respondent Panchayat as Street Light Operator and thereafter, he was appointed as Over Head Tank Operator at Cheruppancode Village due to formation of new overhead tank and the



W.P.(MD)No.13446 of 2020

appointment was also approved by the Panchayat, by Resolution No.6 dated 19.04.2000. Due to ill-health, the petitioner has taken leave from 13.04.2011 to 02.10.2011. After the expiry of the leave, the petitioner has approached the fourth respondent on 03.10.2011 and he was permitted to join duty. There was some dispute with regard to the employment of the petitioner and thereby, the husband of the President of Panchayat has prevented the petitioner from discharging the duty. Sine he was not allowed to continue in the job, he was constrained to file a writ petition in W.P.No.4741 of 2012 and subsequently, the said writ petition was dismissed as withdrawn, since the 4th respondent has permitted the petitioner to continue in work. However, thereafter, the 4th respondent has not permitted the petitioner to continue in work. Hence, he has filed a writ petition in W.P(MD).No.13731 of 2018 and this Court dismissed the writ petition on 20.02.2020, as against which, the petitioner has preferred an appeal before the Hon'ble Division Bench of this Court in W.A(MD).No.1228 of 2018. On 17.09.2018, the Hon'ble Division Bench of this Court has issued a direction to the first respondent to consider the representation of the petitioner dated 27.05.2013 and pass appropriate



W.P.(MD)No.13446 of 2020

WEB COPY

orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of the order, pursuant to which, the present impugned order has been passed by the first respondent. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the present impugned order has been passed on the ground that there was a ban for appointment in Village Panchayat on full time/part time basis on NMR/Consolidated/Daily Wages as per G.O.Ms.No.93, Rural Development Department, dated 26.03.1997 and the petitioner was frequently absent without obtaining prior permission, which is not sustainable one, since the petitioner is working as Over Head Tank Operator from the year 2000 onwards. The said Government Order is not applicable to the person who provides water facilities to the Village Panchayat. Hence, the appointment of the petitioner is perfectly in order which cannot be interfered with either by the fourth respondent or by the District Collector.



W.P.(MD)No.13446 of 2020

WEB COPY

4. Per contra, the learned counsel appearing for the respondents would submit that the initial appointment of the petitioner itself is illegal in terms of G.O.Ms.No.93, Rural Development Department, dated 26.03.1997. As per Government Letter No.4451/E5/07-1, RD and PR Department dated 11.10.2007, the Water Supply Attenders are only part time employees and are entitled for consolidated pay. Further, question of granting time scale of pay does not arise as the post of Water Supply Attenders is not full time. There is no full time post of Overhead Tank Operator sanctioned to any of the Village Panchayats in Kanniyakumari District/in any of the Districts. Hence, he prays for dismissal of the present writ petition.

5. Heard the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for the respondents 1 to 3 and the learned Additional Government Pleader appearing for the fourth respondent.



W.P.(MD)No.13446 of 2020

WEB COPY

6. The facts in the present case are not in dispute. Admittedly, the petitioner was initially appointed as Street Light Operator and subsequently, was appointed as Over Head Tank Operator on temporary basis by the fourth respondent Panchayat in the year 2000. However, there was a dispute with regard to the employment of the petitioner and thereby, the 4th respondent has prevented the petitioner from attending the duty. It was challenged by the petitioner before this Court in W.P(MD).No.13731 of 2018 and the same was dismissed on 20.02.2020. Thereafter, he has filed a writ appeal in W.A(MD).No.1228 of 2018 and the Hon'ble Division Bench of this Court has issued a direction to the 1st respondent to consider the representation of the petitioner dated 27.05.2013, pursuant to which, the present impugned order has been passed. However, a perusal of G.O.Ms.No.93, Rural Development Department dated 26.03.1997, makes it clear that there is no fresh appointments to be made in Village Panchayats on full time/part time basis on NMR/Consolidated/Daily Wages with effect from 01.04.1997. The petitioner was appointed by way of resolution by the Panchayat and the said appointment was only on temporary basis. Since the initial



W.P.(MD)No.13446 of 2020

WEB COPY

appointment of the petitioner is illegal in terms of G.O.Ms.No.93, Rural Development Department, dated 26.03.1997, the claim made by the petitioner cannot be considered.

7. Accordingly, this Writ Petition is dismissed. However, the fourth respondent is directed to initiate proceedings for appointment of Over Head Tank Operator in the Panchayat. If such proceedings is initiated, liberty is granted to the petitioner to participate in the selection process for appointment to the post of Over Head Tank Operator. The fourth respondent is directed to consider the past experience gained by the petitioner and pass appropriate orders. No costs.

24.01.2023

ssb

NCC:Yes/No

Index:Yes/No

Internet:Yes/No



W.P.(MD)No.13446 of 2020

To

1. The District Collector,
Kanyakumari District.
2. The Assistant Director of Rural
Development (Panchayat)
Nagercoil, Kanyakumari District.
3. The Block Development Officer,
Kurunthancode Panchayat Union,
Kanyakumari District.
4. The President cum Executive Officer,
Kattimancode Panchayat,
Kattimancode Post,
Kanyakumari District.



WEB COPY



W.P.(MD)No.13446 of 2020

M.DHANDAPANI,J.

ssb

W.P.(MD)No.13446 of 2020

24.01.2023