



W.P.(MD).Nos.15555, 15556, 15557, 15558 & 15559 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.15555, 15556, 15557, 15558 & 15559 of 2021
and
W.M.P(MD)Nos.12482, 12483, 12484, 12485, 12486, 12487,
12488, 12489, 12490, 12491, 12492, 12493, 12494, 12495 &
12496 of 2021

Alaguponnu	... Petitioner in W.P(MD)No.15555/2021
Karthick Raja	... Petitioner in W.P(MD)No.15556/2021
Poornima	... Petitioner in W.P(MD)No.15557/2021
Balamurugan	... Petitioner in W.P(MD)No.15558/2021
Vasagaperumal	... Petitioner in W.P(MD)No.15559/2021

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.109, Uthamar Gandhi Road,
Nungambakkam,
Chennai – 600 034.
 - 2.The Deputy Commissioner/Executive Officer,
Arulmigu Kallalagar Thirukkivil,
Alagarkovil,
Madurai District.
 - 3.The Thakkar,
Arulmigu Kallalagar Thirukkivil,
Alagarkovil,
Madurai District.
- ... Respondents in all W.Ps'



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COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records from the respondents 2 and 3 in their proceedings in Na.Ka.No.1158/2021/A5, dated 07.07.2021 and quash the same insofar as the post of Para (Guard) is concerned and consequently appoint/promote the petitioners as Para (Guard) at Arulmigu Kallalagar Thirukkivil, Alagarkovil, Madurai District within the period stipulated by this Court.

For Petitioners : Mr.N.Sathish Babu
(In all W.Ps')

For R – 1 : Mr.S.Kameswaran
(In all W.Ps')

For RR 2 & 3 : Mr.K.R.Laxman
(In all W.Ps')

COMMON ORDER

The Writ Petitions have been filed for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the respondents 2 and 3 dated 07.07.2021 insofar as the post of Para (Guard) is concerned and consequently appoint/promote the petitioners as Para (Guard) at Arulmigu Kallalagar Thirukkivil, Alagarkovil, Madurai District within the period stipulated by this Court.



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2.Heard Mr.N.Sathish Babu, learned counsel appearing for the petitioners, Mr.S.Kameswaran, learned Government Advocate appearing for the first respondent and Mr.K.R.Laxman, learned counsel appearing for the respondents 2 and 3 and perused the materials available on record.

3.The petitioners were appointed as Sweepers on consolidated pay basis by the second respondent on 30.12.2013, 08.11.2019, 30.10.2015, 17.01.2020 and 10.07.2019 respectively in Arulmighu Kallalagar Thirukkivil, Madurai. Thereafter, their services were regularized and they were brought into the time scale of pay vide proceedings of the second respondent, dated 19.03.2015, 10.06.2021, 07.02.2017, 04.08.2021 and 10.06.2021 respectively. The petitioners have got the requisite qualification to be appointed as Junior Assistant, Clerk or Para (Guard) and hence, they approached the respondents 2 and 3 requesting them to promote them to the post of Para (Guard). However, their requests were not considered. While so, on 07.07.2021, the impugned notification inviting applications for 25 vacancies for the post of Para (Guard) was notified in "Thina Thanthi" Tamil Daily, dated 09.07.2021 calling for applications from eligible candidates.



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Challenging the said notification, dated 07.07.2021 this Writ Petition came to be filed.

4.The learned counsel appearing for the second respondent submitted that the petitioners cannot claim their right to be considered for promotion to the post of Para (Guard) as a matter of right because of the amendment brought to the Tamil Nadu Hindu Religious Institution Employees (Condition of Service) Rules, 2020, vide G.O.Ms.No.114, Tourism, Culture and Religious Endowments Department, dated 03.09.2020. Before the said amendment, the feeder category for the post of Para was obviously Sweeper post. However, pursuant to the issuance of G.O.Ms.No.114, Tourism, Culture and Religious Endowments Department, dated 03.09.2020, the rules with respect to the said post has been amended to the effect that recruitment could be made only by direct recruitment. In view of the same, the petitioners cannot claim the earlier position of law. Hence, the petitioners' claim, to be promoted to the post of Para from the post of Sweeper, cannot be entertained and on that basis, the learned counsel appearing for the second respondent pressed for dismissal of the Writ Petition. He further relied upon a similar case dealt with by this Court in W.P(MD)Nos.14361 to 14363 of 2021, dated 15.11.2022



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(M.Muthulakshmi and others Vs. The Commissioner and others) and the relevant portion of which is extracted as follows:-

"6. There is no dispute that there were vacancies in the post of Junior Assistants before the introduction of new Rules. The Hon'ble Division Bench vide order dated 05.07.2013 had held that the vacancies which had arisen before the introduction of new Rules will have to be filled up with reference to the then existing rules. As per earlier Rules, the petitioners were definitely qualified to be promoted as Junior Assistants.

7. But in the recent decision of the Hon'ble Apex Court reported in (2020) 18 SCC 1 (D.Raghu Vs. R.Basaveswarudu), it has been held that the employer is not obliged to fill up all the vacancies which might arise and secondly, when action is taken up for filling up the vacancies, statutory rules prevailing then alone will have to be applied.

....

10. The Hon'ble Supreme Court on more than one occasion held that during one's career, one must have an opportunity to be considered for atleast two promotions. I therefore expect the employer to ensure



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that the petitioners are given promotion atleast to Category-XI Posts within a period of two months from the date of receipt of a copy of this order."

Acknowledging the fact that the petitioners therein cannot claim the benefit of the earlier Rules despite amendments in the earlier Rules thereby bringing in new Rules, this Court has dismissed the aforesaid Writ Petitions. However, an observation on equity has been made by this Court that any person should be considered for promotion atleast once during their career or atleast twice during their career and hence, the employer is expected to ensure the petitioners by giving promotion atleast to the Category-XI posts.

5.This Court, in line with the said order, hereby directs the first respondent to consider the case of the petitioners in view of the fact that they are basic service employees to promote them to the Category-XI posts within a period of twelve weeks from the date of receipt of a copy of this order.



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6. With the above direction, these Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

09.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. The Commissioner,
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No.109, Uthamar Gandhi Road,
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Chennai – 600 034.
2. The Deputy Commissioner/Executive Officer,
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L.VICTORIA GOWRI, J.

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