



W.P.(MD).No.4124 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.4124 of 2018

and

W.M.P.(MD).Nos.4288 and 4289 of 2018

Muthukrishnan

... Petitioner

Vs.

1.The Director of Rural Development,
Panagal Building,
Saidapet, Chennai.

2.The Government of Tamil Nadu,
Represented by its Secretary,
Rural Development Department,
Fort St.George, Secretariat,
Chennai – 600 009.

3.The District Collector,
Panchayat Development,
Karur.

4.The Commissioner,
Panchayat Union,
Kulithalai,
Karur District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the fourth respondent in Na.Ka.A1/952/2008 dated 11.10.2017, quash the same and consequently direct the respondents to allow the petitioner in the cadre of Fitter and pay all other benefits to him.

For Petitioner : Mr.P.Saravana Kumar

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader.

ORDER

The petitioner is seeking to quash the impugned order dated 11.10.2017 with a consequential relief to direct the respondents to allow the petitioner in the cadre of Fitter and grant benefits.

2. The petitioner was sponsored by the Employment Exchange and appointed as Helper in the Water Supply Maintenance in the Divisional Development Office, Trichy on 05.12.1984 and he had worked until 11.01.1996. Thereafter, he was transferred to Kulithalai and worked as Helper in the Electrical Department. The claim of the petitioner is that he was qualified and possessed Industrial Training Institute Certificate in the trade of Fitter in the year 1980 and he was appointed as Fitter in the Kadavur Panchayat



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Union through proceedings dated 06.02.1997 and his appointment was acknowledged by the proceedings of the Commissioner vide letter dated 20.02.1997. Thereafter the petitioner was transferred to Kulithalai Panchayat Union as Fitter by the proceedings of District Collector in Na.Ka.Pa.Va. 4/12220/1997. Thereafter the Commissioner of Kulithalai Panchayat Union vide proceedings dated 17.06.2008 granted “No objection” on the petitioner retirement. On 30.06.2008 the petitioner had retired from service and he was allowed to retire as “Fitter”. Thus, the petitioner is entitled to be retired as Fitter with consequential benefits.

3. However, the respondents state that while transferring to Kadavur Panchayat Union, the petitioner was transferred as Helper only. The post of Fitter is a promotion post. The petitioner was transferred to the post of Fitter, since the said post was vacant and the said arrangement is only temporary on administrative reasons and not on promotion. Though the petitioner was transferred in the vacant post of Fitter, he was transferred only as Helper and performed his duty as Helper only and he never ever performed his duty as Fitter and he was not eligible to the said salary. The petitioner rely on the order of transfer to claim the post of “Fitter” and it is only typographical error. Hence, the respondents prayed to reject this Writ Petition and dismissed the same.



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4. Heard Mr.P.Saravana Kumar, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondents.

5. The Special Rules regulating the Fitter post is issued in G.O.Ms. No. 270 Rural Development Department dated 21.12.1992. For the post of Helper, a person should have pass in 8th Standard or III Form or E.S.L.C and must possess Industrial Training Institute Certificate in the Trade concerned. Admittedly, the petitioner is possessing both the qualification and he was rightly appointed as Helper. For the post of Fitter Grade-II, it is through direct recruitment and by recruitment by transfer from any other service. For the post of Fitter Grade-I, it is through promotion from the post of Fitter Grade-II and the person should possess five years experience in the post of Fitter Grade-II. Since the petitioner is serving under “Any Other Service”, the claim of the petitioner is that he is entitled to be transferred to the post of Fitter Grade-II by recruitment by transfer and the respondents have posted him in the vacant post of Fitter. Hence, he should be confirmed in the post of Fitter Grade-II post with consequential monetary benefits.



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6. It is an admitted fact that the petitioner is having qualification to be promoted as Fitter Grade-II. The claim of the respondents is that since a post of Fitter Grade-II fell vacant, since there was no other candidates available, since it is necessary for administrative reasons, the petitioner was transferred to the said post. Even though it is on administrative ground, since the petitioner is possessing qualification, the claim of the petitioner is that he should be considered for the said post. The claim of the respondents is that the petitioner alone cannot be considered, since there are several other persons to be considered for the said post. The list of eligible candidates ought to be prepared and thereafter according to applicable rules and regulations, all the candidates should be considered based on merit and ability, the eligible candidates should be appointed to the said post. Such process had never taken place, it is only for the administrative reasons that the petitioner was transferred to the said post.

7. After hearing the rival submissions, this Court has given its anxious consideration. The respondents submits that the post of Fitter is vacant and it is necessary to fill up the post for effective administration. If the respondents could not fill up the post by following the rules and regulations and the process could not be completed immediately, then the respondents have power to grant temporary promotion. In fact, the respondents have granted temporary



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promotion to the petitioner. But the plea of the respondents is that there is typographical error which cannot be accepted, since in each and every communication the petitioner was referred as “Fitter”. The next plea of the respondents is that the petitioner had not sought any salary applicable to the said post. But this plea is incorrect, since the petitioner had submitted several letters seeking salary for the said post and one such letter is dated 05.11.1998. Therefore, this Court is of the considered opinion that the petitioner is entitled to the said promotion and he is entitled to the salary applicable to the said post. Moreover, the petitioner had retired from service on 30.06.2008.

8. Therefore, this Court is inclined to pass the following orders:

(i) The impugned order is quashed and the petitioner shall be confirmed in the post of “Fitter Grade-II”.

(ii) The respondents shall pay the salary applicable to the post of “Fitter Grade-II”.

(iii) Consequently the petitioner’s terminal benefits and the pensionary benefits shall be revised.

(iv) The entire exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



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9. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

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S.SRIMATHY, J.

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