



W.P.(MD).Nos.21281, 21328 & 22248 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).Nos.21281, 21328 & 22248 of 2023

and

W.M.P(MD)Nos.17689, 17730 & 18519 of 2023

(In W.P(MD)No.21281 of 2023)

P.Kaliappan

... Petitioner

Vs.

1.The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam,
Chennai-108.

2.The District Collector,
Theni District,
Theni.

3.The Assistant Director of Town Panchayat,
Department of Town Panchayat,
Theni Region,
Theni District.

4.The Executive Officer,
Veerapandi Town Panchayat,
Theni District.

... Respondents



W.P.(MD).Nos.21281, 21328 & 22248 of 2023

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the fourth respondent vide his proceedings in Na.Ka.No.275/2021, dated 18.07.2023.

(In W.P(MD)No.21328 of 2023)

S.Ganesan

... Petitioner

Vs.

1.The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam,
Chennai-108.

2.The District Collector,
Theni District,
Theni.

3.The Assistant Director of Town Panchayat,
Department of Town Panchayat,
Theni Region,
Theni District.

4.The Executive Officer,
Vadugapatti Town Panchayat,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating



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to the impugned order passed by the fourth respondent vide his proceedings in Na.Ka.No.494/2023/A, dated 12.07.2023.

(In W.P(MD)No.22248 of 2023)

P.Marichamy

... Petitioner

Vs.

- 1.The Director of Town Panchayat,
Directorate of Town Panchayat,
Kuralagam,
Chennai-108.
- 2.The District Collector,
Theni District,
Theni.
- 3.The Assistant Director of Town Panchayat,
Department of Town Panchayat,
Theni Region,
Theni District.
- 4.The Executive Officer,
Odaipatti Town Panchayat,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the fourth respondent vide his proceedings in Na.Ka.No.243/2023/A, dated 19.07.2023.



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(In All the Cases)

For Petitioners : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.J.Ashok
Additional Government Pleader

COMMON ORDER

The present writ petitions have been filed by three Record Clerks working in the fourth respondent Town Panchayat challenging show cause notices, dated 12.07.2023, 18.07.2023 and 19.07.2023 respectively.

2. According to the writ petitioners, they were appointed as Sanitary Workers in the fourth respondent Town Panchayat on consolidated pay through employment exchange in the year 1998. The services of the writ petitioners were regularised on 04.07.2001 and 19.07.2001 in the cadre of Sanitary worker. Thereafter, the writ petitioners have been promoted to the post of Record Clerk by recruitment by transfer on various dates in April and May 2007.

3. The fourth respondent herein has issued the impugned show cause notices on 12.07.2023, 18.07.2023 and 19.07.2023 respectively calling for explanation from the writ petitioners why they should not be reverted to the



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post of Sanitary Worker citing G.O(Ms)No.205 (Rural Development Department), dated 23.03.1989. Challenging the same, the present writ petitions have been filed.

4. According to the writ petitioners, the petitioners are working in the cadre of Record Clerk from the year 2007 onwards for the past 16 years and at this length of time, if they are reverted to the post of Sanitary Worker, they will be put to great hardship. He further contended that the authorities were pleased to promote the petitioners as Record Clerks only based upon G.O(Ms)No.205, dated 23.03.1989. Therefore, the same Government order cannot be invoked now for reverting the petitioners to the post of Sanitary Workers. He further contended that the Government has issued G.O(Ms)No.76 (Municipal Administration and Water Supply [Peru.1] Department), dated 31.05.2019 wherein, the G.O(Ms)No.125 of the same Department, dated 27.05.1999 is being referred to. As per G.O(Ms)No.125, the menial workers working in the Town Panchayat could be appointed as Junior Assistant / Bill Collector. Considering the fact that the Record Clerk is the feeder category for the post of Junior Assistant, the petitioners having been appointed only as a Record Clerk and not as a Junior Assistant. The petitioners at this length of time may not be



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reverted to the post of Sanitary Workers. The learned Counsel appearing for the petitioner further relied upon Clause 28 of the Tamil Nadu Town Panchayat (Establishment) Rules, 1988 and contended that the Government has got powers to relax the rule or regulation in respect of establishment of Town Panchayats. According to the petitioners, when they are eligible to be appointed as a Junior Assistant, having been appointed in a lesser cadre, namely, Record Clerk, the Government can very well relax the rules by retaining the writ petitioners in the post of Record Clerk itself. Hence, he prayed for quashing the impugned show cause notices issued by the fourth respondent Town Panchayat.

5. Per contra, the learned Additional Government Pleader appearing for the respondents pointed out that as per G.O(Ms)No.205 (Rural Development Department), dated 23.03.1989, the feeder category to the post of Record Clerk is Office Assistant and not a Sanitary Worker. He further pointed out that the Sanitary Workers do not fall within the service rules of the Tamil Nadu Town Panchayat (Establishment) Rules, 1988. In fact the writ petitioners, who were originally appointed as Sanitary Workers fall within the service rules of the Tamil Nadu Town Panchayat Establishment (Qualification and Recruitment of Office Assistants) Rules, 1988. As per the said service rules, Sanitary Worker



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falls within Category II of Class II. They are eligible to be promoted as Sanitary Maestri or Office Assistant and not as Record Clerks. Therefore, the promotion granted to the writ petitioners as Record Clerks is clearly in violation of G.O(Ms)No.205, dated 23.03.1989. Therefore, they were issued with the impugned show cause notices calling for explanation why they should not be reverted to the post of Sanitary Worker.

6. He further contended that these writ petitions challenging a show cause notices are not maintainable and the petitioners are expected to submit their explanation to the show cause notice. Unless the issue of jurisdiction is involved, the show cause notices cannot be challenged under Article 226 of the Constitution of India. Hence, he prayed for dismissal of the writ petition.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. It is not in dispute that the petitioners were originally appointed as Sanitary Workers on consolidated pay in the year 1998 and their services were regularised in the year 2001. In April and May 2007, the petitioners were



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promoted to the post of Record Clerks. A perusal of the promotion order indicates that it is passed in consonance with G.O(Ms)No.205, dated 23.03.1989.

9. As rightly pointed out by the learned Additional Government Pleader as per G.O(Ms)No.205, dated 23.03.1989, the post of Sanitary Worker is not the feeder category to be promoted to the post of Record Clerk. Only the post of Office Assistant is the feeder category for being promoted as a Record Clerk. Therefore, the order of promotion has been erroneously passed in favour of the writ petitioners. Though the learned Counsel appearing for the writ petitioner had relied upon G.O(Ms)No.76, dated 31.05.2019 and G.O(Ms)No.125, dated 27.05.1999, they have been passed granting a special consideration to 13 named persons after getting approval from the Tamil Nadu Public Services Commission. Therefore, the said Government orders will not be applicable to the writ petitioners.

10. Considering the fact that the petitioners have been functioning as a Record Clerks for the past 16 years, this Court is inclined to pass the following order:-



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"(a) All the petitioners are directed to submit their explanation to the impugned show cause notices, if they have not already submitted, within a period of two (2) weeks from the date of receipt of a copy of this order.

(b) The petitioners are at liberty to submit a representation to the Principal Secretary to Municipal Administration and Water Supply Department through the Director of Town Panchayat, seeking relaxation of the rules invoking Clause 28 of the Tamil Nadu Town Panchayat (Establishment) Rules, 1988, within a period of two (2) weeks from the date of receipt of a copy of this order.

(c) Till a decision in relation to the exemption is decided by the Government, the fourth respondent herein is directed not to pass any final orders based upon the show cause notice."

11. With the above said observation, these writ petitions stand disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

18.10.2023



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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- 2.The District Collector,
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R.VIJAYAKUMAR, J.

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