



WEB COPY



W.P.No.3822 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 08.12.2023

Order Pronounced on : 29 .01.2024

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.3822 of 2020

1.J.Anandhavel
2.R.Ezhumalai
3.V.Velmurugan
4.S.Balamourougane
5.P.Chakravarthy .. Petitioners

Versus

1.Union of India
represented by
Government of Puducherry
through the Chief Secretary to Government,
Chief Secretariat,
Puducherry.

2.The Secretary to Government
for (DP & AR), Chief Secretariat,
Puducherry.

3.The Secretary to Government
for Education, Chief Secretariat,
Puducherry.



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4.The Principal, Dr.Ambedkar
Government Law College,
Puducherry.

5.The Director, Directorate of Higher
and Technical Education,
Puducherry.

6.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

7.The Secretary to Union of India,
Ministry of Home Affairs, New Delhi. .. Respondents

(R7 Suo-motu impleaded as per order dated 06.03.2020 made in W.P.No.3822 of 2020)

Prayer: Writ Petition is filed under Section 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the 6th respondent in respect of the decision in O.A.No.12 of 2019 dated 04.01.2019 and to quash the same.

For petitioners : Mr.V.Ajayakumar

For R1 to R5 : Mr.R.Syed Mustafa

Special Government Pleader (Puducherry)

For R6 : Tribunal

For R7 : MR.V.Chandrasekaran
SPC



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ORDER

P. Dhanabal, J

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This Writ Petition has been filed by the petitioner to issue a Writ of Certiorari calling for the records of the 6th respondent in respect of the decision in O.A.No.12 of 2019 dated 04.01.2019 and quash the same.

2. According to the petitioners, the Government of Puducherry has acquired 1081.76 acres of land in Kalapet Village for the purpose of establishing educational institutions. The property belonging to the petitioners have also been acquired by the Government. Out of the said property, 28 acres were allotted for construction of Government Law College. The property acquired from the petitioner's parents was also included in the above said 28 acres.

3. As per the policy adopted by the Government and the Pondicherry University, one member of each displaced family was given appointment on the basis of the written agreement entered into between the Government and the Vice Chancellor of the University. Since the property of the petitioners were acquired for the construction of the Law College, they were directed to approach the Government for getting appointment under the displaced land affected persons categories.



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4. While so, the petitioners have given various representation one among which is dated 02.01.2015. Thereafter, the petitioners filed a Writ petition in W.P.No.20857 of 2009. As per the order passed by this Court, the respondents passed the impugned order dated 13.12.2017, holding that the matter had been taken up with the Ministry of Finance, Government of India, for creation of new posts to appoint the petitioners; that steps have been taken to pursue the matter; in relaxing the rules stipulated by the Ministry of Finance regarding banning of creation of posts; as and when the order of ban on creation of posts is relaxed by the Ministry of Finance Government of India, the above named individuals would be appointed on regular posts subject to the eligibility as per rules.

5. Taking into consideration the above order of this court, the respondents rejected the representation of the petitioners. The same was challenged in the Original Application, wherein, the Tribunal has dismissed the petition at the stage of admission itself without considering the merits of the case. Therefore, the petitioners filed this Writ petition.

6. Even though notice was served to the respondents in the present writ petition, no counter was filed by the respondents.



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7. The learned counsel appearing for the petitioners would contend that these petitioners' lands were acquired by the Government for establishing the educational institutions. Particularly, these petitioners' lands were allotted for construction of Government Law College, Pondicherry. Thereafter, the Government entered into agreement that one job will be provided to one member of each family whose lands were acquired for the establishment of educational institutions. The Pondicherry University has been regularly giving employment to the land affected persons. The Government of Puducherry and the Law College have not considered the repeated request of the petitioners and the other similarly placed persons for job on par with other persons whose property were acquired along with the property of the petitioners. Thereafter, the petitioners filed Writ Petition in W.P.No.20857 of 2009 and the same was disposed of on 30.04.2010 by directing the respondents to consider the claim of the petitioners positively within a period of eight weeks.

8. Without complying the order of this Court, the respondents have taken a stand that there is a ban imposed by the Ministry of Finance for creation of post and so they have decided to engage the petitioners on contract basis pending creation of regular posts and initially the petitioners were appointed on consolidated wages as Multi Tasking Helpers. In fact there is no



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ban to the Government of Puducherry for creation of posts and already the Central Government has delegated the powers to create posts of Group B, C and D to the Government of Puducherry on plan side. But in spite of that, the Government of Puducherry has not considered the petitioners' representation for regular appointment. Hence, they filed the Original Application and the same was also dismissed at the stage of admission itself by holding that as and when the order of ban on creation of posts is relaxed by the Ministry of Finance Government of India, the petitioners would be appointed on regular basis subject to their eligibility as per rules. Therefore, the order passed by the Tribunal is liable to be set aside.

9. The learned counsel appearing for the respondent would contend that these petitioners' lands were acquired by the Government for establishment of Government Law College, Puducherry and thereafter, the Government decided to appoint the persons whose lands were acquired for the purpose of establishing educational institutions. Since these petitioners lands were acquired, they were accommodated in the Government Law College, on temporary basis as MTS on consolidated pay, still they are working, under the said capacity. Due to the ban imposed by the Central Government, the Government of Puducherry sought for clarification from the Ministry and the



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reply is awaited. Therefore, after getting orders from the Central Government, the applications will be considered for regularization. In the mean time, these petitioners have filed Writ Petition praying that as per the direction of Writ Petition in W.P.No.20857 of 2009, the representation of the petitioners shall be disposed of.

9.1. In the mean time, the petitioners filed the Original Application for the relief of absorbing the applicants to regular post of MTS in the Government Law College or in any other Government Department and the same was dismissed since the Government of Puducherry passed order that as and when the ban of creation of post is relaxed by the Ministry of Finance, the said named individuals should be appointed on regular posts subject to their eligibility as per rules.

9.2. Already the petitioners have given representation dated 02.01.2015 and thereafter, they filed Original Application in O.A.No.826 of 2017 and the same was allowed with a direction to consider the representation of the petitioners dated 02.01.2015 in accordance with law. Thereafter, the 4th respondent has passed order dated 13.11.2017 that as and when the order of ban on creation of posts is relaxed by the Central Government, these



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petitioners will be appointed on regular posts subject to their eligibility as per rules. Therefore, the present Writ Petition is liable to be dismissed.

10. This Court heard both sides and perused the records.

11. In this case, it is admitted fact that these petitioners' lands were acquired by the Government for establishing the Government Law College, Puducherry and Government also agreed to give appointment under land affected category for one person to each family whose lands were acquired by the Government.

12. According to the petitioners, now they are working under the temporary category as MTS and they have not been regularized so far. The respondents also admitted that they are working under the temporary category as MTS. Since the ban was imposed by the Central Government for creation of posts, these petitioners have not been considered for regular posts.

13. In this context, the learned counsel appearing for the petitioners referred to the letter dated 26.10.2012, wherein the Ministry of Home Affairs Government of India has addressed the letter to the Chief Secretary,



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Government of Puducherry, for the proposal for seeking approval for creation of posts of watch and ward in the Legislative Assembly Secretariat, Puducherry to implement the order of High Court in W.P.No.1980 of 2004, wherein the Central Government has categorically clarified in para No.2 that Ministry of Home Affairs would like to “make it clear that the Government of Puducherry was delegated powers to create posts of Group B, C and D on plan side”. A copy of Ministry Letter No.U-15036/4/1996-GP dated 04.06.1996 is enclosed in the said order, which reads as follows:

“2.Ministry of Home Affairs would like to make it clear that the Government of Pudducherry was delegated powers to create posts of Group B, C & D on paln side. A copy of Ministry letter No. U-15036/4/1996-GP dated 04.06.1996 is enclosed in this regard.

3. Further, Government of Puducherry is requested to clarify-
(i) as to why the aforesaid posts were created under 'Plan' as such posts are created for a particular plan scheme for a specific purpose whereas it does not appear to be applicable in this case.

(ii) the reasons for referring the proposal to this Ministry for creation of 4 posts of watch and ward under the plan scheme as there is no such plan scheme as also when the powers for creation of posts under plan schemes for Group B, C and D are already vested with the LG, Puducherry in exercise of which 30 posts were earlier created.”



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Therefore, from the above said clarification letter, it is clear that there is no ban to create posts for the Group B, C and D creation of posts under plan schemes. Therefore, the order passed by the respondent is not in accordance with law. However, the Central Administrative Tribunal dismissed the Original Application at the stage of admission itself by referring the order passed by the Government by the respondent dated 13.07.2017 by holding that as and when the order of ban on creation of posts is relaxed by the Ministry of Finance Government of India, the petitioners will be appointed in regular posts subject to their eligibility as per rules, but failed to consider the clarification given by the Central Government in respect of appointment of Group B, C and D as a plan.

14. The Puducherry Government was delegated powers to create the posts for Group B, C and D under plan schemes. Therefore, the order passed by the 4th respondent is not sustainable and the same is liable to be set aside. The Tribunal also without taking into consideration of the above said aspects, without giving opportunity to the petitioners, dismissed the Original Application at the stage of admission itself. Therefore, the order passed by the Tribunal is liable to be set aside.



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15. However, the petitioners are at liberty to approach the Government by sending a fresh representation within a period of two weeks from the date of receipt of a copy of this order and the respondents 1 to 5 are directed to consider the representation, in the light of the above observation made by this Court and the clarification issued by Central Government in this regard, within a period of eight weeks from the date of receipt of a copy of this order.

16. With the above said direction, this Writ petition is allowed. Consequently, the order passed in O.A.No.12 of 2019 is set aside. No costs.

(D.K.K.J)

(P.D.B.J)

29.01.2024

Index: Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

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To

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and**

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