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W.A. No. 580 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

AND

THE HON'BLE MR. JUSTICE K. KUMARESH BABU

W.A.No. 580 of 2021

&

C.M.P. No. 2438 of 2021

1. The District Employment Officer,
Dharmapuri District.
 2. The District Collector,
Dharmapuri 636 705.
 3. The District Revenue Officer,
District Revenue Office,
Dharmapuri District.
 4. The Tahsildar,
Palacode Taluk,
Dharmapuri District.
- ..Appellants

Vs.



W.A. No. 580 of 2021

1. M. Durai Raj

2. The Principal Secretary,
Government of Tamil Nadu,
Revenue Department,
Secretariat, Fort St. George,
Chennai.

(2nd respondent suo motu impleaded as per
judgment dated 04.04.2024 by DKKJ & KBJ)

..Respondents

Prayer: Writ Appeal under Clause 15 of Letters Patent as against the
order dated 06.09.2017 passed in W.P. No. 34887 of 2013.

For Appellants :: Mr.P. Balathandayutham,
Special Govt. Pleader

For Respondent :: Mr.L.G. Sahadevan for
Mr. A.Ilayaperumal

J U D G M E N T

(Delivered by D. KRISHNAKUMAR,J.)

The intra-court appeal is directed against the order dated 06.09.2017
passed in W.P. No. 34887 of 2013.

2. The facts that led to the filing of this appeal, in a nut-shell, are
as hereunder:



W.A. No. 580 of 2021

(a) In 1988, in Panchapalli Village, Palacode Taluk, Dharmapuri

District, the post of Village Assistant fell vacant owing to retirement of the existing incumbent. Though the 1st respondent/writ petitioner made a request for appointing him as Village Assistant in the said vacancy, one Sabeer, the son of then existing incumbent was given appointment. The writ petitioner made several representations challenging the said appoinemtn and finally, by order dated 10.08.1989, in the revision petition filed by him, he came to be appointed as Village Assistant of Panchapalli Village with effect from 17.08.1989.

(b) Aggrieved by the said appointment, O.A. No. 1350 of 1989 was filed by the said Sabeer before the Tamil Nadu Administrative Tribunal and an interim stay was granted, pursuant to which, the 1st respondent/writ petitioner was relieved from service in 1991 and the said Sabeer came to be appointed in his place. Thereafter, the 1st respondent/writ petitioner made several representations to various authorities for consideration of his appointment as Village Assistant in any of the villages in Dharmapuri District where there was vacancy. However, there was no response. Hence, the 1st respondent/writ petitioner was constrained to file W.P. No. 25788 of



W.A. No. 580 of 2021

2007, which was disposed of by order dated 01.08.2007 directing the respondents therein to consider and pass orders on merits on the representation of the writ petitioner.

(c) Despite the order passed by this Court to consider the representation of the writ petitioner and pass orders on merits, the representations made by this writ petitioner with the fond hope of getting appointment did not evoke any response, which necessitated the 1st respondent/writ petitioner to once again knock at the doors of this Court by way of W.P. No. 34887 of 2013 and this Court, by the order under challenge, considering the trajectory that the case had taken so far and taking into account the facts and circumstances, directed respondents 2 to 4/appellants 2 to 4 herein to consider the claim of the writ petitioner and appoint him as Village Assistant in any of the three existing vacancies that were available in Palacode Taluk on that date. Challenging the said order, the present writ appeal has been filed.



W.A. No. 580 of 2021

3. The main ground taken by the appellants in assailing the order passed by the learned Single Judge is that the 1st respondent/writ petitioner was over-aged for the post of Village Assistant even as early as in the year 2013 and therefore, the question of considering the 1st respondent/writ petitioner for appointment as Village Assistant would not arise at this distance of time as the maximum age limit is only 35 years as per G.O.Ms.No. 521, Revenue Department, dated 17.06.1998. Moreover, it is their further contention that if the claim of the 1st respondent/writ petitioner is entertained dehors his age, then it would open the floodgates for similarly placed persons to make such claims. The appellants would further state that when there were no vacancies available in Palacode Taluk, the learned Single Judge ought not to have accepted the submission of the learned counsel for the 1st respondent/writ petitioner with regard to the vacancy position and proceeded to issue a positive direction. Hence, the appellants would submit that the order under challenge needs to be set aside.

4. On the other hand, the learned counsel for the 1st respondent would submit that the order under challenge does not warrant any interference and that the 1st respondent/writ petitioner, who is continuing as



W.A. No. 580 of 2021

Village Assitant should not be disturbed on the verge of his retirement.

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5. Heard both sides and perused the materials on record.

6. It is seen that the 1st respondent/writ petitioner had filed Contempt Petition No. 2165 of 2019 for non-compliance of the direction issued by the learned Single Judge in W.P. No. 34887 of 2013 and by order dated 04.02.2020, the said contempt petition came to be closed only on the submission made by the learned Government Advocate that the orders of this Court have been complied with by issuance of proceedings dated 29.01.2020 by Tahsildar, Palacode Taluk. Pursuant to the said proceedings, the 1st respondent/writ petitioner has also been appointed as Village Assistant, though temporarily, he is continuing in service and likely to retire shortly. As far as the contention of the appellants that the 1st respondent/writ petitioner is over-aged and therefore, he cannot be considered for appointment is concerned, the same cannot be countenanced as the 1st respondent/writ petitioner had been making several representations with regard to his claim and had also filed a writ petition as early as in 2007 and obtained orders. The orders passed by this Court to grant appointment to the 1st respondent/writ petitioner have been complied with only on filing of



W.A. No. 580 of 2021

contempt petition. That being so, the delay on the part of the appellants cannot be put against the 1st respondent/writ petitioner. That apart, though the appellants have annexed the rejection order dated 18.09.2019 passed by Tahsildar, Palacode Taluk, negating the claim of the 1st respondent/writ petitioner seeking appointment as Village Assistant, the said order was neither communicated to the 1st respondent/writ petitioner nor brought to the notice of the learned Single Judge at the time of pendency of contempt petition, which only goes to show that the appellants are guilty of suppression of fact. Moreover, when a positive direction has been issued by this Court to appoint the 1st respondent/writ petitioner as Village Assistant, the conduct of the appellants in passing the rejection order cannot be appreciated.

7. Be that as it may, inasmuch as the 1st respondent/writ petitioner's request has been rejected on the ground that he is over-aged vide proceedings dated 18.09.2019 and the 1st respondent/writ petitioner has come to know about the said proceedings only now, it is open to the 1st respondent/writ petitioner to approach the Government seeking relaxation of age as provided under Rule 48 of Tamil Nadu State and Subordinate Service



W.A. No. 580 of 2021

Rules.

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8. Since the authority concerned to consider grant of relaxation is ***"The Principal Secretary, Government of Tamil Nadu, Revenue Department, Secretariat, Fort St. George, Chennai"***, the said authority is suo motu impleaded by this Court as 2nd respondent. The 1st respondent/writ petitioner shall submit an application seeking relaxation of age to the newly impleaded 2nd respondent within a period of two weeks from the date of receipt of a copy of this order. Till final orders are passed on the said application, the service of the 1st respondent/writ petitioner shall not be disturbed.

9. The writ appeal is disposed of with the above direction. No costs. Connected miscellaneous petition is closed.

(D.K.K.J.) (K.B.J.)

nv
To

04.04.2024

1. The District Employment Officer,
Dharmapuri District.
2. The District Collector,
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W.A. No. 580 of 2021

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D. KRISHNAKUMAR,J.

AND

K. KUMARESH BABU,J.



WEB COPY



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