



W.P.No.30282 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 11.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.30282 of 2013
and W.M.P.No.18184 of 2023

N.Ramesh

....Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
Municipal Administration &
Water Supply Department,
Fort St.George,
Chennai -600 009.
2. The Commissioner of Municipal Administration &
Water Supply Department,
“Ezhilgam Complex Annexe”,
Chepauk,
Chennai – 600 005.
3. The Regional Director of Municipal Administration,
Jay Jee Nagar,
First Street,
Kumaranandapuram,
Tiruppur – 2.



W.P.No.30282 of 2013

4. M.Muthukumar
Assistant,
Working in Dharapuram Municipality
Dharapuram,
Tiruppur District

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Declaration declaring the appointment of the fourth respondent as Assistant as illegal, unconstitutional and null and void.

For Petitioner : Mr.K.Selvaraj

For Respondents : Mr.Stalin Abhimanyu for R1 to R3
Additional Government Pleader

Mr.G.Sankaran for R4
Senior Counsel
for Mr.L.P.Maurya,

ORDER

This Writ Petition is filed seeking for a declaration to declare the appointment of the fourth respondent as Assistant as illegal, unconstitutional, and null and void.

2. (i) It is the case of the petitioner that the fourth respondent was appointed as a Junior Assistant at Dindigul Municipality on compassionate grounds. It is his allegation that by suppressing the fact that both of his



W.P.No.30282 of 2013

elder brothers, namely Mr.M.Balasubramaniam and Mr.M.Amirthalingam have already been appointed in the Government Departments, they obtained a false certificate on 12.09.1989 from the Tahsildar, Polachi, and based on which, the fourth respondent was appointed as a Junior Assistant in the Dindigul Municipality on compassionate grounds.

(ii). It is the case of the petitioner that this appointment made on compassionate grounds is against the scheme of appointment provided under G.O.Ms.No.560, Labour and Employment Department dated 03.08.1977, G.O.Ms.No.998, Labour and Employment Department dated 02.05.1981 and G.O.Ms.No.155, Labour and Employment Department dated 16.07.1993.

(iii). It is the claim of the petitioner that the Tamil Nadu State Transport Corporation by letter dated 04.09.2010 had intimated that Mr.M.Balasubramaniam, the brother of the fourth respondent, was appointed on 09.02.1982 and that another brother, Mr.M.Amirthalingam, was also appointed in the Police Department, on 12.09.1986, as communicated by the Commissioner of Police, Coimbatore City, dated 04.09.2010.



W.P.No.30282 of 2013

(iv). By placing reliance on all these documents, it is the contention of the petitioner that the fourth respondent has secured employment on compassionate grounds by obtaining a false certificate and suppressing the material facts.

(v) It is the petitioner's claim that he had obtained a Bachelor of Business Administration and Master of Business Administration Degree and he belongs to Backward Class Community and in view of the appointment granted to the fourth respondent, which he is not legally entitled to, the chances of the petitioner in securing the public employment got affected, and therefore he had come up with the writ petition praying for a declaration to declare the appointment of the fourth respondent as null and void.

3(i). The learned counsel appearing for the petitioner contended that when the petitioner had obtained letters from the competent authorities whereby, it is clearly established that two of the brothers of the fourth respondent had been appointed in the State Transport Corporation and in the Police Department as early as on 09.02.1982 and 12.09.1986, then the



W.P.No.30282 of 2013

fourth respondent is not entitled to seek any appointment on compassionate grounds due to the death of his father, since two of the family members had already been in employment.

(ii). It is his further contention that apart from this, the fourth respondent is also possessing properties, and he is also collecting monthly rents, thereby, the family is not, in penurious circumstances, eligible to seek the employment on compassionate grounds.

(iii). The learned counsel further contended that even though, there had been a long lapse from the date of appointment of the fourth respondent, it is apparent from the records that the appointment secured by the fourth respondent is by suppression of material facts and based on the false certificate, then it is always open to the petitioner to bring it to the notice of the Court as it is the statutory violation on the part of the authorities by which employment has been provided on compassionate grounds, which otherwise would be open for the public through an open recruitment process and therefore, sought for interference of this Court.



W.P.No.30282 of 2013

4(i). Mr.Stalin Abhimanyu, the learned Additional Government Pleader, appearing for the respondents 1 to 3, contended that the employment to the fourth respondent has been provided based on the certificates issued by the competent authorities as early as in the year 1990 and further, when the complaints were made in respect to the appointment of the fourth respondent, a preliminary enquiry was conducted initially, which was closed, and later even permanent proceedings were initiated, but however, the proceedings were dropped by the orders of the second respondent dated 20.12.2019. It is his further contention that since the petitioner is a third party, he cannot have any say in the service dispute, and it is for the Government to take any proceedings as against the employees, if any situation warrants, and in such regard, the writ petition preferred by the petitioner is not maintainable as he does not have any locus to challenge the selection of the fourth respondent.

(ii). The learned Additional Government Pleader further contended that based on the directions of the first respondent/Government, already the proceedings had been initiated and ultimately, these proceedings had been dropped by the proceedings of the Commissioner as early as in the year



W.P.No.30282 of 2013

2019 and no further enquiry in this regard could be entertained at this length of time.

(iii). The learned Additional Government Pleader also contended that now, in respect of some other complaints, already proceedings have been initiated against the fourth respondent and he is already under suspension for the past one and a half years and therefore, sought for dismissal of this writ petition.

5. Mr. G.Sankaran, learned Senior Counsel, appearing for the fourth respondent, argued that the petitioner is not a person aggrieved to entertain a writ petition and a person who wants to maintain a writ petition under Article 226 of the Constitution of India, must have a legally enforceable right to agitate the issues before the Court. It is his further contention that the petitioner lacks locus to challenge the proceedings in the appointment of the fourth respondent and the writ petition has to be dismissed *in limine* as not maintainable.



W.P.No.30282 of 2013

WEB COPY (ii) The learned Senior Counsel further, by relying on the decision of the Hon'ble Supreme Court in *Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and others* reported in (2013) 4 SCC 465, contended that the third parties cannot be allowed to challenge any of the proceedings as against an employee in service matters.

(iii) The learned Senior Counsel also submitted that when the complaint in respect of the appointment was already conducted and those proceedings were closed as early as in 2011, the respondents again sought to reopen and issued a charge memo for the very same issue, and the charge memo was the subject matter of challenge in the writ petition before the Madurai Bench of this Court in W.P.(MD)No.12689 of 2016 and further in fact, in respect of the charge memo also, an enquiry was conducted, and the second respondent vide proceedings dated 20.12.2019 had taken a conscious decision and dropped the proceedings as against the fourth respondent. These complaints in respect of his appointment, having been enquired twice and closed, the petitioner, who is a third party on personal vendetta due to some other disputes between the business rival, had come



W.P.No.30282 of 2013

up with the above writ petition only to settle a score against the fourth respondent, which cannot be permitted by this Court.

(iv) The learned Senior Counsel further contended that in fact, when the fourth respondent was appointed in service in the year 1990, the petitioner was only aged around four or five years, and therefore, by no imagination, the petitioner could be aggrieved in any way, and in fact, even when the writ petition was filed, the chances of the petitioner securing employment in the place of the fourth respondent were misconceived, and therefore, the petitioner being a third party, and not the person aggrieved, cannot maintain this writ petition at this length of time. Above all these materials, the learned Senior Counsel for the fourth respondent submitted that the writ petition has no merit and this has to be dismissed *in limine*.

6. Heard the rival submissions and perused the materials available on record.

7. The facts are not in dispute, that the fourth respondent has been appointed as a Junior Assistant at Dindigul Municipality on compassionate



W.P.No.30282 of 2013

grounds as early as on 13.07.1990, due to the death of his father. The fourth respondent had all along been in service, and after having been promoted to the post of Assistant, Manager, and Commissioner, he was lastly working as Municipal Commissioner Grade II in Kangeyam Municipality, and presently, he is under suspension in the post of Commissioner w.e.f. 18.06.2022.

8. Around the year 2013, the petitioner had come up with the above writ petition challenging the selection of the fourth respondent as illegal on the ground that since two of his family members are already employed, the petitioner will not cover under the scheme of compassionate appointment, and therefore, the employment secured by the fourth respondent has been only by suppression of the material facts and based on the false certificate issued by the Tahsildar.

9. When the employment has been provided to the fourth respondent based on the certificates issued by the Tahsildar, certifying the financial position and the legal heir certificates furnished, and the certificates are still holding good and not having been canceled by any of the competent



W.P.No.30282 of 2013

authorities, this factual issue cannot be gone into by this court at this length of time, when the certificate till date remains intact. It is only for the authorities to conduct any enquiry, if required in this regard, and from the counter affidavit it is also stated that the records in respect of the certificates issued by the Tahsildars are not available at this length of time and therefore, further enquiry or any verification could not be conducted. As far as the complaint, in respect of the two brothers being working in the department, in respect of the same issue, already a primary enquiry was conducted by the department, and by an order dated 27.09.2011, the second respondent held that on enquiry, it was found that the employment has not been provided in breach of any of the scheme, and also, by relying on the G.O.Ms.No.155 dated 16.07.1993, had come to the conclusion that the appointment issued in favour of the fourth respondent, is correct.

10. From the counter affidavit filed by the second respondent, it is stated that the Regional Director of Municipality Administration, Thiruppur, had also conducted a detailed enquiry and submitted a report to the first respondent through the office of the second respondent on 09.05.2016, pursuant to which, the first respondent/Government vide letter dated



W.P.No.30282 of 2013

24.05.2016 directed the second respondent to take necessary disciplinary action against the fourth respondent. The relevant paragraphs are extracted hereunder for better understanding.

“22. With regard to the averments made in para 8 and 9 of the affidavit, it is respectfully submitted that necessary action was taken on the complaints received from the petitioner and other complainants, and after perusing the statement given by the petitioner during enquiry before the Regional Director of Municipal Administration, Thiruppur a detailed report was sent to the 1st respondent office vide 2nd respondent i.e., the Director of Municipal Administration letter no. 47292/2010 H2 dated 9.5.2016 stating that the two elder brothers of Thiru M.Muthukumar were in Government service and the family of the 4th respondent have their own movable and immovable properties and hence the appointment of Thiru M.Muthukumar is irregular.

23. It is respectfully submitted that the 1st respondent, the Government vide their letter no 12897/OP1/2012-9 dated 24.5.2016 has directed the 2nd respondent to take necessary disciplinary action against the fourth respondent for his irregular appointment having obtained false certificates from the



W.P.No.30282 of 2013

Tahsildar, Pollachi to get appointment as Junior Assistant on compassionate grounds. Based on the directions of the Government, disciplinary action was initiated against the 4th respondent Thiru M.Muthukumar and charges were framed under rule 8(2) of Tamilnadu Municipal Services (Discipline and Appeal) Rules 1970 vide 2nd respondent's charge memo Rc.no.47297/2010/H2 dated 22.6.2016.”

Based on these instructions, a charge memo came to be issued as against the fourth respondent, and the same was the subject matter of challenge in W.P. (MD) No. 12689 of 2016. Though by an interim order dated 20.06.2016, the further proceedings in the charge memo were stayed, subsequently, the proceedings were allowed to continue, subject to the condition that no final orders could be passed pending a decision in the writ petition. The Division Bench of Madurai Bench of Madras High Court, by order, dated 31.08.2018, disposed of the Writ Appeal in W.A.(MD) No. 241 of 2018 and C.M.P.(MD) No. 1392 of 2018 by allowing the respondents to go ahead with the disciplinary enquiry.

11. From the typed set of papers filed in the writ petition, it can be seen that the enquiry was conducted, and pursuant to the report, the second



W.P.No.30282 of 2013

respondent, by an order dated 20.12.2019, has dropped the enquiry as against the fourth respondent. The order dated 20.12.2019 states that since already an enquiry has been conducted as early as on 27.09.2011 and it was found that there was no irregularity in the appointment of the fourth respondent and the appointment having been done properly, the further enquiry in respect of the same complaint, which was also stayed by the Court, was decided to be dropped.

12. Insofar as the maintainability of the writ petition is concerned, the petitioner is a third party to the proceedings and the petitioner cannot have any locus to challenge any of the proceedings in the service matters. However as held by the Hon'ble Supreme Court in ***Rajesh Awasthi vs. Nand Lal Jaiswal and others*** reported in ***(2013) 1 SCC 501*** whenever, under extraordinary circumstances, an issue is brought to the notice of the Court, where the statutory violation by the authorities in respect of the appointment is alleged, it is always open to the Court to look into the complaint to *prima facie* see whether any substance is made out. Though normally, this Court would refrain from entertaining any of the proceedings by the third parties in a service dispute, here in the instant case, since the



W.P.No.30282 of 2013

petitioner is not an aggrieved person, as admittedly, he was only aged about four years at the time of appointment of the fourth respondent, but however, the issue covered under the complaint since has already been looked into by the authorities and an enquiry has been conducted twice in respect of the same matter, based on the directions of the first respondent, the report may be placed before him.

13. Since all the proceedings in respect of the same issue regarding the appointment of the fourth respondent emanated from the direction of the Government in a letter dated 24.05.2016 and now the second respondent has taken a conscious decision by order dated 20.12.2019 to drop the proceedings initiated as against the fourth respondent, this Court only feels that it would be appropriate for the report to be submitted before the first respondent on whose directions the whole proceedings were initiated.

14. On such submission or forwarding of the report to the first respondent, it is for the first respondent to take a call insofar as the dropping of the proceedings as decided by the second respondent, through his proceedings dated 20.12.2019.



W.P.No.30282 of 2013

WEB COPY 15. It is also brought to the notice that there have been subsequent complaints based on which the enquiry has been initiated, and since those issues are not the subject matter before this Court in this writ petition, this Court does not propose to venture into those aspects and leaves it open to the authorities to decide on those issues. Therefore, this writ petition is dismissed only with the observation that the report of the second respondent dated 20.12.2019 shall be forwarded to the first respondent, who shall thereafter take an appropriate decision.

16. In view of the above, this writ petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

11.09.2024

Index : Yes
Neutral Citation : Yes
Speaking order : Yes
dk



W.P.No.30282 of 2013

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State of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St.George,
Chennai -600 009.
2. The Commissioner of Municipal Administration &
Water Supply Department,
“Ezhilgam Complex Annexe”,
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WEB COPY



W.P.No.30282 of 2013

G.ARUL MURUGAN, J

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W.P.No.30282 of 2013
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11.09.2024