



W.P.No.14258 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.14258 of 2020
and W.M.P.No.17729 of 2020

S.Balu

... Petitioner

Vs.

1.The Director of Town Panchayat,
8th Floor, Santhome High Road,
MRC Nagar, Chennai – 28.

2.The Executive Officer,
Mechery Selection Grade Town Panchayat,
Mechery, Salem District.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus directing the 1st and 2nd respondent to consider the petitioner for appointment in the vacancy post of market watchman from the date (01.06.2017) on which the said vacancy was arisen by way of appointment by transfer and consequently to grant all service and monetary benefits.

For Petitioner : Mr.C.Elamurugan



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For Respondent 1 : Mr.S.Rajesh,
Government Advocate

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For Respondent 2 : Mr.S.Prabhakaran,
Government Advocate

ORDER

This writ petition has been filed to direct the respondents 1 & 2 to consider the petitioner for appointment in the vacancy post of market watchman from the date (01.06.2017) on which the said vacancy was arisen by way of appointment by transfer and consequently to grant all service and monetary benefits.

2. The case of the petitioner is that he belongs to Scheduled Caste community with 9th standard qualification. He was appointed as regular sanitary worker by the second respondent vide his proceedings Na.Ka.No.725/2000 dated 29.05.2001. During that period, he has been assigned other duties of tax collection and water maintenance. Moreover, his name was also included in Serial No.5 of the Seniority of Sanitary Workers prepared by the second respondent dated 10.02.2020. However, in the said seniority list, the educational qualification of the petitioner was wrongly



mentioned as 5th standard instead of 9th standard pass. Since the petitioner has acquired the qualification of 8th standard pass, one Mr.Panneerselvam and the petitioner alone are eligible for the available higher posts such as Sanitary Supervisor and Market Watchman. However, till date these posts are not filled up by the respondents. Since the post of Sanitary Supervisor is opted by the aforesaid Panneerselvam, the petitioner made an application before the second respondent seeking to absorb him as Market Watchman. However, till date no action has been taken. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner would submit that the petitioner is fully eligible to hold the regular post of market watchman having scale of pay of Rs.5700-50000, based on eligibility and seniority and he has 19 years of experience and he is also entitled to claim the vacancy of market watchman from the date of arisen i.e., 01.06.2017. Moreover, he can be appointed in the readily available post by way of appointment by transfer in order to avoid the huge expenditure to the Town Panchayat.



4. Learned counsel for the petitioner would further submit that the second respondent has failed to consider that when no eligible person is available to fill up the regular vacant post, then only the same may be filled up with outside by way of direct recruitment. Without intimating and informing to the eligible service employees, the second respondent has conducted the interviews on several time, which is not justified in the eye of law.

5. Learned counsel for the petitioner would further submit that the respondents 1 & 2 have failed to consider the grievances of the in-service eligible employees with regard to filling up the long pending vacancy of market watchman before resorting direct recruitment.

6. On behalf of respondents 1 & 2, a counter affidavit dated 20.11.2020 was filed. Learned Government Advocate appearing for the second respondent submitted that after the appointment of Sanitary Worker with effect from 01.06.2001, the petitioner worked till 04.12.2003 and abstained from his service from 05.12.2003 to 06.12.2007 (1461 days) 4 years. His



probation was not declared and his service also not regularized. Accordingly, disciplinary action has been initiated against the petitioner and he requested to consider his case on moral grounds as due to accident, he could not able to join duty. Thereafter, the matter was referred to medical board and his leave could not be considered as medical leave due to the leave beyond prescribed limit. Therefore, action has been taken under Fundamental Rules 18(3) and Tamil Nadu Servant Leave Rules under 23 a (ii) and on moral ground his unauthorized absence has been considered as leave without salary and accordingly stoppage of increment had been passed for four years. (i.e., 01.04.2004, 01.04.2005, 01.04.2006, 01.04.2007). The next increment had been fixed from 01.04.2008 and been allowed to join in the service on 07.12.2007 by the then Executive Officer through his proceedings in Na.Ka.No.457/2003 dated 17.12.2007 and the same has been entered in his Service Register.

7. Learned Government Advocate appearing for the second respondent would further submit that the petitioner continued his service from 07.12.2007 to 30.11.2018 as sanitary worker and thereafter without any



permission or intimation to appropriate authority, he had abstained from duty from 01.12.2018 to 31.03.2020 i.e., for 2 years and for the same, the then second respondent had sent a memo through his proceedings in Na.Ka.No.27/2019 dated 05.03.2019, 06.05.2019, 09.07.2019, 04.09.2019 and 09.11.2019 respectively and disciplinary action has also pending against him for the unauthorized absence. Under these circumstances, at request of the petitioner, again the then second respondent reinstated the petitioner as Sanitary Worker by proceedings in Na.Ka.No.27/2019 dated 31.03.2020.

8. Learned Government Advocate appearing for the second respondent would further submit that the post of Market Watchman had been lying vacant from 01.06.2017 and the petitioner made representation dated 14.09.2020 and requested for transfer from the post of Sanitary Worker to Market Watchman. The then second respondent vide proceedings in Na.Ka.No.265/2020 dated 15.09.2020 had given detailed reply that there is no provision in the Tamil Nadu Town Panchayat Establishment Rule, 1988 in G.O.Ms.No.205 dated 23.03.1989 for the transfer of Sanitary Worker to Market Watchman. Moreover from Sanitary Worker, the next promotion



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post is Sanitary Supervisor and the required educational qualification for the said post is 8th standard pass and based on seniority, the promotion will be given, otherwise with 10th qualification with 20% quota reservation on promotional basis, Junior Assistant or Bill Collector promotion can be conferred.

9. Learned Government Advocate appearing for the second respondent would further submit that the petitioner's educational qualification had been entered as 5th standard in his service register and moreover, as on 01.01.2019 in the seniority list among the sanitary workers, the petitioner's name is in Sl.No.5 and moreover due to prescribed conditions in Town Panchayat Establishment Rule, 1988 and necessary required educational qualification, the petitioner does not possess the eligible qualification for the post of Market Watchman. The Sanitary Supervisor post is lying vacant from 31.05.2017 and Market Watchman post is lying vacant from 01.06.2017. The salary for Market Watchman is fixed at pay scale of Rs.15700-50000.

10. Learned Government Advocate appearing for the second



respondent would further submit that the Sanitary post is to be filled by promotion and whereas Market Watchman post is to be filled by direct recruitment though the Employment Exchange list and eligible candidates will be selected through interview. Therefore, based on the Town Panchayat Establishment Rules, 1988 there is no provision for appointment of Market Watchman from the post of Sanitary Worker by way of transfer. Further, it is not true as claimed by the petitioner that he had 19 years of unblemished service whereas he had been continuously abstained from duty for two times i.e., for four years and two years respectively. Totally, 6 years he had taken unauthorized leave. Therefore, he is subject to disciplinary proceedings as per fundamental Rules 18(2) and 18(3).

11. Learned Government Advocate appearing for the respondents would submit that the petitioner was already punished for abstaining from duty without permission or intimation for 4 years from 05.12.2003 to 06.12.2007 with cut in increments and based on his request, he was permitted to join duty with assurance in writing, as per proceedings of the second respondent in Na.Ka.No.457/2003 dated 17.12.2007. However, again, the



petitioner was absent from duty for two years from 01.12.2018 to 31.03.2020.

Hence, charge memo was issued by the second respondent under Na.Ka.No.27/2019 dated 05.03.2019 and the disciplinary action is pending for his unauthorised absent from duty. However, the petitioner was permitted to join duty, considering his nature post and other social factors, vide proceedings of second respondent in Na.Ka.No.27/2019 dated 31.03.2020. Therefore, the petitioner cannot claim himself as experienced and eligible for the post of watchmen and cite his health condition as one of the positive reason for consideration of appointment.

12. Heard the learned counsel on either side and perused the materials available on record.

13. The petitioner was initially appointed as Sanitary Worker by the second respondent vide Na.Ka.No.725/2000 dated 29.05.2004. Subsequently, the second respondent vide Na.Ka.No.455/2019 dated 10.02.2020 prepared the seniority of Sanitary Workers in which the petitioner was placed at



Sl.No.5. In the Service Register, the educational qualification of the petitioner has been entered as 5th standard and the next promotional post from the post of Sanitary Worker is Sanitary Supervisor. The petitioner is seeking transfer from the post of Sanitary Worker to the post of Market Watchman. The promotional post of Sanitary Worker is Sanitary Supervisor and Market Watchman and the same has to be filled up only by direct recruitment and not by transfer or promotion.

14. The petitioner after his appointment as Sanitary Worker with effect from 01.06.2001 worked till 04.12.2003 and abstained from duty 05.12.2003 to 06.12.2007 (1467 days) four years and his probation was not declared and his services were not regularized. The Disciplinary Proceedings were also initiated against the petitioner and based on the request of the petitioner, to consider his case on moral grounds since he was not able to join duty due to accident . Thereafter, he was referred to Medical Board and his leave was not considered as Medical Leave due to leave beyond prescribed limit. Therefore, action was taken under Fundamental Rules 18 (3) and the Tamil Nadu State Leave Rules under 23(a) (ii) on the grounds of unauthorized



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absence.

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15. The aforesaid unauthorized absence was considered as leave without salary and accordingly stoppage of increment was passed for four years and he was allowed to join duty on 07.12.2007 and the same was entered in his service register. The petitioner continued his service from 07.12.2007 to 30.11.2018 as Sanitary Worker and again abstained from duty for the second times i.e., from 01.12.2018 to 31.03.2020 (2 years). Thereafter, the petitioner was again reinstated by the second respondent vide proceedings Na.Ka.No.27/2019 dated 05.03.2019. **The post of Market Watchman lies vacant from 01.06.2017 and there is no provision in the Tamil Nadu Town Panchayat Establishment Rules, 1988 and G.O.Ms.No.205 dated 23.03.1989 for transfer of Sanitary Worker to the post of Market Watchman.**

16. **The next promotional post for the post of Sanitary Worker is Sanitary Supervisor and the required qualification is 8th standard and the promotion will be given as per the seniority. As per the service**



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register, the Educational Qualification of the petitioner is 5th standard.

Since the petitioner did not possess the educational qualification of 8th standard, the petitioner is not eligible for the post of Market Watchman.

The post of Sanitary Supervisor has to be filled by promotion and whereas the Market Watchman post has to be filled up by direct recruitment through employment exchange list and the interview will be conducted and eligible candidates will be selected for the appointment of the said post. Accordingly, there is no provision of appointment of Sanitary Watchman by way of transfer.

17. The petitioner working as Sanitary Worker would have been eligible for the post of Sanitary Supervisor by promotion subject to eligibility and seniority on the date of recruitment and he cannot seek promotion by way of transfer to the post of Market Watchman, since there is no such provision under the service Rules of Tamil Nadu Town Panchayat Establishment Rules, 1988 as well as G.O.Ms.No.205 dated 23.03.1989.



18. It is clear and evident that the post of Market Watchman will be filled up only by direct recruitment and the person must possess the educational qualification of 8th standard pass. **However, in the present case on hand, the petitioner does not possess the said qualification and he is having the educational qualification of 5th standard only.** Hence, he is not eligible for the said post even through direct recruitment. Even though, the petitioner claims that he has completed 8th standard pass but in his service register, his educational qualification is mentioned only as 5th standard and the petitioner had so far never submitted his objection or suggestion in writing with relevant documents to update the entry, till date. Therefore, on this ground also, the petitioner is not eligible for the post of Market Watchman.

19. For the foregoing reasons, this Court is of the considered view that the petitioner is not eligible for the post of Market Watchman.

20. In the result, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.



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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To:

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8th Floor, Santhome High Road,
MRC Nagar, Chennai – 28.
- 2.The Executive Officer,
Mechery Selection Grade Town Panchayat,
Mechery, Salem District.



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J.SATHYA NARAYANA PRASAD,J.

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