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W.A. No.484 of 2024

0IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.08.2024

DELIVERED ON: 05.09.2024

CORAM:

THE HON'BLE MR. D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No. 484 of 2024

and CMP. No.3242 of 2024

- 1.The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply
Department, Fort St. George, Chennai -9.
- 2.The Director of Town Panchayats,
Office of the Town Panchayats,
MRC Nagar, Raja Annamalai Puram,
Chennai – 600 028.
- 3.The Assistant Director of Town Panchayats,
Karur District, Karur.
- 4.The District Collector,
Karur District, Karur.

.. Appellants/Respondents

Vs

B.Nagarajan

..Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.08.2022 made in W.P. No.23436 of 2019.



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For Appellants : Mr.R.Neelakandan,
Additional Advocate General
assisted by Mr.C.Selvaraj,
Additional Government Pleader

For Respondent : Mr.V.Vijay Shankar

J U D G M E N T

(Judgment of the Court was made by MR.JUSTICE P.B.BALAJI, J.)

This intra Court Appeal has been preferred by the official/statutory respondents, aggrieved by the order of the Writ Court in WP No.23436 of 2019, dated 02.08.2022, directing the appellants herein to extend the benefit of GO.MS. No.76 dated 31-05-2019 to the respondent/writ petitioner and consequently pay all monetary benefits, within a period of 8 weeks, from the date of receipt of the copy of the order.

2. We have heard Mr.R.Neelakandan, learned Additional Advocate General, assisted by Mr.C.Selvaraj, learned Additional Government Pleader for the appellants and Mr.V.Vijayashankar, learned counsel for the respondent/writ petitioner.

3. For the sake of convenience, the parties shall be described as per



their litigative status before the Writ Court.

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4. The Writ Petitioner sought for the relief of Writ of Mandamus to direct the respondents 1 & 2 to appoint the petitioner as Bill Collector/Junior Assistant on par with persons appointed as such, in various other Districts, pursuant to GO.MS. No. 76 Municipal Administration and Water Supply Department, dated 31-05-2019.

5. The case of the Writ Petitioner was that he was engaged as NMR in the year 1984 by the respondent Department and after a lapse of 10 years, in 1994, his post was regularized and the petitioner has been working as Record Clerk for several years thereafter. The Government issued GO. MS No. 125 of 1999, dated 27.05.1999, giving benefit of regularization in the entry level post to persons who were working on daily wages basis. However, in the case of the Writ Petitioner, he was regularized as a Record Clerk even prior to the issuance of the said GO.MS No. 125, dated 27-05-1999. According to the Writ Petitioner, persons similarly placed got benefit under GO.MS No.125, dated 27-05-1999 and they were all regularized throughout the state of Tamil Nadu. The Government issued yet another GO



in GO.MS. No.76 dated 31-05-2019, annexing a list of persons who were intended to be benefited by the said GO.MS.No.76. In and by GO.MS.No.76, the said identified and listed persons would be entitled to get promotion to the post of Junior Assistant/Bill Collector in Tamil Nadu Town Panchayat's Department. This GO.MS was issued with a laudable purpose to bail out such of those persons who were stagnated at the lower level post without any promotion for several years.

6. According to the Writ Petitioner, his services were regularized even 5 years prior to the said Government Order and considering that he has been working as a Record Clerk, the benefit conferred to the specified number of persons in GO.MS No.76 should also be extended to the Writ Petitioner, as otherwise, his juniors would steal a march over the Writ Petitioner and the Writ Petitioner was thereby denied promotion to the post of Junior Assistant/Bill Collector.

7. After hearing the learned counsel for the Writ Petitioner and the learned counsel for the respondents, the Writ Court found that the exclusion of the Writ Petitioner was not properly explained in the Government Order



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and when the petitioner was qualified to hold the post of Junior Assistant/Bill Collector, leaving out his name in with the annexure to GO.MS.No.76 was not justified and consequently entertained the Writ Petition and issued a positive direction to the writ petitioner to extend the benefit of GO.MS.No.76 dated 31.05.2019 and consequently, directed the respondents to pay all monetary benefits.

8. Before us the learned Additional Advocate General would submit that the Writ Court erred in issuing a positive direction by way of a Writ of Mandamus and ought not to have further directed payment of consequent monetary benefits.

9. The learned Additional Advocate General would further submit that the Writ Petitioner was only temporarily accommodated by way of transfer to a leave vacancy position and when the incumbent who went on medical leave returned and joined duty on 19-04-1993, the petitioner was relieved from the post for want of vacancy. The learned Additional Advocate General would further submit that the said action of the respondents had been challenged by the Writ Petitioner before the Tamil Nadu Administrative



Tribunal in O.A.No. 2674 of 1994 and the said Application was allowed by the Tribunal and consequently, Writ Petitioner was appointed as Record Clerk in the existing vacancy at Musiri Town Panchayat on 14.07.1994.

10. Further according to the learned Additional Advocate General, the post of Junior Assistant/Bill Collector in Town Panchayats is a provincialised post and hence the Government had reserved 20% of the vacancies under GO.MS.No.150, Municipal Administration and Water Supply Department, dated 19.08.1998 to fill up promotion from non provincialised service employees such as Record Clerk, Office Assistant, etc.,. He would therefore submit that the petitioner was eligible for promotion to such provincialised post which was only subject to availability of vacancies and the petitioner acquiring necessary seniority in the combined District Level.

11. The learned Additional Advocate General would further submit that several employees who were appointed at the entry level post under GO.MS.No.125, irrespective of their qualification and eligibility for appointment in provincialised post had made representations, to absorb them



in the post for which they were qualified. Necessary proposal was sent to the Government in July,2013 and the Government in turn, forwarded the same to the Tamil Nadu Public Service Commission (TNPSC) seeking concurrence. In fact, such employees also approached this Court by way of Writ Petitions seeking directions to the TNPSC to grant concurrence. This Court, in the said date writ proceedings, in and by an order dated 29-07-2015, merely directed the Tamil Nadu Public Service Commission to pass orders within a period of two months and it is only consequent to the said order that the Government issued GO.MS.No. 76 dated 31-05-2019 absorbing only 62 employees whose names were set out in the annexure to the GO and they were appointed in the backlog vacancies of Junior Assistant/Bill Collector with notional effect. According to the learned Additional Advocate General, the Writ petitioner was not eligible for the benefit of GO.MS.No. 76, since he had already been appointed in existing vacancy as Record Clerk with time scale of pay even as early as on 14-07-1994 pursuant to the order of the Administrative Tribunal in OA.No.2674 of 1994 dated, 25-05-1994.

12. According to learned Additional Advocate General, when the Writ



Petitioner has been enjoying all the privileges attached to such regular appointment from even day one of his appointment, the Writ Petitioner cannot be considered under the reserved category. According to learned Additional Advocate General, the 62 employees who had been absorbed were not given any special preference and their absorption was only in pursuance of the orders of this Court in WP Nos. 22912, 22913 & 20209 of 2015. Finally, learned Additional Advocate General would submit that when the Writ Petitioner had joined the post on his own volition, he could not seek revised appointment after lapse of 26 years, especially after enjoying all privileges attached therein and the order of the Writ Court directing the promotion to be given to the writ petitioner was contrary to the Rules and he therefore, prayed for the Writ Appeal being allowed.

13. Per Contra, the learned counsel for the respondent/writ petitioner, Mr.V.Vijayashankar, would submit that the learned Single Judge had passed a well-considered order and had met all the objections of the respondents and therefore, no interference was warranted in the order passed by the Writ Court.



14. He would further submit that the 62 persons who had been appointed as Bill Collectors/Junior Assistants with effect from 2001 were all juniors to the Writ Petitioner and when the Writ Petitioner was equally qualified to be appointed to the post of Bill Collectors/Junior Assistant, leaving out the writ petitioner was totally unjustified and improper.

15. He would further submit that the GO.MS No.76 has catered only insofar as Karur District employees alone for reasons best known to the respondents and such action was highly arbitrary and discriminatory in nature and therefore, he would pray that the Writ Appeal to be dismissed.

16. We have carefully considered the submissions advanced by the learned counsel on either side. We have also gone through the records independently. We have also carefully perused the order of the learned Single Judge.

17. It is not in doubt that the petitioner was eligible for promotion along with the other 62 employees. However, regularization cannot be claimed as a matter of right and it is for the respondents to take a conscious decision to regularize the employees for reasons thought fit. Admittedly, the



respondents have taken a decision to give the benefit of promotion to persons who had been stagnated at the lowest level for several years and in such view of the matter, GO.MS No. 76 came to be issued.

18. The Writ Petitioner, admittedly having not found a place in the annexure to the said GO, aggrieved by the same, approached the Writ Court for reasons which we have already set out herein above. It is the grievance of the Writ Petitioner that equals have been treated unequally and in fact, junior persons below the Writ Petitioner have been given promotion by issuance of GO.MS No. 76. Though there is some merit in the said argument of the learned counsel for the Writ Petitioner, considering the fact that the Writ Petitioner, was appointed as a Record Clerk in and by proceedings dated 14-07-1994 and ever since he has been enjoying the benefits and privileges of the said post, the Writ Petitioner cannot certainly be compared with the 62 persons who were benefited under GO.MS No. 76. However, considering the fact that the petitioner qualifies to be eligible for the benefits under GO.MS No.76 and also in light of the settled legal position that regularization cannot be claimed as a matter of right or preference, and in view of the fact that the learned Single Judge has issued a positive direction



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to extend the benefits of GO.MS No. 76 dated 31-05-2019 to the Writ Petitioner, we deem it fit to modify the order of the Writ Court.

19. Accordingly, the Writ Appeal is partly allowed and the appellants shall consider whether the petitioner is eligible to be promoted as Junior Assistant/Bill Collector in Tamil Nadu Town Panchayat subordinate services based on his seniority as a Record Clerk in the light of GO.MS.No.76 dated 31-05-2019 and pass suitable orders in accordance with law. We further make it clear that the said consideration of the writ petitioner's eligibility shall be independent of any observations made either by the Writ Court or by us in the present Writ Appeal. The appellant shall take a final decision on the eligibility of the Writ Petitioner to the benefits of GO. MS No.76 dated 31-05-2019 within a period of eight (8) weeks from today. Consequently, connected Miscellaneous Petition is closed. No costs.

(D.K.K., A.C.J.,) (P.B.B.J.,)

05.09.2024

Internet: Yes/No

Index : Yes/No

Speaking Order/Non Speaking Order



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Pre-delivery Judgment in

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