



W.P.No.32745



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.06.2024

Pronounced on : 20.08.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.32745 of 2017

and

W.M.P.Nos.36084 and 36085 of 2017

A.Mariappan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai – 600 009.
2. The Director of Town Panchayat,
Kuralagam, Chennai – 600 108.
3. The District Collector,
Nagapattinam District,
Nagapattinam.
4. The Assistant Director of Town Panchayat,
Thanjavur Zone, Thanjavur.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of 1st respondent in G.O.Ms.174, Municipal, Administration and



Water Supply(TP-I) Department dated 11.11.2013 and to quash the same in so far as it directs fixation of seniority of the petitioner in the Post of Junior Assistant from the date of appointment in Ministerial Service is concerned as well as to quash the subsequent order issued by the 3rd respondent in Na.Ka. No.1647/16/TP II dated 02.02.2017 and consequently direct the respondent to appoint the petitioner to the post of Junior Assistant as per G.O. Ms.No.174, Municipal, Administration and Water Supply(TP-1) Department dated 11.11.2013 with retrospective effect from the panel year 2004-2005 in the post of Junior Assistant/ Bill Collector with all consequential and other attendant benefits including arrears of salary, within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.G.Sankaran for
Mr.S.Nedunchezhiyan

For Respondents : Mr.Haja Nazirudeen,
Additional Advocate General
assisted by Mrs.Meera Arumugam

ORDER

The brief facts that are relevant for disposal of this Writ Petition are as under:-

The petitioner herein was appointed as 'Sanitary Supervisor' on compassionate grounds in a non-provincialised post through proceedings bearing ந.க.எண்.10/97/பேரு2 dated 16.04.1997 issued by the 3rd respondent



and accordingly, the petitioner joined the service on 28.07.1997 in Thalaigayaru Town Panchayat. Thereafter, though the petitioner made a claim for being appointed to the post of 'Junior Assistant' on compassionate grounds on the ground that he is qualified for being appointed to the said post and appropriate proposals were submitted, the same was not pursued by the petitioner subsequently. The said claim of the petitioner is not the subject matter of the present Writ Petition and no relief is sought in that regard. However, in the light of the orders issued by the Government in G.O (Ms) No.150, MAWS (TP-2) Department, dated 19.08.1998, earmarking 20% vacancies in the posts of Junior Assistant, Bill Collector and Typist to be filled up through recruitment by transfer from a non-provincialised Town Panchayat service, the petitioner made a claim for consideration of his case for recruitment by transfer to the post of 'Junior Assistant' and accordingly, he approached this Court by filing W.P.No.9634 of 2009 to forbear the respondents therein to fill-up 449 notified vacancies in the posts of Junior Assistant, Bill Collector and Typist and seeking a consequential direction to promote the petitioners therein against 20% quota envisaged under G.O (Ms) No.150, dated 19.08.1998. The said Writ Petition was disposed of by an order dated 03.11.2010, directing the respondents to implement G.O (Ms) No.150, dated 19.08.1998. Thereafter, the petitioner



pursued the matter further and finally, the case of the petitioner was considered for appointment by transfer and accordingly, G.O (Ms) No.174, MAWS (TP-1) Department, dated 11.11.2013 was issued, appointing the petitioner as 'Bill Collector', as there was no vacancy in the post of 'Junior Assistant' available at the relevant point of time by way of appointment by transfer. However, the petitioner was posted to work against the post of 'Bill Collector', though the petitioner was appointed as 'Junior Assistant' under the above Government Order dated 11.11.2013. Accordingly, the petitioner joined in the post of 'Bill Collector' and has been working as such.

2. It is thereafter the petitioner submitted a representation to appoint him in the post of 'Junior Assistant' in terms of G.O (Ms) No.174, dated 11.11.2013 with retrospective effect from the panel year 2004-2005 with all consequential and other attendant benefits including arrears of salary etc., Having failed to get any response, the petitioner approached this Court by filing W.P.No.39549 of 2016, complaining the inaction on the part of the respondents. The said Writ Petition was disposed of by this Court by order dated 11.11.2016, directing the respondents to consider the claim of the petitioner for being appointed to the post of 'Junior Assistant' with retrospective effect from the panel year 2004-2005



with all consequential benefits. It is pursuant to the said order dated 11.11.2016 passed by this Court, the 1st respondent, having considered the claim of the petitioner passed an order dated 02.02.2017, stating that for want of vacancy in the post of 'Junior Assistant', the petitioner was appointed in the post of 'Bill Collector', which is an equivalent cadre and also stating that the seniority of the petitioner would be fixed only from the date of joining the post in Ministerial service as per G.O (Ms) No.174, dated 11.11.2013, but not from the panel year 2004-2005. It is aggrieved by the said proceedings dated 02.02.2017, the petitioner approached this Court by filing the present Writ Petition.

3. Heard Sri.G.Sankaran, learned Senior Counsel for the petitioner and Mr.Haja Nazirudeen, Additional Advocate General appearing for the respondents and also perused the entire material on record.

4. Sri.G.Sankaran, learned Senior Counsel appearing for the petitioner contended that the Government, having taken a policy decision, issued G.O (Ms) No.150, dated 19.08.1998, earmarking 20% of vacancies in the posts of Junior Assistant, Bill Collector and Junior Assistant -cum- Typist and Typist in Town Panchayat for being appointed by transfer from among the eligible persons



working in the basic services and having required qualification. The petitioner herein, being a person working as a basic servant in the Town Panchayat, and having possessed the requisite qualifications to the post of 'Junior Assistant' is eligible for being appointed by transfer to the post of 'Junior Assistant', as against 20% vacancies earmarked under G.O (Ms) No.150, dated 19.08.1998. But the respondents failed to discharge their duties as mandated under the said Government Order and have not taken any steps for filling up of 20% vacancies earmarked under the above said Government Order for a long time and it is only in the year 2013, the respondents have discharged their duty belatedly and having found that there was a vacancy available under 20% quota during the panel year 2004-2005, the petitioner was appointed by transfer against the vacancy available during the said panel year. According to the learned Senior Counsel, had the respondents acted in time in terms of G.O (Ms) No.150, dated 19.08.1998, the petitioner would have got appointment to the post of 'Junior Assistant' during the year 2004-2005 itself and thus, it is contended that it is only because of the inaction on the part of the respondents, the petitioner is deprived of his appointment to the post of 'Junior Assistant'. Thus, it is contended that the petitioner is entitled for all service benefits including the seniority, monetary benefits etc., treating his appointment to the post of 'Junior



Assistant' from the year 2004-2005. However, the learned Senior Counsel submitted that the petitioner is not insisting for any backwages or arrears, but is confining his claim only for the purpose of seniority with effect from the panel year 2004-2005. He also placed reliance on following decisions of the Hon'ble Apex Court as well as this Court.

- (i) ***Union of India and others -vs- S.D.Gupta and others*** reported in (1996) 8 SCC 14;
- (ii) ***State Bank of India and others -vs- Kashinath Kher and others*** reported in (1996) 8 SCC 762;
- (iii) ***C.Jeyachandran -vs- State of Kerala and others*** reported in (2020) 5 SCC 230;
- (iv) ***Arvinder Singh Bains -vs- State of Punjab and others*** reported in (1996) 8 SCC 762;
- (v) ***S.D.Madasamy -vs- Secretary to Government*** vide order dated 30.08.2013 passed in W.P.No.19439 of 2005;
- (vi) ***Secretary to Government -vs- S.D.Madasamy*** vide order dated 06.09.2018 passed in W.A.No.134 of 2015;
- (vii) ***Dr.S.Senthilkumaran -vs- Dr.C.Shanmuga velayutham*** vide order dated 08.01.2020 passed in W.P.Nos.14219 and 14220 of 2019;



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5. On the other hand, Sri.Haja Nazirudeen, learned Additional Advocate General contended that, the petitioner, having been appointed as 'Junior Assistant' in the Ministerial service for the first time through G.O (Ms) No.174, dated 11.11.2013, is entitled for counting of his services for all purposes only from the date of entering into the Ministerial service, but not from the date anterior to that. He also further contended that the Government through G.O (Ms) No.150, dated 19.08.1998 has only made a provision for the benefit of basic servants working in Town Panchayat for being considered for appointment by transfer against 20% vacancies in Ministerial service viz., Junior Assistant, Bill Collector, Typist etc., but that does not mean that they have a right to be promoted by way of appointment of transfer to the said post. He also further submitted that there was no recruitment to the post of Junior Assistant, Bill Collector, Typist etc., from the year 1997-2006 and thereafter, due to the litigation initiated by the petitioner and others, their cases were not considered and finally, the cases of the petitioner and others were considered by ascertaining 20% vacancies earmarked for them and accordingly, the petitioner was appointed on transfer to the post of 'Junior Assistant/ Bill Collector'. Therefore, it is contended that the petitioner is not entitled for the relief as



sought for in the present Writ Petition. In support of his contention, the learned Additional Advocate General placed reliance on the following decisions.

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- (i) ***Brij Mohan Lal -vs- Union of India and others*** reported in (2012) 6 SCC 502;
- (ii) ***A.Kanagamuthu and others -vs- State of Tamil Nadu*** vide order dated 28.04.2023 passed in W.A.No.524 of 2020;
- (iii) ***Dr.K.Ramulu and another -vs- Dr.S.Suryaprakash Rao and other*** reported in (1997) 3 SCC 59;
- (iv) ***State of Tripura and others -vs- Nikhil Ranjan Chakraborty and others*** reported in (2017) 3 SCC 646;
- (v) ***Babita Prasad and others -vs- State of Bihar and others*** reported in 1993 Supp (3) SCC 268;

6. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

7. The petitioner was appointed to Ministerial service i.e., 'Junior Assistant/ Bill Collector' through G.O (Ms) No.174, dated 11.11.2013. Through the very Government Order, the petitioner was categorically informed that the



seniority of the petitioner has to be fixed from the date of his appointment in the 'Tamil Nadu Ministerial Service'. Though, the petitioner availed the benefit of the said Government Order, he has not chosen to question the said restriction imposed on him to claim seniority only from the date of his appointment in the 'Tamil Nadu Ministerial Service'. However, he made a claim for promotion/appointment by transfer to the post of 'Junior Assistant' from the panel year 2004-2005. The basis for making such a claim is that in terms of Rule 4(a) of the Tamil Nadu State and Sub-ordinate Services Rules, the respondents are under obligation to prepare a panel of approved candidates every year basing upon the vacancies available and the vacancies that are likely to arise during the panel year and operate the said approved list for filling up of vacancies and such an obligation cast on the respondents is a mandatory requirement, but because of the failure on the part of the respondents to discharge their duties under Rule 4(a) of the Tamil Nadu State and Sub-ordinate Services Rules, the petitioner is put to loss and forced to lose his seniority.

8. No doubt, in terms of Rule 4(a) of the Tamil Nadu State and Sub-ordinate Services Rules, there is an obligation cast on the respondents to prepare a panel of approved candidates every year. The very same Rule also provides for



inclusion of approved candidates who could not be appointed during the relevant panel year for the next panel year along with other eligible candidates and so on and so forth. Though the said Rule mandates for preparation of panel every year, there is no mandate that the respondent/ State should fill-up all the vacancies that are existing during that panel year with the approved candidates included in the said panel. Whether to fill-up the vacancies at the relevant point of time or not is for the respondent/ State to decide. There is no Rule that mandates the respondent/ State to fill-up the vacancies that are existing/ arising in a panel year in the very same panel year.

9. In the decisions that are relied upon by learned Senior Counsel for the petitioner on the issue of preparation of panel also laid down law to the above effect only. In this context, it would be relevant to refer to the decision of the Hon'ble Apex Court in the case of “***Union of India and others -vs- N.R.Banerjee and others***” reported in **1997 (9) SCC 287**, wherein the Hon'ble Apex Court held as under:-

“12. Considered from that perspective, the question arises whether the view taken by the Tribunal is justified in law. It is true that filling up of the posts are for clear or anticipated



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vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right on him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary.

In Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95 : (1991) 2 SCR 567]

the Constitution Bench had held that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant recruitment rules so indicate. The State is under no legal duty to fill up all or any of the vacancies even though the State acts in an arbitrary manner. In Babita Prasad v. State of Bihar [1993 Supp (3) SCC 268 : 1993 SCC (L&S) 1076 : (1993) 25 ATC 598] it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making a panel was to finalise the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies.



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*Unduly wrong panel should not be operated. In **Union Territory of Chandigarh v. Dilbagh Singh [(1993) 1 SCC 154 : 1993 SCC (L&S) 144 : (1993) 23 ATC 431]** it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In **State of Bihar v. Secretariat Asstt. Successful Examinees Union 1986 [(1994) 1 SCC 126 : 1994 SCC (L&S) 274 : (1994) 26 ATC 500]** it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purposes of appointment and that by itself does not amount to selection or creation of a vested right to appointment unless relevant rules state to the contrary. However, in the light of the above principles and in the light of the clear rules extracted hereinbefore, it is seen that the exercise of preparation of the panel is undertaken well in advance to fill up the clear*



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vacancies or anticipated vacancies. The preparation and finalisation of the yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel could not be prepared for any justifiable reason, year-wise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith. In Nagar Mahapalika v. Vinod Kumar Srivastava [(1987) 1 SCC 602 : (1987) 3 ATC 25 : AIR 1987 SC 847] this Court had pointed out with respect to the prescription of the limitation of one year of the waiting list thus:

“The reason underlying the limitation of the period of a list for one year is obviously to ensure that other qualified persons are not deprived of their chances of applying for the posts in the succeeding years and being selected for appointment.”

In the light of the above, it is clear that the respondent/ State is at liberty to decide whether to fill-up a vacancy at a particular time or not.



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10. Nothing is placed on record nor there is any pleading in the affidavit filed in support of the Writ Petition stating that the respondents have filled up the vacancies of Junior Assistant, Bill Collector, Typist etc., during the relevant years while ignoring to fill-up 20% vacancies earmarked for basic servants under G.O (Ms) No.150, dated 19.08.1998. However, from the contents of G.O (Ms) No.174, dated 11.11.2013, it is noticed that, in total vacancies have occurred after 19.08.1998, three vacancies were earmarked as against 20% quota and accordingly, the petitioner was appointed. If it is an established case that the remaining 80% vacancies were filled up at the relevant point of time, but 20% vacancies were not filled up and thereby, the said 80% have become seniors to the petitioner by violating the 'Quota-Rota Rule', then the claim of the petitioner may have to be examined, provided all the factual matrix are made available. But in the instant case, no such material is made available before this Court and therefore, the decisions relied upon by the learned Senior Counsel for the petitioner rendered in connection with the 'Quota Rota Rule' have no relevancy for disposal of the present case.



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11. As far as the reliance placed by Sri.G.Sankaran, learned Senior Counsel on a decision in W.P.No.19439 of 2005 is concerned, that is a case where the selection process was undertaken and there are certain irregularities/illegalities in the selection process and thereby, the aggrieved parties approached this Court and the same was resolved by an order dated 30.08.2013 and appropriate directions were issued to appoint the petitioner therein with effect from a particular date with reference to the date of selection etc., Whereas in the instant case, there was no such occasion and the selection process was undertaken and consequently, the petitioner was appointed to the post of 'Junior Assistant/ Bill Collector'. Therefore, the said decision and the order passed by the learned Division Bench in W.A.No.134 of 2015 filed there-against also has no application the case on hand.

12. In this connection, it would be relevant to refer to the decision of a Hon'ble Division Bench of this Court in W.A.No.524 of 2020 dated 28.04.2023 relied upon by the learned Additional Advocate General, wherein it was held as under:-

“6. The fact remains that the appellants/writ petitioners were promoted to the post of Junior Assistant /



Bill Collectors on 08.06.2011, from non-provincial post of Record Clerk and Sanitary Workers and they have also joined in the said post on the same day in the respective Town Panchayats. The grievance of the appellants is that they are entitled for promotion with retrospective effect from the date of approval of panel by the District Committee on 22.12.2008 and whereas promotion is ordered to be given effect from 08.06.2011, from the date on which they were promoted to the provincial post and the delay is on the part of the respondents in giving effect to promotion.

7. It is the stand of the respondents that the question of promotion with retrospective effect does not arise since there was a general ban for new recruitment from the year 2001 to 2006 and the promotion of the appellants was not open, but restricted only to 20% reservation. The 20% vacancies could not be ascertained every year, as the number of Town Panchayats within the revenue district was only 8 and the vacancies arose in 2001 was just 2, in



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the year 2001 to 2004, it was nil, in 2005, 2007 & 2008 it was just 1 or 2. Further the promotion was to be decided based on combined seniority of candidates in the feeder posts at the time of finalizing promotion under 20% reservation and the appellants became eligible for promotion as per the combined seniority list proposed after the year 2009. It is the further stand of the respondents that promotion is subject to the concurrence of TNPSC and the same was granted with a condition to fix the seniority from the date of appointment by promotion and above all, the appellant once accepted their promotion as Bill Collector / Junior Assistant, with prospective effect and joined the post on 08.06.2011 itself, cannot turn around and agitate after a lapse of more than 8 years. In the light of the abovesaid categorical stand taken by the respondents in the counter affidavit, this Court is of the view that the claim of the appellants/writ petitioner to give effect to retrospective promotion is totally unsustainable, that too when they were promoted



from a non-provincial post with 20% reservation as per

G.O.Ms.No.150, MAWS Department dated 19.08.1998.”

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The above decision has direct application to the case on hand. The other two decisions relied upon by the learned Additional Advocate General, in the considered view of this Court, have no application to the case on hand and therefore, no specific reference need be made to the said decisions.

13. In the light of the above, this Court has no option except to conclude that though the petitioner has a right to be considered for promotion for appointment by transfer, as against 20% quota, he cannot compel the State to fill-up the posts, when the vacancy arose. It is for the State to decide when to fill-up the vacancies. In case, if the State, having chosen to fill-up the vacancy, failed to consider the case of the petitioner along with other eligible candidates, the petitioner may have grievance. As held by the Hon'ble Apex Court in the case of “*Union of India and others -vs- N.R.Banerjee and others*” reported in **1997 (9) SCC 287**, though the State is under an obligation to prepare the panel, the same does not compel the State to fill-up the vacancies. Further, the petitioner for the first time, entered the Ministerial service only by virtue of G.O (Ms) No.174, dated 11.11.2013 and therefore, the question of the petitioner



being granted seniority from the date anterior to his birth in the Ministerial service does not arise.

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14. In the light of the above, this Court does not find any merit in the Writ Petition and the same is accordingly dismissed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

20.08.024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Principal Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George, Chennai – 600 009.
2. The Director of Town Panchayat,
Kuralagam, Chennai – 600 108.
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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
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