



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2024

Pronounced on : 30.10.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**W.P.No.15136 of 2017**

R.Senthilrajan

... Petitioner

Vs.

1. The Secretary, Tamil Nadu Public Service Commission,
No.3, Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai – 600 003.

2. The Deputy Secretary, Tamil Nadu Public Service Commission,
No.3, Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai – 600 003.

[R2 impleaded vide order dated 10.03.2022 passed in WMP No.7875 of 2021]

3. State of Tamil Nadu,
Represented by Principal Secretary to Government,
The Secretariat, Chennai – 600 009.

... Respondents

[R3 impleaded vide order dated 25.07.2024 passed in WMP No.20712 of 2023]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the records of the respondents and quashing the order dated 29.07.2017 signed by the 2nd respondent vide Memo No.2428/PSD-I/VAO/2014-15 and consequently direct the 1st respondent to grant the job of Village Administrative Officer (VAO) to the petitioner fixing his basic pay from the year 2021 without any backwages of arrears of salary and without any retrospective seniority in the post of Village Administrative Officer (VAO) within the time frame.



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W.P.No.15



(Prayer amended vide order dated 10.03.2022 made in WMP No.7882 of 2021)

For Petitioner	: Mr.K.Ravi Ananth Padmanaban, Senior Counsel for Ms.C.Keerthana
For R1 & R2	: M/s.G.Hema
For R3	: M/s.V.Yamunadevi, Special Government Pleader

ORDER

This writ petition has been initially filed seeking a writ of mandamus to direct the respondents to consider the representation dated 25.05.2017, said to have been submitted by the petitioner. However, subsequently, the main prayer in the writ petition was amended on 10.03.2022, questioning the order dated 29.07.2017 passed by the respondents 1 and 2 in Memo No.2428/PSD-I/VAO/2014-15 and also seeking a consequential direction to the Respondent No.1 to grant the job of 'Village Administrative Officer' to the petitioner etc.,

2. It is the case of the petitioner that he is an Ex-Serviceman, having served in the Indian Army from 28.03.1988 to 01.04.2014 for about 26 years and thereafter, got appointed as 'Village Assistant' on 13.10.2014. While he was working as 'Village Assistant', having come across a notification issued by the Tamil Nadu Public Service Commission, dated 12.09.2015 for filling up of the posts of 'Village Administrative Officer', the petitioner submitted an application with Registration No.230303065 and also appeared for the written examination



held on 28.02.2016 and thereafter, he was called for the certificate verification and accordingly, he also appeared for the certificate verification on 18.05.2017 before Respondents 1 and 2 along with the 'No Objection Certificate' issued by his Employer where he has been working as 'Village Assistant'.

3. It is on verification of certificates produced by the petitioner, the petitioner was stated to have been informed of his ineligibility for the said post and about the rejection of his candidature for appointment to the post of 'Village Administrative Officer'. It was thereafter, the petitioner submitted a representation dated 25.05.2017 and it was on considering the said representation, an order dated 29.07.2017 came to be issued. It is aggrieved by the said order, the petitioner approached this Court by filing the present writ petition.

4. In response to the notice issued by this Court, the respondents 1 and 2 filed a counter-affidavit stating that the petitioner, who belongs to MBC/ BC category, submitted an application for appointment to the post of 'Village Administrative Officer' in response to the notification, dated 12.11.2015 and on verification of the certificates on 18.05.2017, it was noticed that the petitioner was already working as 'Village Assistant' and therefore, he was found ineligible for being considered under the Ex-Serviceman category, and insofar as MBC/ BC



category is concerned, he is found over-aged as the petitioner was aged about 49 years and the upper age limit for MBC/ BC category is only 40 years. Thus, the candidature of the petitioner was stated to have been rejected on the abovesaid grounds.

5. Heard Mr.K.Ravi Ananth Padmanaban, learned Senior Counsel for Ms.C.Keerthana appearing for the petitioner, Ms.G.Hema, learned counsel for the respondents 1 and 2 and Ms.V.Yamunadevi, learned Special Government Pleader appearing for the Respondent No.3

6. The learned Senior Counsel appearing for the petitioner contended that, when the petitioner had initially applied for the post of 'Village Assistant', there was no embargo that he should not apply for any other job under the Ex-Serviceman quota and there was no prohibition as such and thus he has an accrued right as on that date to apply for any other post under the category of Ex-Serviceman, inspite of he being appointed as 'Village Assistant' in the year 2014 and therefore, such an accrued right cannot be taken away by the respondents by amending the Rules through G.O (Ms) No.89, Personnel and Administrative Reforms (S) Department, dated 12.08.2015. He also further contended that the amendments that are made to the General Rules through G.O (Ms) No.89,



Personnel and Administrative Reforms (S) Department, dated 12.08.2015, cannot be given retrospective effect, so as to take away the accrued rights of the petitioner. He also further contended that the Tamil Nadu State and Subordinate Service Rules stood replaced by the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and therefore, the General Rules cannot be said to be in force after the said Act came into force with effect from 12.08.2015 and therefore, in respect of the recruitment that took place after the commencement of the said Act into force, have to be made in terms of the said Act, but not in terms of the General Rules that stood replaced by the enactment.

7. He also further contended that the petitioner has not suppressed any facts, but from the beginning, he has disclosed about his employment as 'Village Assistant' and then participated in the recruitment process, pursuant to the notification dated 12.11.2015 and accordingly, he was allowed to appear for the written examination and also participated in the certificate verification and therefore, his case cannot be rejected subsequently. He also further contended that, in view of the fact that the petitioner was allowed to participate in the recruitment process, pursuant to the application submitted by him, by duly disclosing all the facts, the respondents are estopped from rejecting his application on that ground. He also placed reliance on various decisions viz., W.P (MD)



No.9778 of 2009, W.A.No.1020 of 2014, 2012 (13) SCC 243, SLP (C) No.6439 of 2020.

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8. On the other hand, Ms.G.Hema, learned counsel appearing for the respondents 1 and 2 contended that the respondent Tamil Nadu Public Service Commission has acted strictly in accordance with the Rules applicable to the post and by duly applying the law applicable, as on the date of notification i.e., 12.11.2015 and accordingly, the candidature of the petitioner was rightly rejected by passing the impugned order.

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

10. There is no dispute on the factual aspects. The notification in question was issued on 12.11.2015. Admittedly, the petitioner submitted an application for the post of 'Village Administrative Officer', while he was working as 'Village Assistant' on being appointed under the Ex-Serviceman quota. As on the date of notification, i.e., 12.11.2015, the concession of reservation extended in favour of Ex-serviceman was governed by Clause 7-A of Rule 2 of Part I of the Tamil Nadu



State and Subordinate Service Rules, as amended by G.O (Ms) No.89, Personnel and Administrative Reforms (S) Department, dated 12.08.2015. The said amendment, by way of inserting new clause 7-A under Rule 2 of the Part I of the Tamil Nadu State and Subordinate Service Rules, was introduced on 12.08.2015 and the notification in question was issued on 12.11.2015. Thus, as on the date of issuance of the notification in question, clause 7A, as inserted through G.O (Ms) No.89, Personnel and Administrative Reforms (S) Department, dated 12.08.2015 is very much in operation. In terms of 1st proviso to Clause 7-A of Rule 2 of Part I of the Tamil Nadu State and Subordinate Service Rules, an Ex-Serviceman, once recruited to a post in any class or service or category, cannot claim the concession of being called as an 'Ex-Serviceman' for his further recruitment. The said proviso reads as under:-

“Provided that in all cases, an ex-serviceman once recruited to a post in any class or service or category, cannot claim the concession of being called an ex-serviceman for his further recruitment”

As already noted above, the preference or reservation that is extended in favour of the Ex-Serviceman is a concession that was extended acknowledging the service rendered by them in the Indian Army by duly relaxing the mandate of Articles 14 and 16 of the Constitution of India. The said concession extended in favour of the Ex-serviceman can be claimed strictly in terms of the conditions governing such



concession, but not otherwise.

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11. In terms of the above proviso, an Ex-Serviceman, once recruited to a post in any class or service or category, cannot claim the said concession of being called as an 'Ex-Serviceman' for his further recruitment. Admittedly, the petitioner is holding the post of 'Village Assistant', within the meaning of the abovesaid proviso and intended to participate in the further recruitment to the post of 'Village Administrative Officer'. It is by virtue of the above said proviso, the respondents 1 and 2 rejected the candidature of the petitioner. The fact of the petitioner holding the post of 'Village Assistant' is not in dispute. However, the petitioner claim is that, as on the date of the petitioner submitted his application for the post of 'Village Assistant' in the year 2014, there was no such embargo on the Ex-Serviceman to participate in the future recruitment. Even now, there is no prohibition on the right of an 'Ex-Serviceman' to participate in the future recruitment process, but the restriction is only on claiming a concession of being treated as 'Ex-Serviceman'. It is for the State to decide to whom and on what circumstances and subject to what conditions, a concession can be extended in favour of a class or category of persons. Hence, the concept of accrued rights etc., would not arise.



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12. In the instant case, neither the amendment made through G.O (Ms) No.89, Personnel and Administrative Reforms (S) Department, dated 12.08.2015, nor the proviso in question, is under challenge. In the absence of any challenge to the said proviso, which is operating as on the date of issuance of notification in question, the petitioner cannot be permitted to contend otherwise. It is only on applying the above said proviso, the candidature of the petitioner was rejected. The question of giving retrospective effect to the said proviso inserted through G.O (Ms) No.89, Personnel and Administrative Reforms (S) Department, dated 12.08.2015 does not arise. The notification in question was admittedly issued after insertion of clause 7-A in Rule 2 of Part I of the Tamil Nadu State and Subordinate Service Rules. Therefore, the question of giving retrospective effect to the said proviso does not arise.

13. The further contention that, the Tamil Nadu State and Subordinate Service Rules stood replaced by the Tamil Nadu Government Servants (Conditions of Services) Act, 2016 is concerned, the same also does not stand for legal scrutiny, as the posts that are notified through the notification dated 12.11.2015 are required to be filled in terms of the Rules that are existing as on the date of notification and therefore, a subsequent enactment of Act, 2016 absolutely has no bearing on the recruitment process in question.



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14. The reliance placed by the learned Senior Counsel on various decisions have no application to the facts of the case on hand. The decision of this Court in W.P (MD) No.9778 of 2009 is a case where the applicability of a subsequent qualification prescribed for a post was considered and hence, the same has no relevance to the facts of the case on hand. Similarly, the order in W.A.No.1020 of 2014 also has no application, as in the said case, the claim of a person, who retired from service to extend the benefits of a Government Order issued by putting a cut-off date after the retirement of the petitioner was considered and it was held that the persons, who cease to be in service cannot claim the benefit of orders issued subsequently.

15. Insofar as the decision relied upon by learned Senior Counsel on the decision of the Hon'ble Apex Court in the case of ***"Sunil Kohli and others -vs- Union of India and others"*** reported in **2012 (13) SCC 243** is concerned, that is a case dealing with the power of the Board to make regulation with retrospective effect. In the instant case, as already observed above, there is no retrospective effect given to the amendments made through G.O (Ms) No.89, Personnel and Administrative Reforms (S) Department, dated 12.08.2015 and therefore, the said decision also has no application. Similarly, the decision of the Hon'ble Apex Court



in SLP No.6439 of 2020 also has no application, as this Court has already observed as above that, the provisions of the Act, 2016 have no application to the recruitment process in question and it is only the Rules that are in operation as on the date of notification dated 12.11.2015 would only govern the entire process of recruitment.

16. In the light of the above, this Court is of the view that the claim of the petitioner for being considered under 'Ex-Serviceman quota' is rightly rejected by the respondents and the impugned order does not warrant any interference. Insofar as the claim of the petitioner under MBC/ BC category is concerned, the petitioner is admittedly aged about 49 years as against the upper age limit of 40 years prescribed for the said category.

17. Accordingly, this writ petition is liable to be dismissed and the same is accordingly dismissed. No costs. Connected miscellaneous petitions, if any, shall stand closed.

30.10.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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The Secretariat, Chennai – 600 009.



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MUMMINENI SUDHEER KUMAR, J.

skr

Pre-Delivery Order made in
W.P.No.15136 of 2017

20.10.2024