

Case relating to Concurrence:

Parties : P.G. Ramesh Versus The Government of Tamil Nadu Rep. By its Secretary to Government Municipal Administration & Water Supply Dept., Chennai & Others

Court : High Court of Judicature at Madras

Case No : Writ Petition No.19932 of 2008

Judges: THE HONOURABLE MR. JUSTICE R. SUDHAKAR

Appearing Advocates : For the Petitioner: V. Suthakar, Advocate. For the Respondents: R1 to R3 - Ms.V.M. Velumani, Spl.G.P. R4 - Ms. Niraimathi, Advocate.

Date of Judgment : 15-06-2011

Head Note :-

Constitution of India - Article 226 – Mandamus - To direct the first respondent to consider the case of the petitioner for appointment to the post of Junior Assistant on compassionate grounds - petitioner, a Post Graduate, who was working as sweeper at Town Panchayat - petitioner's father was died in harness while he was in service -petitioner states that, at the time of appointment, he possessed educational qualification of Bachelor of Science and petitioner completed his Master's Degree in Sociology - first respondent, while considering the case of the petitioner favourably informed the petitioner that he will be considered for appointment as Junior Assistant after getting concurrence from the fourth respondent, the Tamil Nadu Public Service Commission -Court held - first respondent Government is directed to issue suitable orders to appoint the petitioner in the post of Junior Assistant - petition allowed.

Judgment :-

(Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to consider the case of the petitioner for appointment to the post of Junior Assistant on compassionate grounds in accordance with the guidelines issued in G.O.Ms.No. 206 Municipal Administration & Water Supply (Town Panchayats 1) Department dated 2.11.1995 after getting necessary concurrence from the fourth respondent with all consequential benefits.)1. The above writ petition is filed for issuance of a writ of mandamus directing the first respondent to consider the case of the petitioner for appointment to the post of Junior Assistant on compassionate grounds in accordance with the guidelines issued in G.O.Ms.No.206 Municipal Administration & Water Supply (Town Panchayats 1) Department dated 2.11.1995 after getting necessary concurrence from the fourth respondent with all consequential benefits.

2. The petitioner, a Post Graduate is the son of one late Govindasamy, who was working as sweeper at Polur Town Panchayat. The said Govindasamy died in harness while he was in service on 13.11.1998. Thereafter, the petitioner was appointed as a sweeper on compassionate grounds by the proceedings of the District Collector, Tiruvannamalai dated 25.6.1999 and

posted as sweeper at Polur Town Panchayat. The petitioner states that at the time of appointment, he possessed educational qualification of Bachelor of Science and thereafter he completed his Master's Degree in Sociology. While so, the petitioner made a representation to the Secretary through proper channel on 19.4.2005 stating that he is entitled to be appointed as Junior Assistant in terms of G.O.Ms.No.1499 Labour and Employment (Q1) Department dated 3.8.1989 and subsequent G.O. Viz., G.O.Ms. No. 206 Municipal Administration and Water Supply Department dated 2.11.1995. The first respondent, while considering the case of the petitioner favourably informed the petitioner that he will be considered for appointment as Junior Assistant after getting concurrence from the fourth respondent, the Tamil Nadu Public Service Commission. Since the Public Service Commission did not accord permission as required, the petitioner was forced to file writ petition in W.P.No.37832 of 2007 and this Court by its order dated 2.1.2008 directed the Government to consider his claim and pass orders expeditiously. Thereafter, the Government, it appears, responded favourably by stating that the concurrence of the Tamil Nadu Public Service Commission is awaited.

3. The petitioner in support of his claim for appointment as Junior Assistant relied upon the two Government Orders viz., G.O. Ms.No.407 dated 2.8.2001 issued in favour of one M.Anandan S/o late Murgaiyan and G.O.Ms.No.102 dated 12.3.2008, which was issued in favour of one N.Kumaran S/o late Nallamuthu. In both these cases according to the petitioner, the deceased employees were working as sweepers. They were appointed as Junior Assistants under compassionate appointment category. Thus, the specific case of the petitioner is that the Tamil Nadu Public Service Commission has given its concurrence to the appointment of the above two Junior Assistants viz., M.Anandan and N.Kumaran and the Government thereafter issued the orders appointing them as Junior Assistant. Whereas in the case of the petitioner the concurrence of the fourth respondent is withheld citing untenable reasons and without any just or reasonable cause.

4. The third respondent has filed a counter affidavit for himself and on behalf of the respondents 1 and 2 confirming that the Government has issued specific orders in respect of similarly placed employees as that of the petitioner and they are expecting the concurrence of the fourth respondent in the case of the petitioner.

5. The 4th respondent, the Tamil Nadu Public Service Commission has filed a counter affidavit and additional counter affidavit stating that the benefit of G.O. Ms. No.206 M.A. & W.S. Department dated 2.11.1995 does not apply to the post of sweeper. However, in the additional counter affidavit it has been stated that the Commission has requested the Government to amend G.O.Ms. No.206 to include sweepers as well, so that concurrence may be granted.

6. This court is unable to accept the plea of the fourth respondent. The respondents 1 to 3 have no reservation for granting the relief as sought for by the petitioner as in the case of similarly placed person. In the cases relating to G.O. Ms.No.407 dated 2.8.2001 and G.O.Ms.No.102

dated 12.3.2008, compassionate appointment has been given to the legal heirs in the post of Junior Assistants on the death of the deceased employees, who were working as sweepers and the fourth respondent, the Tamil Nadu Public Service Commission has given its concurrence vide proceedings No.1851/rp o V 3/ /2001 which is evident from para 2 of G.O. Ms.No.407 dated 2.8.2001 itself. When the fourth respondent has given its concurrence to similarly placed persons, the petitioner cannot be singled out. The fourth respondent cannot adopt different yard stick in respect of similar issues. In this case, the petitioner hails from lower strata of society economically impoverished. The fourth respondent cannot take shelter under G.O.Ms.No.206 dated 2.11.1995 and refuse to accord concurrence, thereby disabling the Government from granting the relief to the petitioner.

7. If it is necessary, the Government is bound to modify or amend the G.O. to include such of those categories of employees as already recommended by the fourth respondent.

8. In any event, on going through G.O. Ms. No.206 dated 2.11.1995, this Court finds that the category mentioned therein includes Night Watchman, Office Assistant and Record Clerk etc.

The sweeper cannot be placed on a higher pedestal for denying the benefit. Realising the error, as stated above, the fourth respondent has already recommended for amendment of the said G.O., if necessary. Moreover, the Government itself has recommended the case of the petitioner, as in the case of similarly placed persons who were given the appointment in G.O.No.407 dated 2.8.2001 and G.O. 102 dated 12.3.2008. The fourth respondent has given its concurrence and therefore cannot deny concurrence in this case alone.

9. In the result, the writ petition is allowed. The first respondent Government is directed to issue suitable orders to appoint the petitioner in the post of Junior Assistant.

10. The petitioner is employed as sweeper and he has been working as sweeper. Therefore, he will be entitled to receive salary in the post of Junior Assistant from the date of this order. The petitioner, however, will not be entitled to any backwages except service benefits like continuity of service etc. for the purpose of getting retirement benefits.

11. The first respondent Government is directed to pass appropriate orders within eight weeks from the date of receipt of copy of this order. No costs.