

(2009) 12 MAD CK 0218

In the Madras High Court

Case No : Writ Petition No. 12755 of 2009 and M.P. No. 1 of 2009

A. Sankar

APPELLANT

Vs

The District Collector and The Tahsildar

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Constitution of India, 1950 — Article 142

Tamil Nadu Village Servants Service Rules, 1980 — Rule 8

Citation : (2009) 12 MAD CK 0218

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Elanchezhian, for the Appellant; R. Neelakandan, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner had studied upto 10th standard. He belonged to Schedule Caste community. He had registered his name in the Employment Exchange. The petitioner's name was sponsored for the post of Village Assistant. The Tahsildar, after verifying his records stated that appointment order will be issued very shortly. But he was not given any appointment order. Hence, the petitioner moved this Court by filing a writ petition being W.P. No. 30014 of 2008 seeking for a direction that his temporary employment should be considered while filling up the permanent post and preference should be given to such candidates. This Court without expressing any opinion directed the respondents to consider the case of the petitioner. It is pursuant to that direction, the impugned order dated 21.02.2009 came to be passed by the first respondent District Collector.

2. In the impugned order, it was stated that though the petitioner would have worked as a part time Village Assistant, no preference has been provided under the Rules. With effect from 01.06.1995, part time Village Assistant post has been made as a permanent post and appropriate Service Rules have also been framed.

Under the relevant Rules, there is no stipulation that the erstwhile part time Village Assistants should be considered on preferential basis. It was also stated that only when the orders of the Government are issued in that regard, preference may be given. It is this order, which is under challenge in this writ petition.

3. Pending the writ petition, this Court directed one post of Village Assistant to be kept vacant, provided if there is any vacancy.

4. The learned Counsel for the petitioner contended that in the normal circumstances, a temporary employee is entitled for preference while filling up the permanent post. But it is seen from the affidavit that there was a vacancy in the post of Village Assistant in Chitteri village during the year 1993, on account of one Annamalai, Village Assistant going on medical leave for three months. The petitioner was appointed temporarily in the said post. But the Special Rules for Tamil Nadu Village Servants Service Rules issued by G.O.Ms. 521 Revenue dated 17.06.1998 was brought into effect from 01.06.1995. Under Rule 8(iv), it was stated that the persons who are already working as Vetti, Nirgandi or Thalayari and who were on service as on 01.06.1995 alone were deemed to have been appointed as Village Assistant under these Rules. Therefore, the relevant Special Rules do not give preference to any persons who were working on leave vacancy.

5. The learned Counsel for the petitioner relied upon a judgment of the Supreme Court in Notified Area Council, Pipili and Anr. v. Gahar Mohd and another reported in 2001 (4) Supreme 347. In that case, the Supreme Court held that continuance or abolition of posts is within the power of employer and decision in that regard cannot be interfered with by the Court by the exercise of its jurisdiction. In that case, it was also held dispensing with engagement of daily wage workers was not vitiated on any account and if any employee continues as daily wage worker, the question of regularisation in the post does not arise. However by the exercise of power under Article 142, the Supreme Court directed the consideration of such daily workers for future vacancies either as a daily rated worker or a regular employee according to law, on priority basis, by waiving age bar if any.

6. This Court unfortunately do not have any such power. In the same judgment, it has been clearly held that the Court cannot interfere with the Rules laid down by the authority in the matter of recruitment. Therefore, in the absence of any priority being conferred under the relevant statutory Rule, the prayer in the writ petition cannot be countenanced by this Court.

7. In the light of the above, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.