
(2013) 07 MAD CK 0410

In the Madras High Court

Case No : W.P. No. 1481 of 2010 and M.P. No. 2 of 2010

T. Sarvesa Reddy

APPELLANT

Vs

The District Collector (PD Section), The Block Development
Officer and The President, Grade Panchayat

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 07 MAD CK 0410

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—The Petitioner has filed the instant writ of certiorarified mandamus, in calling for the records pertaining to the letter bearing No.Na.Ka. No. 4108/08/E2 dated 5.1.2010 of the second respondent and to quash the same. Further, the Petitioner has sought for passing of an order by this Court in directing the respondents to regularize the service of the Petitioner in the cadre of Panchayat Assistant Grade II with effect from the date of his initial appointment viz. 13.1.2007 with all consequential benefits. The second Respondent/Block Development Officer (Village Panchayat), Hosur, Krishnagiri District addressed a communication in Na.Ka. No. 4108/08/E2 dated 5.1.2010 to the third Respondent (with a copy being marked to the first Respondent/District Collector's Personal Assistant) inter-alia mentioning that when the Petitioner was appointed as Panchayat Assistant in the third Respondent's office, it is mentioned in the letter dated 23.9.2008 as cited in the reference that his age should have been 28 years as on 1.7.2008, but the Petitioner had crossed 28 years and therefore, he could not be provided with appointment order to the post of Panchayat Assistant and it was duly informed to the President of the third Respondent. However, in Reference No. 5, letter dated 1.12.2009 of Deputy Block Development Officer, it is mentioned that the Petitioner was not relieved of his duties. As such, the third Respondent was directed to relieve the Petitioner immediately.

2. Assailing the correctness of the order dated 5.1.2010 passed by the second Respondent addressed to the third Respondent, the Learned counsel for the Petitioner submits that the said order passed by the second Respondent is contrary to law because of the simple reason that the Petitioner was originally appointed on a temporary basis from 13.1.2007 in the leave vacancy caused due to the medical leave applied by one Raju, who later attained superannuation on 31.7.2008.

3. The Learned counsel for the Petitioner urges before this Court that the Petitioner was serving continuously as Panchayat Assistant Grade II from 13.1.2007 and further, he was appointed in regular vacancy on 18.8.2008. At the time of the Petitioner's initial appointment, it is the stand of the Petitioner that he had not completed 28 years of age and only at the time of appointment against regular vacancy, he crossed 28 years.

4. In effect, the plea taken on behalf of the Petitioner is that he was discharging his duties continuously from 13.1.2007 till date and as such, the Respondents should not have rejected the request of the Petitioner for ratification of the Petitioner's appointment as Panchayat Assistant Grade II on 18.8.2008.

5. The Learned counsel for the Petitioner draws the attention of this Court that the Respondents have failed to appreciate the tenor and spirit of G.O.Ms. No. 152 P & AR dated 18.9.2006 wherein it was categorically stated that the age limit for appointment could be relaxed for a period of five years provided the employees had already put in some service.

6. In the present case on hand, it is submitted on behalf of the Petitioner that the Petitioner was working as Panchayat Assistant Grade II from 13.1.2007 and prior to this, from 1.5.1997 to 30.11.1998, he worked as Volunteer under "Arivoli Iyakkam scheme" and therefore, the Respondents should have ratified the Petitioner's appointment as Panchayat Assistant Grade II.

7. That apart, the Learned counsel for the Petitioner harps on a point that after the Petitioner's appointment, he was sent for foundation training from 22.9.2009 to 26.9.2009 and the Respondents should have seen that the second Respondent has in fact on 19.3.2009 written a letter to the first Respondent/District Collector, Krishnagiri District recommending the ratification of the Petitioner's appointment as Panchayat Assistant Grade II although he crossed 28 years of age considering his conduct and earlier service rendered by him during the year 1997-1998.

8. The Learned counsel for the Petitioner brings it to the notice of this Court that the District Collector (incharge), Krishnagiri, in his proceedings Na.Ka. No. 875/2008/A3 dated 23.4.2008, has ratified the appointment of one Thavamani as Part Time Panchayat Clerk of Pudur village, Thenkanikottai Circle by applying the principles of G.O. Ms. No. 152 P & AR Department dated 18.9.2006 and as such, the same yardstick was not followed in respect of the Petitioner's case and in this regard, there has been a violation and also the Petitioner being discriminated on that count.

9. The Learned counsel for the second Respondent contends that the impugned order dated 5.1.2010 issued by the second Respondent addressed to the third Respondent is only an internal office correspondence and as such, the same cannot be challenged by the Petitioner before this Court in writ jurisdiction.

10. Repelling the contentions of the Petitioner's side, the Learned Additional Government Pleader for the first Respondent/District Collector forcefully contends that the Petitioner cannot take advantage of the communication dated 23.4.2008 wherein the first Respondent ratified the appointment of one Thavamani by applying G.O. Ms. No. 152 P & AR Department dated 18.9.2006 and further, in the instant case, the Petitioner belongs to O.C. category and although at the time of his initial appointment as Panchayat Assistant on temporary basis, he has not crossed 28 years of age, as on 1.7.2008, he had crossed 28 years and therefore, he could not be appointed in the post of Panchayat Assistant.

11. Further, the learned Additional Government Pleader Mr. P.S. Shiva Shanmuga Sundaram submits that in the letter dated 23.9.2008 of Personal Assistant to the District Collector, Krishnagiri, it is mentioned that as per G.O. Ms. No. 175 RD Department dated 5.12.2006, the persons to be appointed as Panchayat Assistant as per Clause (iv) of the appointment conditions in that particular year on 1.7.2006, his age should have been 28 years and for Backward/Most Backward-Adi Dravidars and Tribal community, the age limit is 33 years and later under reference dated 20.8.2008 of Block Development Officer, it is stated that in the Petitioner's transfer Certificate, it is described as Reddy caste and further, it has not been mentioned under which community viz. other Community/Adi Dravidar/Tribal Community/Backward Community/Most Backward and it was also noted that a Certificate should be obtained in regard to the age limit, since a decision has to be taken.

12. The Learned Additional Government Pleader for the first Respondent submits that ultimately, the Personal Assistant to the first Respondent/District Collector, Krishnagiri District addressed a communication dated 23.9.2008 through the second Respondent/proper channel (to be served on the Petitioner) to the effect that the Petitioner's date of birth is shown as 25.7.1979 in the transfer Certificate and further it is mentioned that as he belongs to other community and since he has crossed 28 years as on 1.7.2008, he could not be given the appointment order for the post of Panchayat Assistant.

13. Further, the Learned counsel for the Petitioner informs this Court that the Petitioner had not received the communication dated 23.9.2008 of P.A. to the District Collector, Krishnagiri and therefore, the Petitioner could not challenge the said communication. Significantly, the writ Petitioner in the present writ petition has challenged the communication dated 5.1.2010 of the second Respondent addressed to the third Respondent.

14. For a fuller and better appreciation of the subject matter in issue, at this stage, this Court makes a pertinent and useful reference to G.O. Ms. No. 152 P &

AR Department dated 18.9.2006 wherein in paragraphs 2 and 3, it is mentioned as under:

2. In the meantime, several representations have been received from the employed youth and also from the Tamil Nadu Secretariat Association wherein they have requested that the age relaxation of 5 years may be made applicable to the employed persons also so as to enable them to write the competitive exams, since those who are already employed were also affected by the ban on recruitment and they were not able to write the competitive exams and when the ban was lifted they became overaged.

3. After careful consideration, the Government direct that the upper age limit for entering into Government service shall be relaxed by five years to those who are already in Government service also, so as to enable them to write the competitive examinations conducted by the Tamil Nadu public Service Commission.

15. In G.O. Ms. No. 175 Rural Development Department dated 5.12.2006 under the head "appointment conditions" sub clause (iv), it is mentioned that in respect of the appointment for the post of Panchayat Assistant, the age in the same year on 1.7., it should be 28 years and in respect of Backward/Most Backward/Adi Dravidar/Tribal Community, the maximum age limit must be 33 years. It is not in dispute that the Petitioner was appointed as Panchayat Assistant Grade II at Bagalu village Panchayat/third respondent in the time scale of Rs. 625-10-125-20-925 on temporary basis as the existing incumbent viz. one Raju was on medical leave. Also, he was appointed in the regular vacancy in view of the fact that the existing incumbent attained the age of superannuation on 31.7.2008. At the time of Petitioner's initial appointment as Panchayat Assistant on transitory basis, he has not crossed 28 years of age.

16. On 18.8.2008, the third Respondent addressed a communication to the first Respondent through the second Respondent to ratify the appointment of the Petitioner as Panchayat Assistant Grade II, indeed, the second Respondent, on 20.8.2008, forwarded the proposal to ratify the appointment of the Petitioner as Panchayat Assistant Grade II. It also transpires that the Petitioner submitted his representation on 16.3.2009 to the first Respondent to ratify his appointment as Panchayat Assistant Grade II on the ground that initially he was appointed by the first Respondent/District Collector, Krishnagiri as Volunteer in "Arivoli Iyakkam" between 1.5.1997 and 30.11.1998. Subsequently, from 13.1.2007, he is serving as Panchayat Assistant Grade II on temporary basis without any interruption whatsoever.

17. A cursory perusal of the proceedings of the District Collector incharge, Krishnagiri in Na.Ka. No. 875/2008/A3 dated 23.4.2008 unerringly points out that in respect of one Thavamani, age relaxation of 5 years was granted by following G.O. Ms. No. 152 P & AR Department dated 18.9.2006 and also by accepting his temporary service period at the education Department. However, a

scrutiny of the communication of the second Respondent addressed to the third Respondent dated 5.1.2010, there is no reference to G.O. Ms. No. 152 P & AR Department dated 18.9.2006. However, in the said communication, in reference No. 1, there is a reference to G.O. Ms. No. 175, RD Department dated 5.12.2006.

18. Continuing further, on 16.3.2009, the Petitioner has made a detailed representation to the first Respondent/District Collector, Krishnagiri District wherein he has requested for relaxation of five years being given to him. This particular letter has been addressed by the Petitioner through proper channel and also the second Respondent had addressed a communication in Na.Ka. No. 4108/2008/E2 dated 19.3.2009 to the first Respondent/District Collector, recommending the age relaxation of 5 years sought for by the Petitioner.

19. When that being the factual situation and also, taking note of the fact that when one Thavamani was given the age relaxation of five years as per the letter of the District Collector (incharge), Krishnagiri dated 23.4.2008 by placing reliance on G.O. Ms. No. 152 P & AR Department dated 18.9.2006, this Court is of the considered view that G.O. Ms. No. 175 RD Department dated 5.12.2006 is to be read in conjunction with G.O. Ms. No. 152 P & AR Department dated 18.9.2006. Then only the benefit of G.O. Ms. No. 152 P & AR Department dated 18.9.2006 can be showered on the Petitioner and in this regard, the first Respondent has to take note of the earlier proceedings dated 23.4.2008 while consider the case of the Petitioner's relaxation from the date of initial appointment dated 13.1.2007 (as claimed by the Petitioner).

20. As such, this Court is of the considered view that since the second Respondent's communication dated 5.1.2010 addressed to the third Respondent has not dealt with or considered the tenor and spirit of G.O. Ms. No. 152 P & AR Department dated 18.9.2006, this Court comes to an inevitable conclusion that the said communication is not a legal and valid one in the eye of law, per contra, the same is unsustainable in the eye of law. As such, this Court is left with no other alternative but to interfere with the said order passed by the second Respondent addressed to the third Respondent dated 5.1.2010 and sets aside the same to promote substantial cause of justice. Consequently, the writ petition succeeds.

21. In the result, the writ petition is allowed, leaving the parties to bear their own costs. The first Respondent/District Collector is hereby directed to consider the representation of the Petitioner dated 16.3.2009 in a fair, dispassionate and threadbare fashion and to pass orders on merits in regard to the claim made by the Petitioner for his regularisation from the date of his initial appointment viz. 13.1.2007. Whether the petitioner's service is to be regularised from the initial appointment viz. 13.1.2007 or it has to be made from 18.8.2008 being the date when regular vacancy of Raju, who got superannuated, had arisen are all matter/matters to be dealt with by the first Respondent/District Collector at the time of consideration of the representation dated 16.3.2009 submitted by the Petitioner in right earnest with an open mind. Also, the first Respondent/District Collector,

Krishnagiri is hereby directed to pass a detailed, Just, objective and reasoned order outlining the process of conclusion arrived at by him in a qualitative and quantitative fashion so as to resolve the subject matter in issue once and for all. The above exercise shall be done by the first Respondent/District Collector within a period of eight weeks from the date of receipt of a copy of this Order. Consequently, the connected M.P. is closed.