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W.P.(MD)No.23837 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.23837 of 2019

and

**W.M.P.(MD)Nos.20458, 20459 of 2019, 12434 and
12435 of 2020**

M.Sasikumar

... Petitioner

vs.

1.The Secretary to Government,
Municipal Administration and Water
Supply Department,
Secretariat, Chennai-9.

2.The Commissioner of Municipal
Administration,
6th Floor, Ezhilagam, Chepauk,
Chennai-5.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records connected with the impugned order passed by the 2nd respondent in his proceedings Roc.No.20305/2018/F3, dated 26.09.2019 and in



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Roc.No.33218/2019/F3, dated 26.08.2020, in so far as the non-inclusion of the petitioner in the panel and to quash the same and consequently, to direct the 2nd respondent to promote the petitioner notionally as Overseer from the date on which Mr.Patturajan was promoted as Overseer.

(Prayer amended, vide Court order, dated 27.04.2023, in W.M.P. (MD)No.12437 of 2020 in W.P.(MD)No.23837 of 2019)

For Petitioner : Mr.S.Govindan
For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to call quash the impugned order dated 26.09.2019 and in Roc.No.33218/2019/F3, dated 26.08.2020, in so far as the non-inclusion of the petitioner in the panel and consequently to direct the 2nd respondent to promote the petitioner notionally as Overseer from the date on which Mr.Patturajan was promoted as Overseer.



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2. The petitioner was appointed as Technical Assistant as NMR basis and joined in Melur Municipality in the year 1997. Thereafter, taking into consideration of NMR service, the Regional Director, Municipal Administration, sent proposal to the 2nd respondent to appoint the petitioner in the post of Work Inspector along with one B.Patturajan in his letter, dated 18.08.2006. The 2nd respondent by an order, dated 30.06.2008, appointed B.Patturajan and one Gowri as Work Inspector. Since the petitioner was not appointed and hence the petitioner filed W.P. (MD)No.9436 of 2008 and this Court directed the respondents to consider and pass orders within a period of four weeks. But the 1st respondent rejected the claim of the petitioner, vide letter, dated 27.02.2009. The contention of the petitioner is that since the petitioner approached the Court for granting relief, the respondents orally terminated the petitioner from service from January 2009. Hence, the petitioner filed W.P.(MD)No.3718 of 2009 to quash the rejection order



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and consequently, to direct the respondents to absorb the petitioner as Work Inspector from the date on which the petitioner's juniors were appointed as Work Inspector in terms of G.O.Ms.No.73, dated 25.05.2009. This Court, vide order, dated 09.04.2013, quashed the order, dated 27.02.2009 and directed the respondents to take note of G.O.Ms. No.73, dated 25.05.2009 and grant the benefits that were granted to the similarly placed persons.

3. Based on the above said order, the 2nd respondent vide order, dated 30.06.2008, granted relief to the petitioner as well as to the juniors of the petitioner and absorbed them as Work Inspector in terms of G.O.Ms.No.183, Municipal Administration, dated 19.02.2008. The seniority list of Work Inspector was released by the 2nd respondent, dated 25.03.2015, wherein the petitioner's name was placed in Serial No.70. The claim of the petitioner that he ought to have been included below



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Patturajan who was appointed as Technical Assistant based on the recommendation, dated 18.08.2006. Subsequently, the said Patturajan was also promoted as Overseer within a month and he was placed in Serial No.50 in the seniority list of Overseer released by the 2nd respondent, dated 18.12.2017. Since the orders were not implemented the petitioner filed contempt petition. Thereafter based on the orders of the Court, the petitioner was appointed as Work Inspector in terms of G.O.Ms.No.309, dated 25.08.2004, i.e., after a delay of one and a half years. In the meanwhile, again, the petitioner filed W.P.(MD)No.20737 of 2018, seeking to appoint the petitioner notionally from the date on which the petitioner's juniors were appointed as Work Inspector and promote the petitioner. This Court directed the respondents to dispose the appeal within two months. But the same was rejected, vide order, dated 19.02.2019. Therefore, again the petitioner filed W.P.(MD)No.13682 of 2019 and this Court, vide order, dated 17.12.2020, has held that the



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respondents are discriminating the petitioner as well as other similarly placed persons and held the impugned order is illegal and perverse. This Court also directed the respondents to grant notional promotion. Pending the above said writ petition, the petitioner filed this writ petition to quash the impugned panel dated 26.09.2019 for promotion to the post of Overseer. Pending the present writ petition in W.P.(MD)No.23837 of 2019, the respondent issued subsequent panel for the year 2020 in proceedings Roc.No.33218/ 2019/F3, dated 26.08.2020 and hence filed an amendment petition in W.M.P.(MD)No.12435 of 2020 and the same is allowed by this Court.

4. The contention of the petitioner is that when the similarly placed persons were granted appointment as early as 2008 itself, especially the said Patturajan, the petitioner is also eligible to be appointed as early as 2008 based on the recommendation letter dated 18.08.2006 and based on



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the order of the 2nd respondent dated 30.06.2008 whereby the said B.Patturajan and Gowri were appointed as Work Inspectors. Consequently, the petitioner is claiming seniority and promotion. Hence, the petitioner is before this Court.

5. The learned Special Government Pleader appearing for the respondents submitted the written instructions, wherein it is stated that the petitioner cannot compare with the said Patturajan, since he is working in some other Municipality. Moreover, as per G.O.Ms.No.73, dated 25.05.2009, as on the date of G.O., the petitioner ought to have completed 10 years of service. Since the petitioner has not completed 10 years of service, the petitioner is not entitled to absorption on par with Patturajan.

6. Heard Mr.S.Govindan, learned Counsel appearing for the



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petitioner and Mr.M.Lingadurai, Special Government Pleader appearing for the respondents and perused the records.

7. The contention of the respondents is that the petitioner ought to have completed 10 years of service as on the date of 25.05.2009. Since the petitioner has not completed 10 years of service, the petitioner is not entitled to the benefit of G.O.Ms.No.73, dated 25.05.2009.

8. On perusing the said G.O., it is seen that the Commissioner of Municipal Administration has recommended the petitioner's name. In the said recommendation's letter, it is stated that in the 3rd grade municipality, some 25 Technical Assistants were working and they were working until 29.11.2001, therefore, their service shall be regularized by granting relaxation wherever necessary. The relevant portion of the G.O., is extracted hereunder:

“2. மேலே இரண்டாவதாக படிக்கப்பட்ட நகராட்சி நிர்வாக



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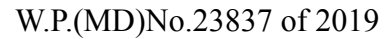
ஆணையரின் கடிதங்களில், முன்றாம்நிலை நகராட்சிகளில் 29.11.2001 வரை தொழில்நுட்ப உதவியாளர்களாக தொடர்ந்து பணிபுரிந்து வரும் 25 நபர்களின் பட்டியலை அரசுக்கு அனுப்பி, மேற்படி பணியாளர்களின் வயது வரம்பு குறித்த விதி, வேலை வாய்ப்பதம் மூலம் நியமனம் மற்றும் இன சுழற்சி ஆகியவை குறித்த விதிகளிலிருந்து விலக்களித்து அரசாணை வழங்குமாறு கோரியுள்ளனர்.

...

- (i) தற்போதுள்ள காலிப்பணியிடங்களில் மட்டுமே மேற்படி பணியாளர்கள் ஈர்த்துக் கொள்ளப்பட வேண்டும்.
- (ii) இதற்கென மிகைப்பணியிடங்கள் ஏதும் உருவாக்கப்படக் கூடாது.
- (iii) போதுமான பணியிடங்கள் இல்லாத நிலையில், மேற்படி பணியாளர்களை காத்திருப்போர் பட்டியலில் வைத்து காலிப்பணியிடங்கள் ஏற்படும்போது நியமனம் செய்யலாம்.
- (iv) மேலும் 29.11.2001 முன்னர் வரை தொழில்நுட்ப உதவியாளர்களாக பணியமர்த்தப்பட்டு 10 வருடம் பணி முடித்த பணியாளர்கள் மட்டுமே மேற்படி பட்டியலில் சேர்க்கப்பட வேண்டும்.”

Under Clause 3 Sub-clause 4, it has been stated that who were completed 10 years of service as on 29.11.2001 can be granted regularization.

9. The contention of the petitioner is that even though the said condition is imposed, one Patturajan was granted relaxation. The said Patturajan was appointed in the year 1995 and he would have completed

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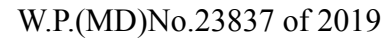


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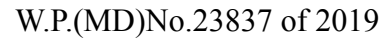
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10. On perusing this list, it is seen that none of them were appointed 10 years prior to 29.11.2001. One T.Arun in serial no.24 was appointed on 01.09.2001. The said person has not completed even one year but he was granted regularization under G.O.Ms.No.73, dated 25.05.2009. Therefore, the contention of the respondents that regularization was granted under G.O.Ms.No.73, dated 25.05.2009, after completion of 10 years is incorrect. Therefore, the petitioner is entitled to relief.

11. The next contention that was raised by the respondents is that the petitioner cannot compare himself with the said Patturajan, since he is working in some other Municipality. It is seen that the said 25 persons in the list are working in different municipalities. Therefore, this contention of the respondents is meaningless and is liable to be rejected.



13. Therefore, this Court is of the considered opinion that the respondents shall grant absorption to the petitioner from 2008 onwards, fix the petitioner's name in the appropriate place in the seniority list and



14. With the above said observation, the writ petition is allowed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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<https://www.mhc.tn.gov.in/judis>
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To

- 1.The Secretary to Government,
Municipal Administration and Water
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Secretariat, Chennai-9.
- 2.The Commissioner of Municipal
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6th Floor, Ezhilagam, Chepauk,
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S.SRIMATHY, J

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