

In the High Court of Judicature at Madras

Dated: 27.07.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.1027 of 2015 and
M.P.Nos.1 and 2 of 2015

R.Manahavala Perumal ... Appellant/Petitioner

Vs.

1. State of Tamilnadu
Rep. By its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai - 600 009
2. The Director of Municipal Administration
"Ezhilagam" Annexe Building
Chepauk, Chennai - 600 005
3. The Commissioner
Tirunelveli City Municipal
Corporation, Tirunelveli. ... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal to set aside the Order dated 05.06.2015 made in W.P.No.370 of 2015 and consequently issue a Certiorarified Mandamus by calling for the records comprised in the proceedings of the 2nd Respondent in proceedings bearing Roc.No.64964/2006/IT-1 dated 05.01.2015 and quash the same as null and void and forbear the 2nd Respondent from relieving the Appellant from the post held by in the said Department till such time he is absorbed in a permanent post in the office of the 1st Respondent.

For Appellant : Mr.T.T.Ravichandran

For Respondents: Mr.P.S.Sivashanmugasundaram
Special Government Pleader

JUDGMENT

[Judgment of the Court was Delivered By M.VENUGOPAL, J.]

The Appellant / Petitioner has preferred the present instant Writ Appeal as against the Order dated 05.06.2015 in W.P.No.370 of 2015 passed by the Learned Single Judge in dismissing the Writ Petition.

2.The Learned Counsel for the Appellant contends that the 2nd Respondent / Director of Municipal Administration, Chennai had passed an Order relieving the Appellant from the post held by him as "System Analyst" and in fact he was not to be relieved from the said post inasmuch as he was substantively appointed by means of a Government Order in G.O.Ms.No.201 & 202 dated 30.10.1998. That apart, it is represented on behalf of the Appellant that his appointment could not be equated with the recruitment made from the Employment Exchange.

3.According to the Learned Counsel for the Appellant, the 1st Respondent/State of Tamil Nadu being an 'Appointing Authority' had issued orders creating the post 'System Analyst' and after eligibility criteria was satisfied by the Appellant, the 2nd Respondent/Director of Municipal Administration without the concurrence of the Government could not have passed the Impugned Order dated 05.01.2015. As such, the Impugned Order passed without jurisdiction and the same is void ab-initio.

4.Advancing his arguments the Learned Counsel for the Appellant projects an argument that the Appellant is not a temporary appointee under Section 10(a)(i) of the Rules and in fact after having been appointed substantively on 06.03.2008, should not have been relieved from the post summarily. Also that it is represented that the Appellant was appointed de hors the Rules and at this stage, the 2nd Respondent should not have been passed the Impugned Order dated 05.01.2015.

5.The Learned Counsel for the Appellant contends that the 2nd Respondent had not followed the principles of Natural Justice and as such the Impugned Order dated 05.01.2015 is liable to be set aside in the interest of justice.

6.The Learned Counsel for the Appellant submits that the Appellant should have been absorbed in the Present Department pursuant to numerous representations made by him from 10.09.2011 till 13.12.2013 and that the Corporation of Tirunelveli had passed Resolution No.332 in the Emergency Meeting held on 28.10.2013 wherein it had permitted the Appellant to seek for permanent absorption in the Municipal Administration Directorate. Further, it is the stand of the Appellant that the 2nd Respondent / Director of Municipal Administration is now endeavouring to give a new twist by bypassing the said resolution and by ignoring the same had rejected the claims of the Appellant seeking for permanent absorption.

7. Yet another contention projected on the side of the Appellant is that the Government had constituted a new cadre for the purpose of a separate service under the provisions of the proposed Tamil Nadu Municipal Information Technology Rules and since the Rules were never framed, the Appellant cannot be repatriated to a Department from which he was transferred to the present service.

8. The Learned Counsel for the Appellant takes a plea that the Impugned Orders dated 05.01.2015 and 02.02.2015 are contrary to Rule 44 of the Tamil Nadu State and Subordinate Service Rules and further, the 2nd Respondent/Director of Municipal Administration, Chennai had shown undue zeal for extraneous reasons in permitting the Appellant's service as "System Analyst" in the Department without assigning reasons and indeed the reasons mentioned in the Order dated 02.02.2015 are purely after thought and passed behind the back of the Appellant. Therefore, the said order had violated the principles of Natural Justice.

9. It is not in dispute that the 2nd Respondent/Director of Municipal Administration, Chennai had sent proposals to the 1st Respondent/State of Tamil Nadu for permitting absorption as well as extension and the deputation of the Appellant. But the 1st Respondent/Government had rejected the proposal of the 2nd Respondent/Director of Administration as per Letter No.(2D) No.8, dated 02.02.2015. As such, the 2nd Respondent was left with no option but to relieve the Appellant from the post of 'System Analyst' and that the Appellant had not challenged the order of the 2nd Respondent in this regard.

10. It is to be borne in mind that the Appellant in law cannot seek for absorption as 'System Analyst' in the office of the Director of Municipal Administration / 2nd Respondent either as a matter of Right or Routine, when that too he was sent on Deputation from Tirunelveli Corporation, where he was serving as an Assistant.

11. In the light of the aforesaid detailed facts as mentioned supra, the order of the 2nd Respondent dated 05.01.2015 does not suffer from any material infirmity or patent illegality in the Eye of Law. Further, this Court holds that the Learned Single Judge had rightly dismissed the Writ Petition. Resultantly, the Writ Appeal fails.

In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai - 600 009
2. The Director of Municipal Administration
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W.A.No.1027 of 2015 and
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