

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.03.2015

CORAM :-

THE HON'BLE MR.JUSTICE V.DHANAPALAN
and
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.A.No.1931 of 2011

K.Kalidoss

... Appellant/Petitioner

Vs.

1. The Director
Directorate for Municipal Administration
Chepauk, Chennai - 600 005.

2. The Commissioner
Chengalpet Municipality
Chengalpet
Kancheepuram District.

3. M.Vijayakumar
Assistant
Madhuranthagam Municipality
Kancheepuram District.

4. J.Baskaran, Typist,
Chengalpet Municipality
Kancheepuram District
Pin - 603 002.

... Respondents/Respondents

Writ Appeal under Clause 15 of Letters Patent against the order dated 07.06.2011 made in W.P.No.1205 of 2011.

Petition presented under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the first respondent in Na.Ka.No.49317/10/F3 dated 15.11.2010 and to quash the same and to direct the first respondent to promote the petitioner as Junior Assistant/Revenue Assistant with effect from 4.3.1997, i.e., the date of promotion of the third respondent as Revenue Assistant and to pay all consequential benefits arising thereof.

For Appellant : Mr.S.Balasubramanian
For RR 1 & 2 : Mr.T.N.Rajagopalan,
Special Government Pleader
For RR 3 & 4 : Mr.P.Srinivas

Date of reserving the Judgment : 04.03.2015

Date of Pronouncement : 25.03.2015

J U D G M E N T

G.CHOCKALINGAM, J.

Being aggrieved by the dismissal of the Writ Petition in W.P.No.1205 of 2011, by an order dated 07.06.2011, the writ petitioner has preferred this appeal.

2. Brief facts of the appellant/writ petitioner are that:-

(i) The writ petitioner was appointed as "Wireman Helper" in the Office of the Chengalpet Municipality on 28.12.1989 through employment exchange and completed his probation on 27.12.1990 and he applied for the post of Junior Assistant/Revenue Assistant. He filed O.A.No. 7023 of 2001 before the Tamil Nadu Administrative Tribunal, seeking appointment of Junior Assistant/Revenue Assistant. The Tribunal has passed an order, dated 05.11.2001 to consider his representation. Thereafter, on a representation made by the petitioner, the second respondent herein by letter dated 05.02.2003 informed that the petitioner has been kept under waiting list for promotion from the post of last grade Government servant and he is second in the list. Subsequently, the petitioner sought for information regarding the postings granted to certain people in the Municipality. The petitioner was informed that the third respondent was promoted as Revenue Inspector pursuant to the direction issued by the Tamil Nadu Administrative Tribunal in O.A.No. 5768 of 1996 and the fourth respondent was given the post of Typist pursuant to the order passed by the High Court as per the advice of the Commissioner for Revenue Administration.

(ii) The petitioner thereafter filed an another O.A.No. 886 of 2003 seeking for a direction to promote him to the higher post on par with his juniors and that Original Application got transferred to this Court as W.P.No. 12573 of 2007. This Court once again by an order dated 17.09.2010 had directed the respondents to consider his claim. It is on the strength of the said direction and the further representation made by the petitioner, the impugned order came to be made on 15.11.2010. In the impugned order, the petitioner was informed that as per the existing rules, he cannot be promoted as Junior Assistant / Revenue Assistant and that the Municipality has only sent proposals regarding amendment of rules for such promotion. In the absence of any law, the same cannot be given effect to.

(iii) Against the impugned order, the petitioner has preferred the Writ Petition in W.P.No. 1205 of 2010. This Court, by an order dated 07.06.2011 dismissed the abovesaid Writ Petition. Against which, the present Writ Appeal has been filed by the petitioner before this Court.

3. The learned counsel appearing for the appellant / petitioner contended that the appellant has filed W.P.No. 1205 of 2010 for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent and to quash the order, dated 15.11.2010 and directed the respondents 1 and 2 to promote the appellant as Junior Assistant/Revenue Assistant with effect from 04.03.1997. But the learned Single Judge has not considered the merits of the case and dismissed the Writ Petition. He further contended that the appellant was appointed as "Wireman Helper" in the office of Chengalpet Municipality and completed his probation on 27.12.1990 and applied for Junior Assistant/Revenue Assistant in 1991, but he was not promoted and the third respondent was appointed like the appellant and he was promoted but the appellant was not promoted.

4. The learned counsel appearing for the appellant further argued that the learned Single Judge has not taken into consideration the information given by the Commissioner, Chengalpet Municipality, on 05.12.2003, by which it is stated that the promotion will be considered as the name of the appellant is in the second place and failed to note that had the authority considered the case of the appellant for promotion, then and there, he would have got promotion as the appellant is agitating for promotion on 04.03.1997. Further, the learned Single Judge ought to have distinguished the decision reported in 2006(11) SCC 709 and the said decision is not applicable to the facts of the present case. Since it was established that the promotion will be considered as the appellant is in the second place, but other employees have been promoted as list include in page No. 13 of the typed set of papers. Since the learned Single Judge failed to consider the relief prayed for by the petitioner, the appellant prays that the appeal has to be allowed as prayed for.

5. The learned counsel appearing for the respondents vehemently contended that in this case the learned Single Judge after considering both side arguments and the materials produced before him, considered all the points and came to a correct conclusion and dismissed the Writ Petition. There is no error or illegality or infirmity in the order of the learned Single Judge and no reasons to interfere with the Judgment of the learned Single Judge. He further contended that the case of the petitioner was duly considered and after that only decided that he is not fit for promotion and he was not promoted. Further contended that since other employees are promoted, he was also to be promoted is a wrong assumption and it cannot be accepted. The learned Single Judge considered all the points, there is no reason to interference with the Judgment of the learned Single Judge and prayed for the dismissal of the Writ Appeal.

6. This Court has considered the arguments of both sides and the materials produced by both sides.

7. Both sides admitted that the appellant was appointed as "Wireman Helper" in the office of Chengalpet Municipality on 28.12.1989 through employment exchange. Further it is not in dispute that the appellant has completed his probation on 27.12.1990. It is admitted that earlier the petitioner has filed O.A.No. 7023 of 2011 before Tamilnadu Administrative Tribunal, for appointment of Revenue Assistant / Junior Assistant and the Tribunal gave an order to consider his representation, vide order dated 05.11.2011. Thereafter, on a representation made by the petitioner, the Municipality, Chengalpet / second respondent herein after consideration, informed the petitioner in its letter dated 05.02.2003 that the petitioner is entitled to be promoted as per the then existing rules and he is second in the list. Further it is admitted by both sides that the petitioner sought for information regarding the postings granted to certain people in the Municipality and the petitioner was informed that the third respondent was promoted as Revenue Inspector pursuant to the direction issued by Tamilnadu Administrative Tribunal in O.A.No. 5768 of 1996 and the fourth respondent was given the post of typist pursuant to the orders passed by the High Court as per the advice of the Commissioner of Revenue Administration. It is admitted by the petitioner that thereafter the petitioner has filed another application in O.A.No. 886 of 2013 seeking for promotion to promote him to higher post on par with his Junior and Original Application got transferred to this Court as W.P.No. 12573 of 2007. This Court once again by an order dated 17.09.2010 had directed the respondent to consider his claim on the strength of the said direction and the further representation made by the petitioner, the impugned order came to be made.

8. The learned counsel appearing for the respondents contended that in the existing rules, the petitioner cannot be promoted as Junior Assistant / Revenue Assistant and the Municipality has only sent proposal regarding the amendment of rules for such promotion. In the absence of any law, the same cannot be given effect to.

9. The argument of the petitioner that since the other juniors are promoted, he also entitled for promotion on par with his juniors is not acceptable. The arguments put forth on the side of the learned counsel for the respondents that in the absence of any rule, the petitioner cannot be promoted as Junior Assistant / Revenue Assistant is acceptable one. This petitioner was considered since there is no rule to give the promotion to the petitioner, he was not promoted for the same relief he once again came to the Court after the impugned order passed. The learned counsel for the respondents submitted that since there is no rule,

the petitioner was not promoted is acceptable one. The learned counsel appearing for the respondents produced the decision of the Hon'ble Supreme Court in Col.B.J.Akkara (Retd.) Vs. Government of India and Others reported in 2006 (11) SCC 709. The Hon'ble Supreme Court in the above said Judgment held that merely because the Government had chosen to implement a wrong order which became final, that by itself will not give any cause of action to the other persons without deciding the issue on merit.

10. In view of the above principles laid down by the Hon'ble Supreme Court, there is no rule for promotion of the petitioner and the petitioner is not entitled for promotion in view of the other persons are promoted.

11. In view of the above said decision, we are of the considered view that there is no illegality or infirmity in the order of the learned Single Judge and the order of the learned Single Judge do not warrant any interference by this Court and hence, the Writ Appeal deserves to be dismissed.

12. Accordingly, the Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Director
Directorate for Municipal Administration
Chepauk, Chennai - 600 005.

2. The Commissioner
Chengalpet Municipality
Chengalpet
Kancheepuram District.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.16957
+1cc to M/s.S.Bala Subramanian, Advocate, S.R.No.17275

W.A.No.1931 of 2011

UG(CO)
CA(16/04/2015)