

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2015

DELIVERED ON : 09.01.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.34732 of 2013
& M.P.Nos.1 and 2 of 2013 and
1 of 2014

G. DhanalakshmiPetitioner

- Vs.-

1. Government of Tamil Nadu
Rep. by its Secretary
Municipal Administration and
Water Supply (M.C.3) Department
Fort St. George
Chennai-600 108.

2. The Commissioner
Corporation of Chennai
Ripon Building
Chennai-600 003.

....Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for records on the files of the first respondent relating to the impugned order bearing Government Letter No.32934/ MANA3/ 2008-14 dated 10.6.2013, quash the same as arbitrary and illegal and consequently direct the respondents to appoint the petitioner as Librarian for the Corporation of Chennai with effect from 18.12.2004 in the pay scale of Rs.15600-39100+5400 after due sanction of the post as per the second respondent's resolution dated 23.1.2007 with all consequential benefits including seniority and arrears of salary with interest and award costs.

For Petitioner : Ms. Anna Mathew

For Respondents : Mr.M.S. Ramesh
Spl. Govt. Pleader for R.1

Mr. B.B. Senthil Kumar for R.2

ORDER

The challenge in this writ petition at the instance of an employee of Chennai Municipal Corporation is to the order dated 10 June 2013, whereby and whereunder, the Government of Tamil Nadu rejected the proposal made by the Corporation of Chennai for creation of the post of Librarian.

The facts:

2. The petitioner was initially appointed as Record Clerk in Chennai Corporation on compassionate ground. She joined the service on 21 October 1994. The petitioner later acquired the qualification in Bachelor of Library and Information Science, Master of Information and Library Science and thereafter completed M.Phil course. The petitioner was promoted to the post of Junior Assistant in the year 2000 and thereafter as Assistant by order dated 2 June 2006. The petitioner was finally promoted to the post of Superintendent.

3. The petitioner was made incharge of the Library maintained by the Chennai Corporation. According to the petitioner she contributed substantially to the growth of the Library. Her contribution was appreciated by the officials of the Corporation and certain other dignitaries. The Corporation Council resolved to request the Government of Tamil Nadu to create one post of Librarian under Clause III establishment for better maintenance of the Corporation Library. The proposal was sent to the Government pursuant to the Council resolution No.480 of 2006. The Government rejected the proposal stating certain reasons. The said order is under challenge in this writ petition.

4. The Government of Tamil Nadu through its Deputy Secretary, Municipal Administration and Water Supply Department filed a counter affidavit in answer to the contentions raised in the affidavit filed in support of the writ petition. According to the first respondent, the Corporation Library is not open for public use. It has got only limited books. The Government opined that there is no need for creation of a post of Librarian. The creation of post would involve financial implication and as such the proposal was rightly rejected.

5. The Commissioner, Chennai Corporation in his counter affidavit contended that the petitioner functioned as librarian incharge on

duty arrangement. According to the Corporation, the petitioner was given salary for the post of Assistant during the time she functioned as Librarian incharge. The Corporation further contended that there was no such post of Librarian and as such the petitioner was given duty to look after the library. Such duty would not give her any right to challenge the order passed by the Government.

Submissions:

6. The learned counsel for the petitioner contended that the petitioner is fully qualified for appointment to the post of Librarian. According to the learned counsel, the Corporation is having a full fledged Library. Similar libraries are all having sanctioned post of Librarians. Other libraries are also similarly situated and as such none of the reasons given by the Government in the impugned order would stand to judicial scrutiny. The learned counsel placed reliance on the decision of the Division Bench in The Government of Tamil Nadu and another v. Tamil Nadu Makkal Nala Paniyalargal Munnettra Sangam (judgment dated 19.8.2014 in W.A.No.696 of 2012 etc. batch) and the decision of the Supreme Court in Nihal Singh v. State of Punjab (2013) 14 SCC 65.

7. The learned Government Pleader contended that it is up to the Government to decide as to whether a post would be sanctioned. The Government have taken several aspects into consideration and took a decision not to sanction the post of Librarian. The petitioner has no legal right to challenge the order.

8. The learned counsel for the Chennai Corporation submitted that the Corporation made a request to the Government to sanction the post. The Government have taken a decision not to sanction the post. The Corporation has accepted the said decision and as such it is not open to an employee of the Corporation to challenge the same.

The issue:

9. The only question that arises for consideration is whether by functioning as incharge of the Library by duty arrangement, a legal right would accrue to the petitioner to direct the Government to sanction the post of Librarian.

Analysis:

10. There is no dispute that the petitioner was functioning as Assistant and she was made incharge of the Library. It was only by way of duty arrangement she was placed as Librarian incharge. The petitioner was paid the salary applicable to the post of Assistant.

11. The Chennai Municipal Corporation Council passed a resolution at its meeting held on 29 December 2006 to request the Government to sanction one post of Librarian. The resolution was forwarded to the Government by the Commissioner vide proceedings dated 23 January 2007. The Government considered the proposal and passed an order

holding that it is not necessary to sanction the post of Librarian in Chennai Corporation.

12. The core issue is as to whether it would be open to the Court to direct the Government to sanction the post of Librarian disregarding the reasons given for rejecting the request made by the Corporation to sanction the post.

13. The Government have given certain valid reasons while rejecting the resolution passed by the Corporation for creation of the post of Librarian. According to the Government, the Corporation Library is not open to public use and as such there is no need for separate post of Librarian. The Government was also of the view that creation of the post of Librarian would put an additional financial burden on the Corporation. The Government in its counter affidavit stated that geographical area of the Corporation of Chennai was expanded from 174 sq.kms to 426 sq.kms and 42 Urban/Rural Local bodies were merged and, in order to serve the public with all basic amenities and develop infrastructure facilities, 784 additional posts were sanctioned. The Government have also abolished 1150 temporarily created posts vide proceedings dated 7 February 2013, meaning thereby, it was only to reduce the financial burden, such a measure was taken. Such being the position, it is not open to the Court to direct the Government to sanction the post of Librarian.

14. The petitioner wanted this Court to exercise judicial review by acting like an appellate authority over the decision taken by the Government and to substitute its views. The Government is the best judge to take a decision as to whether a particular post should be created. Several factors have to be taken into account before taking such a decision. Financial implication is also a relevant factor to be looked into before taking a decision for creation of post.

15. The learned counsel for the petitioner placed reliance on the decision of the Division Bench in Tamil Nadu Makkal Nala Paniyalargal Munnettra Sangam in support of her contention that in similar situation this Court set aside the decision taken by the Government. The facts in the said case is entirely different. The Government have appointed 25,234 candidates at the rate of two candidates in each Village Panchayat. They were designated as "Village Level Workers" or otherwise known as "Makkal Nala Paniyalargal." The services of those Makkal Nala Paniyalargal were dispensed with by the Government. They were engaged by the Government led by one political party and disengaged by another Government. The employees were subjected to engagement and disengagement by different Governments. The Division Bench found that the Government have engaged those workers to perform certain functions. The Government have no case that those functions are no more in existence. It was only under such circumstances, the Division Bench confirmed the order passed by the learned Single Judge

and directed the Government to consider creation of posts for accommodating the workers. However, that is not the case here. The petitioner is an employee of the Corporation. She was given the charge as Librarian by duty arrangement. There is no question of regularising the petitioner in the post of Librarian by directing the Government to sanction the post.

16. The decision in Nihal singh was decided on a totally different circumstances. In Nihal Singh the Supreme Court found that the Government have appointed Special Police Officers. They have worked for years together. In such circumstances, it was held that they are entitled to be regularised in the services of the State.

17. As stated earlier, the present case is totally different. Here the Corporation has not given assurance that the petitioner would be accommodated as Librarian. The petitioner at all point of time received the salary applicable to the post of Assistant. It was only by way of duty arrangement she looked after the affairs of the Library.

18. The Supreme Court in P.U. Joshi v. Accountant General, (2003) 2 SCC 632 made it very clear that constitution and abolition of posts are all prerogative of the Government. The relevant observation reads thus:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is

entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

19. The Government have given sufficient reasons to justify the decision to reject the proposal made by the Corporation to sanction the post of Librarian. This Court would not be justified in upsetting the said decision by substituting its views. There is absolutely no merit in the contention taken by the petitioner.

20. In the upshot, I dismiss the writ petition. Consequently, the connected MPs are closed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Tr/

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To

1. The Secretary
Government of Tamil Nadu
Municipal Administration and
Water Supply (M.C.3) Department
Fort St. George
Chennai-600 108.

2. The Commissioner
Corporation of Chennai
Ripon Building
Chennai-600 003.

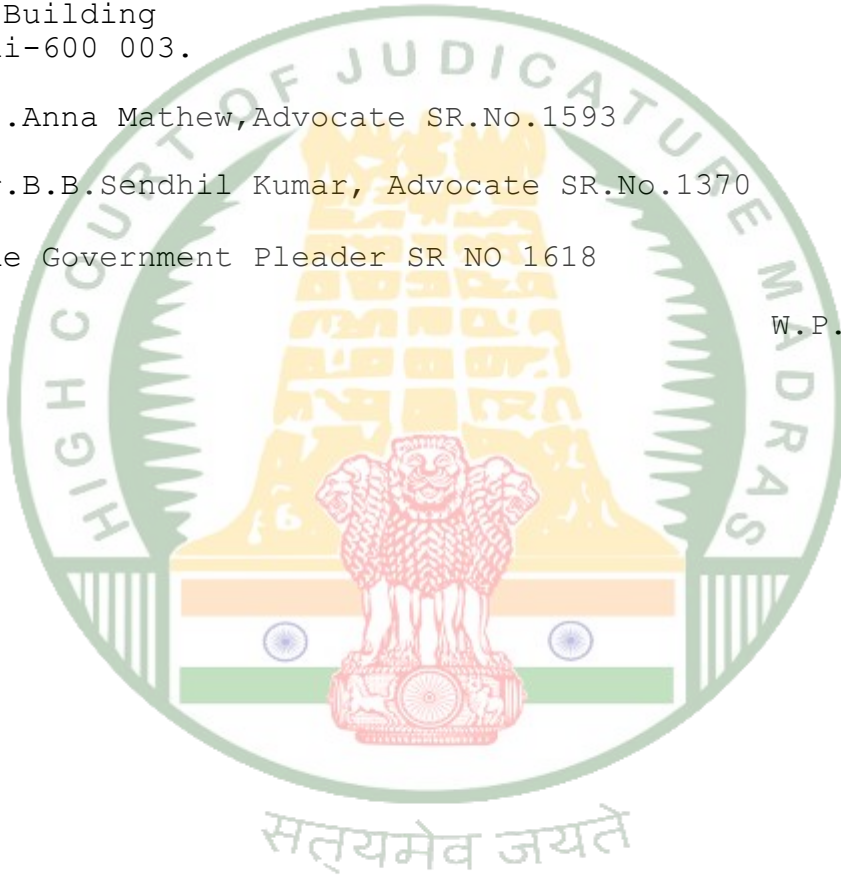
+1cc to Ms.Anna Mathew, Advocate SR.No.1593

+1cc to Mr.B.B.Sendhil Kumar, Advocate SR.No.1370

1 CC to the Government Pleader SR NO 1618

ssi[co]
gp/20.1.15

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