



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.06.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM
AND
THE HONOURABLE MR.JUSTICE V.S.RAVI

W.A(MD)No.988 of 2014

The Tiruchirapalli Corporation,
rep.by the Commissioner,
Tiruchirapalli Corporation,
Tiruchirapalli.

.. Appellant/3rd respondent

Vs.

1.S.Durai

..1st Respondent/Petitioner

2.The State of Tamil Nadu
rep.by the Secretary to Government,
Municipal Administration and Water Supply
Department, Secretariat, Chennai.

3.The Commissioner of Municipal Administration,
Elizhalagam, Chepauk, Chennai - 5.

.. Respondents 2 & 3
/Respondents 1 & 2

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 03.09.2012 passed in Writ Petition(MD)No.11555 of 2008 by this Court.

Prayer in WP(MD). 11555/ 2008 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus call for the records on the file of the 3rd respondent in connection with the order passed by him in his proceedings Na.ka.No. 3332/2008/C1 center dated 14/11/08 and quash the same and direct the 3rd respondent to count the service of the petitioner as bill collector from the date of his initial appointment that is 14/02/94 for promotion to the post of Assistant in the light of G.O.Ms.No. 73 Municipal administration and water supplies Department dated 08/05/98 and consequently promote him to the said post with all monetary and service benefits

For Appellant : Mr.P.Srinivas

For R - 1 : Mr.D.Selvanayagam
for Mr.R.Singaravelan

For R - 2 : No appearance

JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM, J.**)
<https://noseservices.courts.gov.in/noseservices/>

Challenge in this Writ Appeal is to the order dated 03.09.2012 passed in Writ Petition(MD)No.11555 of 2008 by the learned Single Judge of this Court.



2. The first respondent herein as petitioner has filed Writ Petition (MD) No. 11555 of 2008 on the file of this Court under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and Mandamus so as to quash the proceedings passed in Na.Ka.No.3332/2008/C1, Centre dated 14.11.2008 by the third respondent herein and also for giving benefits to the petitioner as per G.O.Ms.No.73, Municipal Administration and Water Supply (Corporation) Department, dated 08.05.1998.

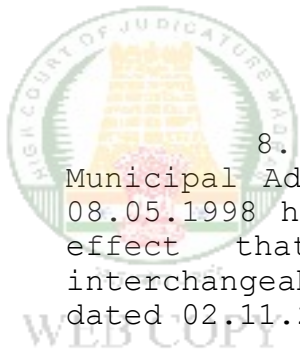
3. It is averred in the petition that the petitioner has been appointed on compassionate ground as Bill Collector on 16.02.1994. From the date of appointment he has been serving in the same post without any blemish. The petitioner has been initially appointed in Prattiur Town Panchayat and thereafter the same has been merged with Corporation, Tiruchirapalli. On 08.05.1998, G.O.Ms.No.73, Municipal Administration and Water Supply (Corporation) Department has been passed, wherein it has been specifically stated that the post of Bill Collector and Junior Assistant are interchangeable and as per the said G.O., the petitioner has been posted as Junior Assistant by order dated 02.11.2006. As per the said G.O. the petitioner is eligible for getting promotion to the post of Assistant. In Tirunelveli and Salem Corporations and other Municipalities, combined seniority for the posts of Junior Assistant, Typist and Bill Collector are being maintained. The third respondent has passed its proceedings dated 14.10.2008 by way of deterring the promotion of the petitioner. Under the said circumstances, the present petition has been filed for the reliefs sought for therein.

4. In the counter filed on the side of the third respondent, it is specifically averred that claim of the petitioner is totally illegal. As per Corporation Service Rules, 1996 dated 01.10.1996, method of calculation for filling up the post of Assistant has been mentioned. Under the said circumstances, the petitioner is not eligible for getting promotion to the said post. It is false to aver that the petitioner is entitled to get benefits as per G.O.Ms.No.73, Municipal Administration and Water Supply (Corporation) Department, dated 08.05.1998. The petitioner is not entitled to get the reliefs sought for in the petition. Further in the Corporation Service Rules, no mention has been made to the effect that the posts of Junior Assistant, Tax Collectors and Conservancy Inspectors are interchangeable and therefore, the present petition deserves to be dismissed.

5. On the basis of the divergent contentions raised on either side, the learned Single Judge has allowed the Writ Petition and directed the third respondent to count service of the petitioner as Bill Collector from the date of his initial appointment that is, 14.02.1994. Against the order passed by the learned Single Judge, the present Writ appeal has been filed by the third respondent as appellant.

6. Before contemplating the rival submissions made on either side, it has become shunless to narrate the following admitted facts.

7. It is an admitted fact that the petitioner has been appointed as Bill Collector in Prattiur Town Panchayat on compassionate ground and subsequently the said Panchayat has become merged with the third respondent viz. Corporation, Tiruchirapalli from 01.06.1994.



8. It is also equally an admitted fact that G.O.Ms.No.73, Municipal Administration and Water Supply (Corporation) Department, dated 08.05.1998 has been passed, wherein it has been clinchingly stated to the effect that post of Bill Collector and Junior Assistant are interchangeable. It is also equally an admitted fact that by an order dated 02.11.2006 the petitioner has been posted as Junior Assistant.

9. The main gravamen expressed on the side of the petitioner is that as per G.O.Ms.No.73, Municipal Administration and Water Supply (Corporation) Department, dated 08.05.1998, the post of Bill Collector and Junior Assistant are interchangeable and accordingly he has been posted as Junior Assistant by order dated 02.11.2006 and now the third respondent has prepared a panel without including the name of the petitioner to the post of Assistant.

10. The learned Single Judge after considering the rival contentions raised on either side has allowed the Writ Petition.

11. The learned counsel appearing for the appellant/third respondent has repeatedly contended that on 27.05.1997 G.O.Ms.No.140 has been passed, wherein certain qualifications have been prescribed either for giving promotion or appointment to the post of Assistant and in that way the petitioner has not possessed of necessary qualification. Under the said circumstances, the reliefs sought for in the present petition cannot be granted.

12. The learned counsel appearing for the appellant/third respondent has not questioned G.O.Ms.No.73, Municipal Administration and Water Supply (Corporation) Department, dated 08.05.1998.

13. The learned counsel appearing for the first respondent/petitioner has sparingly contended that with regard to similar issue, two Writ Petitions viz., WP Nos.3669 & 4235 of 2003 have been filed by the persons namely, B.Subramanian and Sirajudeen, wherein this Court has discussed similar issue and ultimately allowed the same and accordingly, the petitioner in respective writ petition has been given promotion to the post of Assistant and further, the orders passed in the said Writ Petitions have not been challenged by the present third respondent and the learned Single Judge after considering the involvement of similar issue in the said Writ Petitions as well as orders passed thereon, has rightly allowed the present Writ Petition and therefore, the contentions put forth on the side of the appellant/third respondent cannot be accepted.

14. In fact, on the side of the first respondent/petitioner, the orders passed in WP Nos.3669 and 4235 of 2003 have been filed, wherein the present third respondent has been shown as respondent. In those writ petitions, similar issue has been raised and this Court has accepted the contentions put forth on the side of the petitioners and the orders passed by this Court have not been challenged by the appellant/third respondent.

15. The learned Single Judge in most of the places has befittingly pointed out that similar issue has already been settled in the said Writ Petitions and no Appeal has been preferred by the present appellant/third respondent. Under the said circumstances, the learned Single Judge has allowed the present Writ Petition.



16. As pointed out earlier, the entire argument put forth on the side of the appellant/third respondent is based upon the G.O.Ms.No.140. In fact this Court has perused the entire counter filed on the side of the appellant/third respondent, wherein no mention has been made with regard to applicability of G.O.Ms.No.140 and the said G.O. has been passed in the year 1997, whereas, in WP Nos.3669 and 4235 of 2003 orders have been passed on 12.12.2008 and 10.12.2009. No argument has been advanced on the side of the respondent therein with regard to applicability of the said G.O.Ms.No.140. Therefore, it is quite clear that the entire argument put forth on the side of the appellant/third respondent is against the orders passed in WP Nos.3669 and 4235 of 2003.

17. The learned Single Judge has specifically observed that against the orders passed in the said Writ Petitions, no appeal has been preferred. If really the present appellant/third respondent is having grudge or *bona fide* contention with regard to claim of the present petitioner, since it is identical to the claim of the petitioners found in WP Nos.3669 and 4235 of 2003, definitely the said orders should have been challenged. Therefore, the orders passed in WP Nos.3669 and 4235 of 2003 have become final. Since identical issue has been raised and settled in the said Writ Petitions, the same yardstick can also be applied in the present case.

18. The learned Single Judge after hearing the divergent contentions raised on either side and also by way of keeping in mind about the orders passed in WP Nos.3669 and 4235 of 2003 has rightly allowed the present Writ Petition. In view of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant/third respondent and altogether, the present Writ Appeal deserves to be dismissed.

19. In fine, this Writ Appeal is dismissed without cost. The order passed in WP(MD)No.11555 of 2008 is confirmed. Connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To.

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

2. The Commissioner of Municipal Administration,
Elizhalagam, Chepauk, Chennai - 5.

+1cc to M/S.P.Srinivas, Advocate in SR.No 34125

+1cc to M/S. R.Singgaravelan Advocate in SR.No 34106

+1cc to Special Government Pleader in SR.No. 34378.