

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Appeal Nos.1321 to 1324 of 2012

R.Karthikeyan		Appellant in W.A.No.1321/2012
K.Mohan		Appellant in W.A.No.1322/2012
M.Anbalagan		Appellant in W.A.No.1323/2012
P.Ramakrishnan		Appellant in W.A.No.1324/2012

vs.

1. The Secretary to Government,
Municipal Administration and Water
Supply (MC 4) Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Municipal Administration,
Ezhilagam, Chennai 600 005.
3. The Commissioner,
Coimbatore Corporation,
Coimbatore 641 001.
4. The Managing Director,
Tamil Nadu Textile Corporation Ltd.,
Corporation Complex, IIIrd Floor,
Dr.Nanjappa Road,
Coimbatore 641 018. Respondents in all W.As.

Writ Appeal under clause 15 of the Letters Patent against the order passed in W.P.Nos.7336, 7337, 7345 and 7346 of 2012, dated 26.03.2012.

Prayer in W.P.Nos.7336, 7337, 7345 and 7346 of 2012:

Writ Petitions under Article 226 of the Constitution of India praying for a Writs of Certiorarified Mandamus Calling for the records of the 1st respondent in connection with the impugned Government Order passed in GO No.472/Municipal Administration and Water Supply (MC4) Department dt.22.11.2011 in so far as

mentioning of word "appointment" in para 11 and consequential order of 3rd respondent passed in Na.Ka.No.5197/2001/MC3 dated 29.12.2011 and Na.Ka.No.5197/2001/MC3 dated 28.01.2012 and quash the same and direct the respondents to absorb the petitioner in the 3rd respondent corporation instead of fresh appointment.

For Petitioner : Mr.S.Gopinathan

For Respondents: Mr.K.V.Dhanapalan
Special Government Pleader for R1 & R2

Mr.J.Sathyanarayana Prasad for R3

Mr.S.Saravanakumar for R4

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J)

Writ Appeals are directed against the order made in W.P.Nos.7336, 7337, 7345 and 7346 of 2012, dated 26.03.2012.

2. The appellants are Bachelor Degree Holders and based on the paper advertisement, issued by the Managing Director, Tamil Nadu Textile Corporation Ltd., Coimbatore, 4th respondent herein, calling for eligible candidates for appointment to the post of Laboratory Assistant, they had applied for the same and also participated in the interview and appointed to the service as Laboratory Assistant (Trainee). After completion of their probation, their services were regularised. However, due to administrative reasons, the 4th respondent-Corporation has implemented a scheme of Voluntary Retirement in the year 2000 and retrenched the service of the appellants. Subsequently, in order to accommodate them in some other employment, attempts were made. The Director of Family Welfare addressed a communication to the Secretary to the Government, Municipal Administration and Water Supply Department, stating that Coimbatore City Municipal Corporation is willing to accept and grant them employment and they are seeking for Government's permission for grant of such employment.

3. On the basis of this communication, when no employment was given to them, the appellants have filed a batch of Writ Petitions in W.P.Nos.14826 to 14836 of 2009, challenging G.O. (Ten Years) No.230, Municipal Administration and Water Supply Department, dated 1.8.2009, insofar as rejecting their claim for absorption of their employment in the Coimbatore Corporation and sought for a direction to grant relaxation of the Rules for redeploying them. This Court, vide order, dated 17.12.2009,

issued directions to the respondents, stating that the Tamil Nadu Textile Corporation has already initiated steps, to introduce Voluntary Retirement Scheme and the appellants were not willing to accept the Voluntary Retirement Scheme and therefore, there is a duty was cast upon the Tamil Nadu Textile Corporation to redeploy them by getting appropriate approval from the State Government. At that stage, on 11.02.2010, a mention was made to this Court that no such direction can be given to the Textile Corporation and if at all, there is any redeployment of these appellants, that could be done only by the State Government and therefore, appropriate directions can be given to the State Government. Therefore, this Court ordered that appropriate approval should be given only by the State Government and in this regard, the Corporation should address the State Government.

4. Being aggrieved by the abovesaid directions, the State Government and other Officers have filed Writ Appeal Nos.2143 to 2149 of 2010 and a Hon'ble Division Bench of this Court, vide judgment, dated 11.2.2011, while confirming the orders passed by the writ Court, dismissed the appeals. As against the same, the State Government preferred SLPs, with delay. Though delay was condoned, the Hon'ble Supreme Court dismissed the Special Leave Petitions on 17.10.2011.

5. Having failed in their attempt, the State Government have issued G.O.Ms.No.472, Municipal Administration and Water Supply Department, dated 22.11.2011, directing the Corporation of Coimbatore to accommodate the appellants in the vacant posts of Assistant/Clerk, in the scale of pay of Rs.5200-29299+2800. For this purpose, necessary relaxation was also granted, for the adhoc Rules, as well as Rule 4, requiring the sponsorship by the Employment Exchange. Pursuant to the direction issued by the State Government, the appellants were accommodated by the Corporation, vide order, dated 29.12.2011 and accordingly, they have joined duty.

6. After joining the duty, the appellants have sent a representation, dated 09.01.2012, to the Commissioner, Coimbatore Corporation, 3rd respondent herein, stating that they cannot be treated as a fresh recruit and they should have the benefit of absorption. After sending such representations, the appellants have filed W.P.Nos.7336, 7337, 7345 and 7346 of 2012, challenging G.O.Ms.No.472, Municipal Administration and Water Supply (MC4) Department, dated 22.11.2011, insofar as mentioning of the word, "appointment", in para 11 and the consequential order of the Commissioner, Coimbatore Corporation, Coimbatore, 3rd respondent herein, passed in Na.Ka.No.5197/2001/MC3, dated 29.12.2011 and Na.Ka.No.5197/2001/MC3, dated 28.01.2012 and consequently, sought for a direction to the respondents to

absorb them in the 3rd respondent- corporation, instead of treating them as fresh appointment.

7. Considering the facts and circumstances of the case, a learned single Judge, vide order, dated 26.03.2012, dismissed the writ petitions, as follows:

"5. It is not clear as to how such a Writ Petition is maintainable. When the appellants are working in State owned Corporation, which is a distinct autonomous body and when the appellants do not want to accept the Voluntary Retirement Scheme introduced on account of Textile Corporation having become sick, there is no scope of further employment either in the Corporation or in other Government Departments. In the absence of legal or enforceable right on the part of the appellants in approaching this Court, using the resolution of the Coimbatore Corporation, which was willing to accommodate them and after series of litigations, wherein the State Government was unsuccessful in fighting against the same, the State Government was forced to implement them without there being legal or enforceable right on the part of the appellants. Having availed their redeployment from the Corporation and refused to go on Voluntary Retirement Scheme, the appellants have secured a fresh employment and they should self-content with the same and not challenge the same which was agreed on the basis of discretionary order passed by this Court.

6. The appellants neither in the affidavit nor in their representation pleaded any specific right on their part to get regular employment counting their past service. Even as against the Corporation, the power to appoint vests only with the Corporation Council. The State Government has no power under the Coimbatore City Municipal Corporation Act to give any direction. Therefore, the impugned G.O and the consequential order of posting can be considered only as an enabling provision to accommodate them.

7. In the absence of legal or enforceable right, the present attempt made by the appellants to seek for further improvement in the G.O is uncalled for and unwarranted. The writ petitions are misconceived and bereft of legal reasoning. Accordingly, all the Writ Petitions stand dismissed."

8. Mr.S.Gopinathan, learned counsel appearing for the appellants submitted that having accepted that the power to appoint vests only with the corporation council and when the Corporation Council passed a resolution, as early as on 17.09.2001 itself, for absorbing the appellants from the Tamil

Nadu Textile Corporation, the Writ Court ought not to have dismissed the writ petitions, since the appellants have got legal right to seek for absorption, instead of fresh appointment. He further added that even Coimbatore Corporation, without having any resolution, absorbed one Mrs.Y.Usharani, in the said Corporation, as per the Government Order.

9. Learned counsel for the appellants further submitted that challenging the voluntary retirement scheme of the Tamil Nadu Textile Corporation, the appellants have filed W.P. No.8367/2002 and based on the undertaking of the Government, they continued in the textile corporation, till they joining Coimbatore Corporation. He further submitted that G.O.Ms.No.472, passed by the 1st respondent herein, is contrary to the earlier direction of this Court made in W.P.No.14826 of 2009, dated 17.12.2009, wherein, a specific direction has been given to respondents 1 and 2 to redeploy all the appellants, after getting proper approval from the State Government, pursuant to the resolution passed by the 3rd respondent herein, in Resolution No.25, within a period of six weeks the said order was taken on appeal and confirmed by the Hon'ble Supreme Court.

10. Learned counsel for the appellants further submitted that to circumvent the contempt proceedings, pending before this Court, the first respondent issued G.O.Ms.No.472, stating that the Tamil Nadu Textile Corporation has been closed, which deprived 30 years past services of the appellants in the said Corporation, by fixing the initial grade pay at the fag end of the service period. He further submitted that when the Tamil Nadu Textile Corporation has decided to suspend the operation of laboratory, due to slump in the activities of the textile mills and implemented the Voluntary Retirement scheme, the appellants, who were working in the laboratory, as lab assistants, refused to accept the same and requested to absorb them, in any Governmental organization. The said request was accepted and forwarded to many Departments of the Government, including the 3rd respondent- Corporation, by passing Resolution No.251.

11. Learned counsel for the appellants further submitted that while issuing G.O.(3D) No.845, dated 03.12.2008, in respect of Mr.Jayachandran, the 1st respondent has used the term, "absorption" in abstract, but used the word "appointment" in the operative portion. In implementing said G.O., the Commissioner of Municipal Administration, 2nd respondent herein, has issued fresh appointment, but paid the salary, from the last drawn wages in Tamil Nadu Textile Corporation. The appellants are also similarly placed persons, like Mr.Jayachandran and hence, similar benefits should be granted to them.

12. Reiterating the counter affidavit filed by the Commissioner, Corporation of Coimbatore, Coimbatore, 3rd respondent herein, Mr.J.Sathyannarayana Prasad, learned counsel appearing for the 3rd respondent submitted that in letter No.12011/19/86, dated 21.04.1986, of the Government of India, Health and Family Welfare Department, the Government of India sanctioned to establish 22 City Health Centers, within this Corporation area. Thereafter, Government of Tamil Nadu, vide G.O.Ms.No.2259, Health and Family Welfare Department, dated 27.11.1986, sanctioned 20 posts of computer cum clerk. In the year 2000, the Tamil Nadu Textiles Corporation was facing financial crisis and was on the verge of closure. A voluntary Retirement Scheme was announced and appellants, without availing the said scheme, sought for redeployment in other departments, in terms of the notification issued by Government of India.

13. Learned counsel appearing for the 3rd respondent further submitted that the Commissioner of Municipal Administration, Chennai, 2nd respondent herein, by his proceedings, dated 21.05.2001, advised the Corporation to place appropriate subject for their consideration, to absorb 10 Lab Assistants, who were working with the erstwhile Tamilnadu Textile Corporation Limited. Pursuant to the advise of the Commissioner of Municipal Administration, Chennai, the second respondent herein, a subject was placed for the consideration of the Council of this Corporation and the Council, after elaborate discussion, vide their resolution No. 251, dated 17.09.2001 resolved to absorb those 10 persons, including the appellants, subject to the following conditions,

(i) That necessary consent may be obtained from the Director of Family Welfare, Chennai for the sanction of appropriate grant towards their salary.

(ii) To seek appropriate relaxation from the Government of Tamilnadu against the requisite educational qualification.

(iii) That they will be fixed at the pay scale applicable to the category of Assistants as it is initial stage.

(iv) In so far as their seniority is concerned that they will be considered as Junior Most to the existing Computer cum clerk.

14. Learned Counsel appearing for the 3rd respondent further submitted that above resolution of the Corporation was forwarded to the Commissioner of Municipal Administration, Chennai, who in turn, by his proceedings dated 10.07.2002, had recommended to the 1st respondent, Government of Tamil Nadu, for the absorption of those 11 persons, with the condition, as it was imposed by the council of the Corporation. Thereafter, the

entire issue was once again considered by the first respondent, who had decided that out of said 10 persons, 8 of them had not been sponsored by the employment exchange, at the time of their initial recruitment to the Tamil Nadu Textile Corporation and therefore, the said 8 persons are not eligible for further absorption.

15. Learned counsel for the 3rd respondent-Corporation further submitted that Government in G.O.(D) No.845, Municipal Administration and Water Supply Department, dated 3.12.2008, one Laboratory Assistant, who was recruited, through employment exchange in the Tamil Nadu Textiles Corporation, was absorbed in the Coimbatore City Municipal Corporation. The Condition in G.O. (D)No.230, Municipal Administration and Water Supply Department, dated 01.06.2009, is that persons, who have been originally recruited in the Tamil Nadu Textile Corporation, through employment exchange, could only be redeployed in Coimbatore City Municipal Corporation and in the instant case, the appellants were not recruited through employment exchange.

16. He further submitted that G.O.(D) No.845, Municipal Administration and Water Supply Department, dated 3.12.2008, was placed before the Appointment Committee of the 3rd respondent-Corporation and the Appointment Committee, by their resolution, dated 10.07.2009, resolved to appoint the appellants to the post of Computer cum clerk, in the pay scale of Rs.4000-6000/-, which is the pay scale, applicable to the category of Assistant, as per the recommendation of the 6th Pay Commission. In the mean time, 6th Pay Commission was also implemented by the Government of Tamilnadu. Accordingly, by proceedings, dated 16.07.2009, appointment order was issued to the appellants, specifically mentioning that the appellants will be appointed to the existing post of Computer cum Clerk, in the pay scale of Rs.5,200-20,200 + 2,400, which is the scale of pay fixed for the category of Assistant.

17. Learned counsel appearing for the 3rd respondent further submitted that the appellants filed W.P.Nos.14826 to 14832 of 2009 and this Court, by order, dated 17.12.2009, directed respondents 1 and 4 herein, to redeploy the appellants, after getting proper approval from State Government to the resolution passed by the 3rd respondent, in Resolution No.251, within a period of six weeks from the date of receipt of a copy of this order. State Government filed appeals in W.A.Nos.2143 to 2149 of 2009 and the same was dismissed on 11.02.2011. Thereafter, the Government have preferred SLP and the Hon'ble Supreme Court has dismissed the same on 17.10.2011.

18. According to the 3rd respondent, Government of Tamil Nadu issued an order, in G.O.Ms.No.472, Municipal Administration and Water Supply Department, dated 22.11.2011, directing the Corporation of Coimbatore to accommodate the appellants in the vacant post of Assistant/Clerk in the scale of pay of Rs.5200-20200+2800. For this purpose, necessary relaxation was granted for the adhoc Rules as well as Rule 4, requiring the sponsorship by the Employment Exchange. Pursuant to the direction issued by the State Government, the appellants were accommodated by the Corporation, by an order, dated 29.12.2011 and accordingly, the appellants have joined duty. After joining the duty, they have sent a representation, dated 09.01.2012, to the Corporation Commissioner, stating that they cannot be treated as a fresh recruit and they should have the benefit of absorption.

19. Learned counsel for the 3rd respondent-Corporation contended that the appellants neither in the affidavit nor in their representation, pleaded any specific right, on their part to get regular employment, counting their past service. He further submitted that the power to appoint vests only with the Corporation Council and therefore, the Government Order and the consequential order of posting can be considered only, as an enabling provision to accommodate the appellants. Appointment of the appellants to the Corporation, is only, in pursuance of the following resolutions and Government Orders,

(i) Resolution No.251, dated 17.09.2001,

(ii) G.O(3D) No. 845, MA & WS Department, dated 03.12.2008,

(iii) Resolution of the Appointment Committee, dated 08.07.2009, and

(iv) G.O.No. 472, Municipal Administration and Water Supply (MC 4) Department, dated 22.02.2011.

20. He further submitted that based on the above proceedings, appointment order, dated 29.12.2011 was issued to the appellants, wherein, it has been specifically stated that they would be posted as Computer cum clerk in the pay scale of Rs.5,200-20200-2800. The appellants had accepted the said offer and joined the duty. The Council as well as the Appointment Committee of the Corporation, which are the Competent Authorities, for making appointment, have already resolved that the appellants must be appointed at a particular scale of pay.

21. It is further submitted that the appellants' representation, dated 09.01.2012, stating that they cannot be treated as a fresh recruit and they should have the benefit of absorption cannot be accepted by the respondent-Corporation, because they have been appointed, as per G.O.Ms.No.472, Municipal Administration and Water Supply Department, dated

22.11.2011, issued by the first respondent, appointing them in the pay scale fixed at Rs.5200-20200- 2800 and on the condition that they would be placed Junior most in the Seniority list of computer cum clerk post and knowing fully well, they have joined duty in the 3rd respondent-corporation.

22. Learned counsel for the 3rd respondent further submitted that Indian population project IV scheme, implemented by the Government of India and governed by the Director of Family Welfare, Government of Tamilnadu, Chennai, is not fully aided by the Government of India. The Government of India funding is only in respect of salary alone. Pension, Gratuity, Leave Salary, is given only by the 3rd respondent-Corporation and hence, there is a financial burden for the corporation.

23. He further submitted that the first respondent has issued G.O(D) No.427, Municipal Administration and Water Supply (MC-4) Department, dated 26.10.2006, transferring one Mrs.Ya.Usha Rani, Assistant, in Electricity Department, Chennai Corporation to Corporation of Coimbatore, in the existing vacancy, on condition that she would be placed in the Junior most place and with pay and seniority protection, because the transfer is from one Corporation to another Corporation, but not as absorption, as claimed by the appellants.

24. Learned counsel for the 3rd respondent further submitted that the above Government order was issued by the first respondent, based on Resolution No.8 of the Corporation of Coimbatore, dated 31.05.2006, allowing the transfer of Mrs.Ya.Usha Rani from Chennai Corporation to Corporation of Coimbatore. The 3rd respondent has passed the resolution No.251, dated 17.05.2001, for absorbing the appellants in the Corporation and that the appellants were aware of the resolution and knowing fully well about the contents of the resolution, the pay scale and their posting, accepted the order of appointment, dated 29.12.2011 and joined the duty in the respondent corporation. Hence, he prayed for dismissal of the writ appeals.

25. Per contra, learned counsel for the appellants submitted that in the counter filed by the 3rd respondent, it has been categorically admitted at more than one place that the Council had resolved to absorb the appellants and the only defence was that as per condition No.3 of resolution No.251, dated 17.09.2001, the appellants would be fixed at the pay scale, applicable to the category of Assistants, as it is initial stage. As per Condition No.5 in G.O.Ms.No.27, Finance (BPE) Department, dated 24.01.2007, which formulated the guidelines for absorption of employees in the Government Departments, would be given pay protection. However, they would

not be given any service rights for the purpose of promotion, Selection grade appointments etc. Therefore, the appellants are entitled to the pay protection, since they received salary upto Rs.49,000/-, from the Tamil Nadu Textile Corporation, at the time of absorption by the 3rd respondent.

26. Placing reliance on an similar issue, in respect of Mr.Jeyachandran and Mr.Thirugnanasambandham, learned counsel for the appellants have further submitted that initially, the audit objection was raised for payment of monthly salary immediately, after the absorption from the Tamil Nadu Textile Corporation, based on the last drawn salary. Later, based on the clarification sought for, by the 3rd respondent, the Deputy Director, local audit replied, by a proceedings in Na.Ka.No.1022/A2/12, dated 27.11.2012 that they are entitled to the pay protection, as per the G.O.Ms.No.27, Finance Department, dated 24/01/2007.

27. Learned counsel for the appellants submitted that in respect of Mrs.Ya.Usharani, transfer from Chennai Corporation to the 3rd respondent, was not affected, based on the resolution of the both the Corporation Council, only based on the Government Order. Her seniority and pay was affected, in violation of the said Government Order and on the objection raised by the aggrieved person, at the time of the promotion to Administrative Officer, 3rd respondent has passed a resolution, cancelling a promotion. In the said resolution of cancelling the promotion, there is no reference of Resolution No.8, dated 31.05.2006. The Chennai Corporation and Coimbatore Corporation are all separate and different entities under the Law and therefore, he submitted that the 3rd respondent has applied different yardstick for similarly placed persons.

Heard the learned counsel appearing for the parties and perused the materials available on record.

28. By resolution, dated 17.09.2001, the appellants and 6 others have been absorbed in Coimbatore City Municipal Corporation, from the Tamil Nadu Textile Corporation, on the following conditions,

(i) Appointment may be made, after getting approval of the Director of Family Welfare, Chennai, for granting full grant for these employees also, under the scheme and for appoint them.

(ii) Order may be passed by the Government, by relaxing the Educational Qualification and the decision making mentioned in G.O.Ms.No.932, Family Welfare Scheme, dated 03.04.1971.

(iii) These employees in Assistant Grade Pay will be fixed in initial stage.

(iv) They will be placed in the junior most of the Coordinator and Assistant in this office to the Senior most people."

Names, designation in the Tamil Nadu Textile Corporation and the educational qualification of the above ten persons, as stated in the resolution, is extracted hereunder:

Sl.No.	Names	Designation	Educational Qualifications
1	P.Ramakrishnan	Supervisor	B.Sc.Maths
2	R.Manoharan	Supervisor	M.Sc. Statistics
3	P.Sanavi	Lab Assistant	B.Sc. Physics
4	M.Anbalagan	Lab Assistant	B.Sc. Physics
5	G.Chellapandian	Lab Assistant	B.Sc. Physics
6	R.Karthikeyan	Lab Assistant	B.Sc. Chemistry
7	R.Daniel Kalimuthu	Lab Assistant	B.Sc.Appl. Science
8	K.Mohan	Lab Assistant	B.Sc. Maths
9	T.Thirugnanasambandham	Lab Assistant	B.Sc. Physics
10	N.Jayachandran	Lab Assistant	B.Sc. Physics

29. The Commissioner, Coimbatore Corporation, vide proceedings, dated 05.11.2001, has sent the consent letters of the abovesaid persons, to the Government. However, by G.O.(D) No.230, Municipal Administration and Water Supply Department, dated 1.8.2009, the Government have absorbed Mr.T.Thirugnanasambandham, from Tamil Nadu Textile Corporation Ltd., as he was recruited through Tamil Nadu Public Service Commission.

30. Challenging the said Government Order, except Mr.P.Ramakrishnan (appellant in W.A.No.1324/2012), the other appellants herein and four others have filed W.P.Nos. 14826 to 14832 of 2009 and this Court, vide order, dated 17.12.2009, has ordered that it is the duty of the Tamil Nadu Textile Corporation Ltd., to redeploy all the petitioners therein, after getting proper approval from the State Government to the Resolution passed by the Commissioner, Coimbatore Corporation, Coimbatore, within a stipulated time.

31. Aggrieved by the same, State and others have preferred appeals in W.A.Nos.2143 to 2149 of 2010 and contended that since the appointments of the petitioners therein were not made through employment exchange, as per G.O.No.790, dated

05.07.1991, their appointments were illegal. After considering various decisions, a Hon'ble Division Bench of this Court, vide order, dated 11.02.2011, while confirming the orders passed by the writ Court, dismissed the appeals, held as follows:

"9. It should be noted that it is mandatory that all the three above modes should be to call for applications/names for the purpose of selection for appointment. In this case, though the vacancies were not notified to the employment exchange, publication was made in the newspaper and based on the applications submitted, the writ petitioners were selected and appointed by means of a regular selection process. Further, their appointments were also later on regularised on completing the period of probation. After the above exercise, it is too late in the day for the appellants to contend that the writ petitioners cannot be considered as regular employees so as to be considered for redeployment. In our considered opinion, the appointments of the writ petitioners cannot be termed as illegal at all so as to apply the principles stated in Uma Devi Vs. State of Karnataka and others case (cited supra). In such view of the matter, we are of the considered view that the order of the learned Single Judge is perfectly in order and it does not require any interference at the hands of this Court."

32. As against the same, Government have preferred SLPs, with delay. Though delay was condoned, the Hon'ble Supreme Court has dismissed the Special Leave Petitions on 17.10.2011, leaving the question of law open to be decided in an appropriate case.

33. Thereafter, State Government have issued G.O.Ms.No.472, Municipal Administration and Water Supply Department, dated 22.11.2011, directing the Corporation of Coimbatore, to appoint the appellants herein in the post of Assistant, by relaxing the Rules for direct appointment, as per adhoc rules mentioned in G.O.Ms.No.932, Health and Welfare Department, dated 03.04.1971 as well as Rule 4 of the Tamil Nadu Corporation Service Rules, 1996 (Procedure for recruitment - through employment exchange). Thereafter, the appellants were issued with appointment orders, dated 29.12.2011, appointing them as new recruits.

34. At this juncture, let us consider, as to how, the case of Tmt.Y.Usharani, was considered, when she was absorbed from the Electricity Department, in Coimbatore Corporation. G.O.(Pa) No.427, Municipal Administration and Water (Ma.Na-4) Department, dated 26.10.2006, is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Appointment - Chennai Corporation - Tmt.Y.Usharani,
Assistant, Electricity Department - Order of one way
transfer issued to Coimbatore Corporation.

Municipal Administration and Water (Ma.Na-4)
Department

G.O. (Pa) No.427

Dated: 26.10.2006

Read:

1. Letter in Na.Ka.No.3735/2006 M.C.1/ dated
25.07.2006 of Commissioner, Coimbatore Corporation.

2. Letter Me.Thu.Na.Ka.No.A2/4098/2005, dated
22.9.2006
by Commissioner, Chennai Corporation.

3. Letter in Na.Ka.No.48308/2006/Ma.Na.A1/dated
24.8.2006 and 07.10.2006.

ORDER:

The Government hereby orders by granting approval
for one way transfer, subject to the following
conditions, for the post of Assistant, which is vacant
at the Coimbatore Corporation, in respect of
Mrs.Y.Usharani, who is now serving as Assistant in the
Electricity Department of Chennai Corporation after
accepting the Note of Commissioner of Municipal
Administration read in 3 above.

1. He will find place in the last of the
Seniority list for his posts in the Transferred
Corporation, after the transfer herein.

2. She is permitted to receive the allowances
paid from time to time in force, along with the last
salary drawn.

3. Her Provident Fund, Special Provident Fund,
Bonus and Group Insurance Scheme will be closed and to
be transferred to be new office account.

4. Her pension and leave benefit for the days
served by her shall be completed and transferred to
the new office.

5. Since she is going to transfer on her own, no T.A. will be given.

6. No joining time will be given.

(BY ORDER OF THE GOVERNOR)

SECRETARY TO GOVERNMENT.

35. When the Government have issued orders in G.O.(Pa) No.427, Municipal Administration and Water (Ma.Na-4) Department, dated 26.10.2006, to one Tmt.Y.Usharani, protecting her pay, whether the Government is right in denying nearly 30 years of service of the appellants and place them in the initial pay scale and force them to accept the initial scale of pay? They were getting Rs.36,381/- to Rs.49,000/- monthly salary. Whereas, now fixed in the minimum scale of pay of Rs.5200-29299+2800, as computer-cum-clerk.

36. Two persons, Mr.R.Karthikeyan and Mr.K.Mohan, erstwhile employees of the Textile Corporation, lost their job, due to closure. Government issued orders in G.O.Ms.No.472, Municipal Administration and Water Supply (MC4) Department, dated 22.02.2011, absorbing them in Coimbatore Corporation. Appointment orders were issued to them, stating that they would be treated as fresh entrant to the Corporation. They challenged the said orders in W.P.Nos.7336 and 7337 of 2012. Prayer made in the said Writ Petitions are,

"Writs of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned Government Order passed in G.O.No.472, Municipal Administration and Water Supply (MC4) Department, dated 22.02.2011, quash the portion of the same and consequential orders of 3rd respondent passed in Na.Ka.No.5197/2001/MC3, dated 29.12.2011 and Na.Ka.No.5197/2001/MC3, dated 28.01.2012 and direct the respondents to absorb the petitioners in the 3rd respondent corporation instead of fresh appointment."

It is worthwhile to incorporate the grounds for challenge in the above writ petitions,

(a) The impugned order passed by the 1st respondent is contrary to direction of the Hon'ble Court by order dated 17/12/2009 in W.P.No.14826/2000, wherein it is specifically directed "the 1st and 5th respondents to redeploy all these petitioners after getting proper approval from State Government to the resolution passed by the 6 respondent in resolution no: 251 within a period of 6 weeks from the date of receipt of a copy of this order", the same was confirmed upto the Hon'ble Supreme Court. The Hon'ble Court order has not been complied with in letter and spirit; on this ground alone the impugned orders can

be quashed.

(b) The non application of mind by the 1st respondent while issuing the G.O. is evident that by mentioning the factually incorrect statement of "closure of TNTC", to circumvent the Contempt proceedings pending before the Hon'ble High Court the 1st respondent issued the impugned G.O. in haste manner, thereby depriving the 30 years past services of the petitioner in TNTC and shattered his life by fixing the initial grade pay at the fag end of the service period.

(c) The 1st respondent without considering the development for the past 10 years, issued the impugned G.O. by directing the Corporation to appoint the petitioner afresh, right from the year 2000, when the TNTC decided to suspend the operation of laboratory, due to slump in the activities of the textile mills. At that time petitioner and others, those who were working in the laboratory as lab assistant refused to accept the VR Scheme and requested to absorb them in any Governmental organization, that request was accepted and forwarded to many Departments of the Government including the 3rd respondent Corporation by passing the resolution No.251. Since because of approaching the Hon'ble High Court for redressal, petitioner and others have been victimized by the Government and other respondents.

(d) Even in the impugned G.O. all other Department recommendations are referred and observed as absorption only, but for ordering appointment there is no reason mentioned to substantiate the decision.

(e) This is 100% Central Government aided post, no financial burden for Government as well as Corporation, only after confirming the position by the Directorate of Family Welfare Department Chennai, the 3rd respondent passed the resolution No.251 to absorb the petitioner and others.

(f) While issuing the G.O.(3D) No. 845, dated 03/12/2008, in respect of Mr.Jayachandran, the 1st respondent used the term absorption in abstract but used the word appointment in the operative portion. In implementing said G.O. the 2nd respondent also issued fresh appointment, but paid the salary of last drawn amount in TNTC, later they passed an order of recovery, that being the case now the 1st respondent treating the similarly situated persons in a different manner for the reasons best known to them.

(g) Similar to the petitioner Mr.Jayachandran also questioned the portion of G.O.845, dated 03/12/2008 in W.P. No.19831 of 2010 and this Court

granted interim stay on 30/08/2010, now this W.P. is also pending before this Court.

(h) The very same 1st respondent issued a G.O. (Pa)No.427 Municipal Administration and Water Supply (MC4) Department, dated 26/10/2006, in the case one Mrs.Ya.Usharani, on her request transferred from Chennai Corporation to the Coimbatore Corporation with pay and seniority protection. The said G.O. was passed even without passing the resolution of the Coimbatore Corporation. When the petitioner case is pending from 2000, the said G.O. dated 26/10/2006 passed, the same benefits can be applicable to the petitioners also, since the 3rd respondent passed, a resolution to absorb. Further the financial burden is also not for the State Government. Therefore, it is the petitioners have been victimized for one reason or the other.

(i) It is submitted that when the petitioner working nearly 30 years of permanent service in TNTC and getting Rs.36,381/- Per month towards salary at the time of relieving the post to Join the 3rd respondent Corporation on 05/01/2012, without any justification for appointing him as a fresh one by foregoing all the financial benefits drawn last month while working in the TNTC. It is very difficult to lead the family with the reduced salary as fresh entrants. There is no break in service also, the petitioner relieved from the TNTC on 05.01.2012 and joined in the 3rd respondent service on 05/01/2012."

37. At this juncture, it is worthwhile to consider, as to how, the Government issues orders, when there is a closure of a unit. G.O.Ms.No.27, Finance (BPE) Department, dated 24.01.2007, deals with such a situation and the said Government Orders reads thus,

"Government have issued orders for winding up of certain State Public Sector Undertakings / Co-operative Institutions as they became sick and unviable. Some of the employees of these organizations were either deputed to other State Public Sector Undertakings or appointed in Government Departments on Contract basis before issue of orders on the closure of the parent organization. Those foreign bodies have sought the permission of Government for permanent absorption of these deputationists /contract employees in view of their good performance and experience gained by them in these organizations so as to ensure continuous availability of their expertise to the best advantage of the organization. As per the existing guidelines the employees of the closed State Public Sector Undertakings can opt for Voluntary Retirement Scheme

and those who do not opt for Voluntary Retirement Scheme will be retrenched. Therefore even while on deputation or on contract appointment if these employees do not opt for the Voluntary Retirement Scheme as offered by their parent organization which is under closure, they are liable to be retrenched as per the existing Voluntary Retirement Scheme guidelines.

2. The above subject was placed before the Secretaries Committee on Public Enterprises (SCOPE) and the Committee in its meeting held on 17.11.2003 have made certain recommendations with regard to the permanent absorption of these employees in the foreign bodies.

3. The Government have decided to accept the recommendations of the Secretaries Committee on Public Enterprises (SCOPE) and accordingly direct that the employees of State Public Sector Undertakings / Co-operative Institutions deputed to other State Public Sector Undertakings or appointed on contract in Government Departments prior to the issue of orders on the closure of the parent Undertaking/Co-op Institution, if found very useful to the organization, may be absorbed permanently in the foreign Body or Government Department concerned subject to fulfillment of the following conditions notwithstanding the fact that the Government have subsequently taken a decision on the closure of the Parent Undertaking / Co-operative Institution:-

(i) They should possess all the qualifications and experience prescribed for the post in the Foreign Body. No relaxation of Educational Qualification will be entertained.

(ii) They should have been deputed to the Public Sector Undertakings / Boards etc., or appointed on contract basis in Government Departments prior to the issue of orders on winding up of the parent organization.

(iii) In case of deputation of employees of State Public Sector Undertakings/Boards, such permanent absorption should be governed by the general orders issued by Government from time to time.

(iv) Consent of Foreign Body-and the Lending Organization for their permanent absorption should be obtained. if the Lending Organization under closure does not accept the proposal for permanent absorption in the Foreign Body, then the Government will be the final authority to pass orders in the matter. In case where the foreign body does not agree for the permanent absorption, then those, employees on deputation or on contract appointment may be reverted to the parent

organization so that they can opt for Voluntary Retirement Scheme and if they do not opt they will be retrenched as per Industrial Disputes Act.

(v) The employees to be absorbed in the undertakings/Government Departments will be given pay protection. However they will not be given any service rights for the purpose of promotion, selection grade appointments etc.,

(vi) They will be appointed to the post as junior most in that particular category to which they are appointed consequent on permanent absorption.

(vii) In respect of recruitment made by method of direct recruitment, wherever necessary the concurrence of the TNPSC should be obtained.

(viii) There should be no surplus posts in the Foreign Body in the categories in which these employees are to be permanently absorbed.

(ix) The employees of State Public Sector Undertakings / Co-operatives working on deputation / Contract with the other state Public Sector Undertakings / Government Departments may be considered for permanent absorption only after they completed two years of service in the foreign body. It is also clarified that the permanent absorption in the SPSUs, Government Departments will take effect from the date from which they are continuously working in the foreign body on deputation/contract.

(x) Wherever relaxation of rules other than educational qualification are involved, the Administrative Department will consider the permanent absorption on merit of each case in consultation with the Finance (BPE) Department and P & AR Department and pass necessary orders.

4. This order issues with the concurrence of P&AR (S2) Department, vide its U.O.No.2441/S2/07-1, dated 23.01.2007."

38. Government have issued orders, in the case of Mrs.Y.Usharani, giving pay protection by issuing G.O.(Pa)No.427, Municipal Administration and Water (Ma.Na-4) Department, dated 26.10.2006. May be it was a case of transfer. But the appellants cannot be found fault with, for the closure of the Textile Corporation and deprive them, to lose their entire service rendered, in the said Corporation and start their career, as a fresh entrant.

39. When Mr.T.Thirugnana Sambandam and Mr.N.Jayachandran, lost their jobs in the erstwhile Tamil Nadu Textile Corporation, due to closure and placed in the initial pay scale, in

Coimbatore Municipal Corporation, they have made requests for refixation. The Commissioner, Coimbatore Corporation, in his proceedings in Rc.No.5197/11/MC3, dated 23.11.2012, replied to the Deputy Director, Local Audit Fund, Coimbatore Corporation, as hereunder:

MUNICIPAL ADMINISTRATION AND
WATER SUPPLY DEPARTMENT

From	To
Thiru. Ponnusamy I.A S	Deputy Director,
Commissioner,	Local Fund Audit,
Coimbatore Municipality	Corporation Office,
Coimbatore - 641 001.	Coimbatore Corporation.

Na. Ka. No. 5197/2001/MC3, dt. 23.11.2012

Sub : Estd - Coimbatore Corporation - Tamil Nadu
Textile Yarn Corporation - fixation of pay to the
Terminated employees, Thiru N.
Jayachandran and
Thiru. T. Thirugnanasambandam - request furnish
auditor certificate - reg.

Ref : 1. G.O (3D) No.845, Municipal Administration and
Water Supply Department dt. 3.12.2008.

2. This Office Proceeding Order Na.Ka.No.5197/
2001 /MC3; dt. 16.7.2009.

3. G.O (New Year) No.230, Municipal
Administration and Water Supply Department,
dt. 1.6.2009.

4. This Office Proceeding Order Na.Ka.No.5197/
2001 /MC3; dt. 30.10.2009.

5. Letter of Deputy Director Corporation Audit
O.Mu.No.659/2010/A1; dt. 29.7.2010.

6. Proceedings of the Commissioner
Na.Ka.No.5197 /2001 /MC3: dt. 11.8.2010.

7. Madras High Court Order in W.P.No. 19830 &
19831 /2010.

8. Order of the Commissioner, dt. 15.10.2010.

9. Applications of Compiler and Clerk,
Thiru.N.Jayachandran and Thiru.T.Thirugnana
sambandam, dt. 10.09.2010.

As per the Government Order and Proceedings cited in the reference due to closure of Tamil Nadu Textile Yarn Corporation, among those who have loose the job, one Thiru.N.Jayachandran and Thiru.T.Thirugnanasambandam appointed as laboratory assistant through the employment office were appointed as Compiler and Clerk in this corporation. The said Thiru N. Jayachandran joined duty in this corporation on 23.7.2009 and Thiru. T. Thirugnanasambandam joined or 4.11.2009.

As per the Resolution No.251, dt. 17.9.2001 of this Corporation resolved to fix their pay in Assistant Grade Pay Structure (Rs.5000 - 20000 + 2400 basic pay).

But the above said workers have already received the pay in their last employment in Tamil Nadu Textile Yarn Corporation at Rs.9300 - 34800 + 4400 basic pay.

Therefore, on the basis of the request made to the Deputy Director Local Fund Audit to furnish his opinion with regard to their pay ratio to be paid by this corporation, as per the letter cited in the 5th reference the above said Thiru.N.Jayachandran and Thiru.T.Thirugnanasambandam have been getting higher pay from the date of joining duty (from 22 2009 & 4.11.2009 respectively) as find, raised the audit erection and reports were sent.

As per the audit objection slip No.3/09 directed to deduct a sum of Rs.1,86,848/- to Thiru N. Jayachandran and as per slip No.2/09 deduct a sum of Rs.1,43,916/- to Thiru. T.Thirugnanasambandam.

It is informed that the said Thiru N. Jayachandran received additionally as per pay scale Rs.9,300 - 34,800 + 4,400 in the post of compiler and clerk received the basic pay of Rs.14,650 + 4,400 from the date of his joining namely dt. 23.7.2009. Also it is hereby instructed to recover the excess payment made from the concern employee from 23.7.2009 to 31.7.2010 for the sum of Rs.2,03,776/- and credit the same in the Corporation Fund Account.

Therefore as per the proceedings of the Commissioner cited in 6th reference ordered the Women Medical Officer Singanallur Town Welfare Center to deduct every month at Rs.4,245/- for 47 months from 9/2010 and at Rs. 4,261/- from 8/2010 from the pay of the employee.

The said Thiru.T.Thirugnanasambandam compiler and clerk received basic salary of Rs.15,710 + 4,400 as per the pay scale at Rs.9,300 - 34,800 + 4, 400 from 4.11.2009 is against office proceedings. Also it is

informed in the auditors report to recover a sum of Rs.1,62,375/- paid from 4.11.2009 to 31.7.2010 excessively and deposited the same in the corporation account. Therefore as per the proceedings of the Commissioner cited in 6th reference ordered the Women Medical Officer Rajaveedhi Town Welfare Center to deduct every month at Rs.3,385/- for 47 months from 9/2010 and at Rs.3,280/- from 8/2010 from the pay of the employee.

In the W. P. 19830 & 19831/10 orders passed to stay the order for deducting the salary as cited in the 6th reference.

Therefore, as per the order of the Commissioner cited in the 8th reference requested to furnish opinion with regard to pay structure to be paid to the above said employees.

In the applications cited in the 9th reference the compiler and clerk Thiru.N.Jayachandran and Thiru.T.Thirugnanasambandam have worked for 26 years in the Tamil Nadu Textile Thread Corporation and observed through the Government Order and they have not received any compensation for loosing their job worked already, and they have requested to pay their salary on the basis of LPC as per GO No.27 Finance Department; dt. 24.1.2007.

Therefore, it is hereby request you to furnish auditor certificate whether pay the salary on the basis of LPC as per GO No. 27 Finance Department; dt. 24.1.2007.

For Commissioner
Coimbatore Corporation.

40. But the Deputy Director, Local Fund Audit, Coimbatore Corporation, in his proceedings in Na.Ka.No.1022/A2/12, dated 27.11.2012, addressed to the Commissioner, Coimbatore Corporation, Coimbatore, has replied as hereunder:

LOCAL FUND ACCOUNT AUDIT DEPARTMENT

From	To
Thiru.V.Ravi	Commissioner,
Deputy Director,	Coimbatore Corporation,
Local Fund Audit	Coimbatore.
Corporation Audit,	
Coimbatore Corporation,	
Coimbatore 641 001.	

Na. Ka. No.1022/A2/2012, dated 27.11.2012

Sub : Estd - Coimbatore Corporation - Tamil Nadu
Textile

Textile Thread Corporation - fixation of pay to
Job

lost employees, Thiru.N.Jayachandran and
Thiru. T. Thirugnanasambandam - reg.

Ref : 1. Commissioner, Coimbatore Corporation in
Na.Ka.No.5197/11/MC3, dated 23.11.2012.

3. G.O.Ms.No.27, Finance (BPE) Dept.,
dated 24.1.2007.

Request made to furnish auditor certificate to fix
the pay scale of Thiru N. Jayachandran and Thiru.
T.Thirugnanasambandam who have worked in Tamil Nadu
Thread Corporation and absorbed in Coimbatore
Corporation as per GO cited in the 2nd reference.

In the GO 2nd cited it is stated that when closing
the Public Sector and Co-Operative Institutions, when
absorbing the employees who have lost the job as per
G.O clause-3, sub-clause-v (in page No.3) orders
issued with pay protection on the basis of the salary
certificate issued by the previous institution. Also
in clause - 4 (in Page No.4) as per the GO Personal
and Administrative Department P&AR (S-2) 2441/S-2/07-
1; dt. 23.1.2007 approval granted to the above GO and
in this circumstances as per GO 27 Finance (BPE); dt.
24.1.2007 with pay protection on the basis of the
salary certificate issued by the previous institution.

Sd. Deputy Director,
Corporation Audit,
Coimbatore Corporation.

41. Thus, it could be seen that even the Local Audit,
Coimbatore Municipal Corporation, has affirmatively stated that
pay of those employees should be protected. At this juncture,
this Court deems it fit to consider that an administrative
decision should satisfy the principle, justice, equity and good
conscience. What is justice, equity and good conscience is
explained by the Hon'ble Supreme Court in Shri Rattan Lal Vs.
Shri Vardesh Chander and Others, reported in 1976 (2) SCC 103,
and in the words of Hon'ble Mr.Justice Krishna Iyer,

"The concept of 'justice, equity and good
conscience' comes into play in the absence of any
specific legislative provision. In India and in other
colonies during the imperial era a tacit assumption
had persuaded the courts to embrace English law (the
civilizing mission of the masters) as justice, equity

and good conscience."

42. Further, the Hon'ble Apex Court while considering the abovesaid concept of 'justice, equity and good conscience' an English common law, at paragraph No.21 held as follows:-

This is the genesis of the idea that Indian 'good conscience' is English Common Law during the reign of Empress Victoria. The imperatives of Independence and the jural postulates based on the new value system of a developing country must break off from the borrowed law of England received sweetly as 'justice, equity and good conscience'. We have to part company with the precedents of the British-Indian period tying our non-statutory area of law to vintage English law christening it 'justice, equity and good conscience'. After all, conscience is the finer texture of norms woven from the ethos and lifestyle of a community and since British and Indian ways of life vary so much that the validity of an anglophilic bias in Bharat's justice, equity and good conscience is questionable today. The great values that bind law to life spell out the text of justice, equity, and good conscience and Cardozo has crystallised the concept thus:

Life casts the mould of conduct which will some day become fixed as law.

Free India has to find its conscience in our rugged realities and no more in alien legal thought. In a larger sense, the insignia of creativity in law, as in life, is freedom from subtle alien bondage, not a silent spring nor hot-house flower.

43. Persons similarly placed should be extended the same treatment. At this juncture, this Court deems it fit to consider few decisions, as to whether, similarly placed persons are to be treated alike or not,

(i) In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court in paragraph 8 held thus,

"8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons

dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

(ii) In State of Karnataka v. N.Parameshwarappa reported in 2003 (12) SCC 192, the Hon'ble Supreme Court, at paragraph 8, held thus:

"8..... we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30-3-1990, as raised in the proceedings."

(iii) In State of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

(iv) The Hon'ble Supreme Court in State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others reported in 2015 (1) SCC 347, wherein, the Hon'ble Apex Court dealt with the issue as to the entitlement of benefit of judgment in rem with an intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. It is held therein that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India.

44. Going through the entire material on record, we are of the clear view that the writ petitioners ought to have been extended the benefit of pay protection benefits of their 30

years of service in the erstwhile Textile Corporation and cannot be placed at the initial pay.

45. For the reasons stated, the order of the writ Court is set aside. Hence, the writ appeals are allowed, as prayed for. The respondents are directed to absorb the appellants and pay the retiral benefits, by counting the services rendered in the Textile Corporation, within a period of two months, from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

1. The Secretary to Government,
Municipal Administration and Water
Supply (MC 4) Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Municipal Administration,
Ezhilagam, Chennai 600 005.
3. The Commissioner,
Coimbatore Corporation,
Coimbatore 641 001.
4. The Managing Director,
Tamil Nadu Textile Corporation Ltd.,
Corporation Complex, IIIrd Floor,
Dr.Nanjappa Road,
Coimbatore 641 018.

+3ccs to Mr.S.Gopinathan, Advocate Sr.66338, 66339, 66340

W.A.Nos.1321 to 1324 of 2012

pa[co]
srg 13/03/2019