

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.No.26089 of 2016

and

W.M.P.No.22367 of 2016

P.Hemalatha

... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.

2.The Commissioner,
Erode Corporation, Erode-638 001.

3.K.Kumaresan,
Assistant-cum-Accountant,
Zone-1, Suriampalayam,
R.N.Pudur, Erode-638 005.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned orders in Na.Ka.No.2955/2016/C1, dated 18.07.2016 and final seniority list in Na.Ka.No.C1/2955/2016, dated 19.07.2016, and Selection Seniority list in Na.Ka.No.C1/2955/2016, dated 21.07.2016 passed by the 2nd respondent, selecting the 3rd respondent for promotion and to quash the same and consequently, to direct the respondents 1 & 2 to give promotion to the petitioner to the post of Superintendent at 2nd respondent-Corporation, with her original seniority as per the seniority list dated 19.07.2016 followed by the Selection seniority list dated 21.07.2016 issued by the 2nd respondent, along with all attended benefits within a reasonable time to be fixed.

For Petitioner : Mr.P.Rajavel

For Respondents : Mr.K.Dhananjayan, Spl GP (For R1)
Mr.P.Srinivas (For R3)
Mr.M.Rajamathivanan (For R2)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned orders in Na.Ka.No.2955/2016/C1, dated 18.07.2016 and final seniority list in Na.Ka.No.C1/2955/2016, dated 19.07.2016, and Selection Seniority list in Na.Ka.No.C1/2955/2016, dated 21.07.2016 passed by the 2nd respondent, selecting the 3rd respondent for promotion and to quash the same and consequently, to direct the respondents 1 & 2 to give promotion to the petitioner to the post of Superintendent at 2nd respondent-Corporation, with her original seniority as per the seniority list dated 19.07.2016 followed by the Selection seniority list dated 21.07.2016 issued by the 2nd respondent, along with all attended benefits within a reasonable time to be fixed.

2.In the affidavit filed in support of the writ petition it has been stated by the petitioner as follows_

2-1.The petitioner entered into Municipal service as a Junior Assistant in 1988. During the year 2007, the petitioner was promoted as Assistant in the Erode Municipality. Thereafter, Erode Municipality was upgraded as Corporation, pursuant to the Ordinance passed by the Government to that effect on 13.11.2007. Consequent to the upgradation of Erode Municipality into Corporation status, the service conditions of the employees would be governed by the Notification issued by the State Government in G.O.Ms.No.237, Municipality Administration and Water Supply (Election) Department, dated 26.09.1996, Rule 36 of the General Rules governed under the Act called the Madurai City Municipality Corporation Act, 1971 and Coimbatore City Corporation Act, 1981 deal with the application of Government Rules to the Corporation Employees. Rule 36 of the Tamil Nadu Municipal Corporation Service Rules, 1996 reads as follows_

Application of Government Rules to the Corporations Employees_

In the matter of settlement of Pension, regularization of pay and other allowances, leave benefits claiming of travelling allowances and daily allowances and other allowances and control of conduct of the Corporation employees, the Tamil Nadu Pension Rules, the Fundamental Rules of the Tamil Nadu Travelling Allowances Rules, the Manual of Special Pay and Allowances, and the Tamil Nadu Government Servants conduct rules shall apply to the Corporation Employees as nearly as possible to the Government servants of similar status and standing. In matters in respect of

which no provision has been made in these rules, every member of the service shall be nearly possible, be governed by the provisions applicable to the Government servants status and standing."

Accordingly, in the absence of any provision under these Rules, the Service conditions of the employees of the Corporation shall be governed by the provisions applicable to the Government servants.

2-2. After the upgradation of the 2nd respondent to Corporation Status from Municipality, the employees of the Municipality have been treated as the employees of the Corporation subject to the option exercised by the employees to continue their posts of employment and the interse seniority list was prepared on 21.04.2008 after considering the objections, for the posts of Assistants, Junior Assistant, Typist, Revenue Assistant, Record Clerk, Sanitary Inspectors etc., In the said seniority list, the petitioner was placed at Serial No.10, above the name of one K.Kumaresan, who is the 3rd respondent herein.

2-3. While so, on 06.08.2012, the 2nd respondent by an order in Na.Ka.No.C1/3098/2012, prepared a revised final seniority list and showed her name in Serial No.5; subsequently, the list of selected candidates names was published on 06.08.2012 and it showed the petitioner's name at Serial No.3, there was no charge pending against the petitioner. Subsequently, the 2nd respondent prepared the final seniority list in Na.Ka.No.C1/3098/2012, dated 22.05.2014, she was placed at Sl.No.2 and her post was redesignated as Assistant-cum-Accountant in the 2nd respondent-Corporation, wherein a remark is made stating charge is pending under Rule 8(2) of Tamil Nadu Government Servants (Discipline and Appeal) Rules.

2-4. It is further stated by the petitioner that the 2nd respondent had issued a charge-memo dated 04.06.2013 under Rule 8(2) of Tamil Nadu Government Servants (Discipline & Appeal) Rules alleging that the petitioner, without obtaining prior permission to the higher officials, updated to the corporation computer, using password of the Revenue Inspector regarding new taxes assessment, which caused damage to the 2nd respondent's reputation. After enquiry, the Enquiry Officer submitted his report. Thereafter, the 2nd respondent passed an order on 19.02.2015 imposing on the petitioner the punishment of stoppage of increment without cumulative effect for six months.

2-5. According to the petitioner, the said punishment of stoppage of increment for six months without cumulative effect, is a minor punishment, as per Rule 8 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, and it was given effect from 01.10.2015 to 31.03.2016, as the date of increment for every year would be on the 1st day of October. Hence, the six months period ended on 31.03.2016 itself. Since the six months

period ended on 31.03.2016, the petitioner became eligible to be considered for promotion to the post of Superintendent from 01.04.2016.

2-6. The 2nd respondent on 21.06.2016 published a temporary seniority list for Assistants-cum-Accountants and called for objections if any to be submitted in 15 days. A revised and temporary seniority list was published on 21.06.2016. In the said seniority list, it is mentioned as punishment was awarded to her on 19.02.2015, which indicated that her name would not be considered for promotion. Hence, the petitioner submitted her objection on 30.06.2016. But, the petitioner's objection was negated by the 2nd respondent on 18.07.2016 and next day i.e., 19.07.2016, final seniority list was published. Later the 2nd respondent did not publish a revised final seniority. Subsequently, the list of selected candidates for promotion to the post of Superintendent and Assistant Revenue Officers was published on 21.07.2016, in which the name of the 3rd respondent, who is junior to the petitioner in the seniority list, is shown. The petitioner's name is not shown, despite the fact that she has become eligible from 01.04.2016 onwards, as the period of punishment ended on 31.03.2016 and the concept of 'Check Period' is not in force pursuant to the order of the Full Bench of this Court, in a case reported in 2011(3) CTC 129 [The Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani]. Hence, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel for the petitioner would submit that the 2nd respondent passed an order on 19.02.2015 imposing on the petitioner the punishment of 'stoppage of increment without cumulative effect for six months'. The said punishment was given effect from 01.10.2015 to 31.03.2016, as the date of increment for every year would be on the 1st day of October. Hence, the six months period ended on 31.03.2016 itself. Since the six months period ended on 31.03.2016, the petitioner became eligible to be considered for promotion to the post of Superintendent from 01.04.2016. The learned counsel for the petitioner would further submit that even according to the respondent, the crucial date for preparing panel for the promotion from the post of assistant-cum-Accountant was 01.04.2016. Since on the date of crucial date for preparing panel for promotion there is no currency of punishment, the petitioner is entitled for promotion. But, the 2nd respondent deliberately dropped the name of the petitioner from the list of the candidates for promotion, stating that any punishment prior to five years from the crucial date for preparing the panel for promotion is stated to be a disqualification for inclusion in the panel for promotion.

4. In this regard, the learned counsel for the petitioner by inviting the attention of this Court reported in 2011(3) CTC 129 [The Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani], wherein it has been held that it can never be said that even after the period of punishment is over, in between the date of crucial date and the date of punishment there must be one year in case of censure and five years in other cases as disqualification period. The said impediment in the name of 'check period' can never be imposed on a Government servant. Thus, the learned counsel for the petitioner submitted that the impugned orders are liable to be quashed.

5. The learned Special Government Pleader, by filing a detailed counter, opposed the prayer of the petitioner, stating that as per G.O.Ms.No.22 P & AR Department, dated 24.02.2014, the Rules have been amended to the effect that the punishments for the previous 5 years period is to be considered as a disqualification.

6. The learned counsel appearing for the 3rd respondent has also, by filing a counter, contended that the judgment reported in 2011(3) CTC 129 [The Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani] relied upon by the learned counsel for the petitioner, cannot be made applicable to the present case, because in this case the punishment imposed on the petitioner was in effect from 01.10.2015 to 31.03.2016 and the crucial date of prepare of the panel was on 01.04.2016 and as per G.O.Ms.No.22 P & AR Department, dated 24.02.2014, the Rules have been amended to the effect that the punishments for the previous 5 years period is to be considered as a disqualification. The said Rules have been amended only after various judgments of this Court as well as the Hon'ble Supreme Court. Thus, the learned counsel for the 3rd respondent sought for dismissal of the writ petition.

7. But, by way of reply, the learned counsel for the petitioner would submit that the said Government Order cited by the respondents viz., G.O.Ms.No.22 P & AR Department, dated 24.02.2014 has been quashed by the Division Bench of this Court by order dated 14.09.2016 in W.A.No.983 of 2015 etc. insofar as it suggests the 'check period' as an embargo for granting promotion. Therefore, there cannot be any impediment in considering the petitioner for promotion.

8. I have carefully heard the submissions made on either side and perused the materials available on record.

9. Admittedly, the currency of the punishment of stoppage of increment for six months without cumulative effect imposed on the petitioner was given effect from 01.10.2015 to 31.03.2016.

Hence, the six months period ended on 31.03.2016 itself. The crucial date for preparation of panel for promotion was 01.04.2016. Since the six months period ended on 31.03.2016, the petitioner became eligible to be considered for promotion to the post of Superintendent from 01.04.2016. Under such circumstances, in the light of the dictum laid down in the decisions reported in n 2011(3) CTC 129 [The Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani] and decision of the Division Bench in W.A.No.983 of 2015 etc, dated 14.09.2016, I am of the opinion that since as on the crucial date for preparing panel for promotion, there was no currency of punishment, the petitioner deserves to be included in the panel for promotion. Hence, the writ petition is liable to be allowed.

10. Accordingly, the writ petition is allowed and the impugned orders are quashed. The respondents 1 & 2 are directed to give promotion to the petitioner to the post of Superintendent at 2nd respondent-Corporation, with her original seniority as per the seniority list dated 19.07.2016 followed by the Selection seniority list dated 21.07.2016 issued by the 2nd respondent, along with all attended benefits, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.

2. The Commissioner,
Erode Corporation,
Erode-638 001.

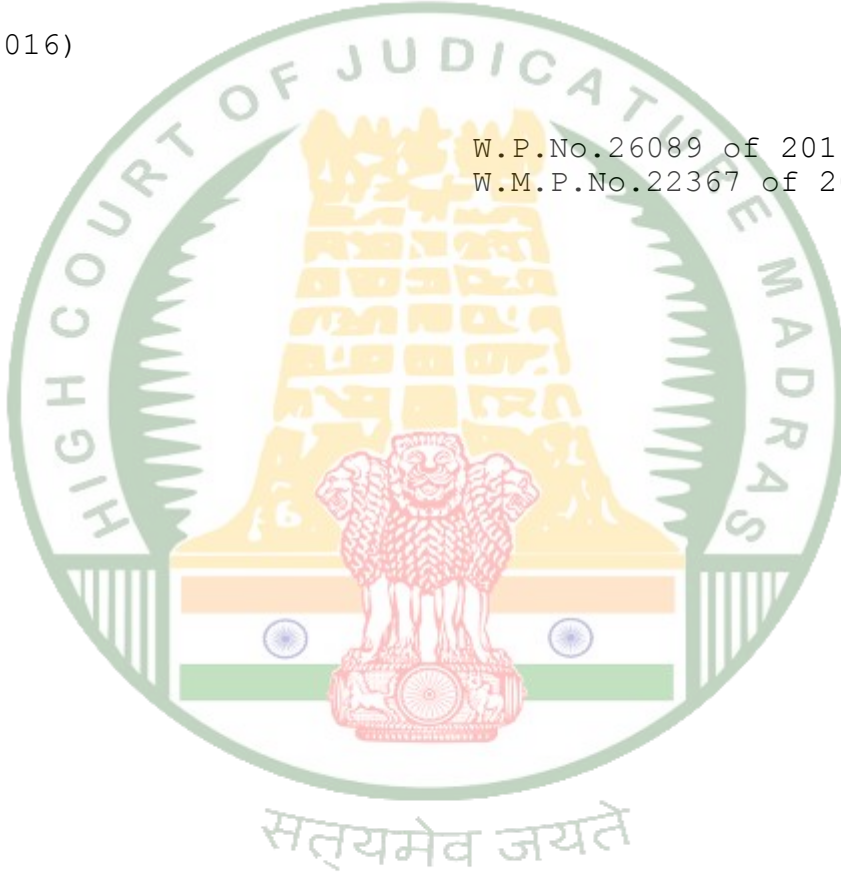
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3.K.Kumaresan,
Assistant-cum-Accountant,
Zone-1, Suriampalayam,
R.N.Pudur, Erode-638 005.

+1cc to Mr.M. Rajamathivanan, Advocate, S.R.No.67378
+1cc to Mr.P. Rajavel, Advocate, S.R.No.67456
+1cc to Mr. P. Srinivas, Advocate Sr.No.68234
+1cc to the Government Pleader, S.R.No.68353

nm(CO)
md(16/12/2016)

W.P.No.26089 of 2016 and
W.M.P.No.22367 of 2016



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