

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2016

Coram

The Hon'ble Mr.Justice Nooty Ramamohana Rao
and
The Hon'ble Mr.Justice S.M.Subramaniam

W.A.No.1558 of 2016
and
C.M.P.No.19170 of 2016

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply
Department,
Fort. St. George, Chennai - 600 009.
2. The Director of Town Panchayats,
Kuralagam, Chennai - 600 108.
3. The Collector,
Thiruvavarur District.

...Appellants/Respondents

Vs.

J.Mohamed Ibrahim

... Respondent/Petitioner

Writ Appeal, filed under Clause 15 of Letters Patent,
against the Order passed by this Court, in W.P.No.3128 of 2014,
dated 03.06.2015.

WP.No.3128 of 2014:Petition filed under Article 226 of the
constitution of India for the issuance of Writ of Mandamus
Directing the respondents to promote the petitioner as Executive
Officer Grade I on par with his colleagues and juniors with
effect from 17.12.2013 in accordance with the revised Seniority
List of Executive Officer Grade I for the Year 2011-2012 vide
Proceedings Na.Ka. NO.6793/ 2000/A3 dated 12.7.2013 with all
consequential and attended benefits.

For Appellants : Mr.P.S.Shiva Shanmugasundaram
Special Government Pleader

For Respondent : Mr.V.Vijay Shankar

JUDGEMENT

(Judgement of the Court was made by Nooty Ramamohana Rao,
J.)

This Writ Appeal is an inhouse Appeal against the order rendered by the learned Single Judge, allowing the Writ Petition, instituted by the respondent herein.

2. The crux of the matter is, Whether the appellants are justified in not considering the candidature of the writ petitioner for promotion to the post of Executive Officer Grade - I ?

3. On 12th July, 2013, the Director of Town Panchayats, Chennai, published a Final Seniority List of various categories of employees, such as, i) Head Clerks, ii) Assistants and iii) Executive Officer Grade - II. It is a combined Seniority List, arranged in the descending order from the date of entry into the grade concerned. In that List, admittedly, the name of the writ petitioner figures at Serial No.177, out of 240 names. Obviously, the writ petitioner is happy and content with the position so assigned to him, and hence, he has not mounted any challenge to the Final Seniority List, dated 12.07.2013. But the problem arose, because, Smt. R.Umarani, whose name figures at Serial No.178 of the said Final Seniority List was promoted as Executive Officer Grade - I, leaving aside the writ petitioner to continue to function only as Executive Officer Grade - II. Fortunately, there is no quarrel that the post of Executive Officer Grade - I holds a superior status, and rank than that of the post of Executive Officer Grade - II, as it carries higher duties and responsibilities, apart from the higher scale of pay. In those set of circumstances, the writ petitioner approached this Court, seeking relief for inclusion of his name immediately above that of his immediate junior, and for notional promotion as Executive Officer Grade - I with effect from the same date, on which, his immediate junior was so promoted, and that exactly the relief, the learned Single Judge has granted.

4. The learned Special Government Pleader for the appellants urged before us that, the writ petition ought to have been dismissed for the sheer failure on the part of the petitioner to challenge the order of promotion of his immediate junior, or the panel prepared for underking promotions. And, for the failure to implead such persons, who have been promoted,

which promotions, according to the writ petitioner are contrary to law, as party respondents to the writ petition.

5. The contentions canvassed by the learned Special Government Pleader are not without merit, but this is not the stage, at which, such contentions can be addressed, for, the writ petitioner has made out a case before the learned Single Judge by demonstrating that, the persons, who have been included next below to him in the Final Seniority List published on 12.07.2013, have been picked up for promotion as Executive Officer Grade - I. In the absence of any justifiable or special reasons, which fetched promotions to his immediate junior (s), a case of discrimination is made out by the writ petitioner, which prompted exercise of discretion by the learned Single Judge. When once the final seniority list is published, there is no discretion vested in the competent authority, to either make appointments or promotions by making a random departure from such a senior finality list. The names of all eligible employees have to be picked up one after the other, in the descending order of the said seniority list. The names of employee cannot be picked up at will or pleasure. Any such exercise of omitting consideration of cases of seniors for promotion clearly amounts to discrimination, which is forbidden by Article 14 of our Constitution.

6. Hence, we are in complete agreement with the opinion of the learned Single Judge and hold that the learned Single Judge has rightly exercised the discretion in favour of the writ petitioner, who made out a case. Even before us, no demonstrable reasons, much less, justifiable ones, have been shown for picking up the immediate junior to the writ petitioner in the Final Seniority List for favouring promotion as Executive Officer Grade - I, leaving aside the writ petitioner. Therefore, we see no reason to interfere with the Order/Judgment of the learned Single Judge, which is in accord with the legal principles on the subject.

7. However, wherever a writ petitioner has not chosen to squarely challenge the order of promotion of his immediate junior, and also failed to implead the said junior as party respondent to the Writ Petition, all that, the Court needs to observe is that, while the petitioner will be entitled to 'pay fixation on notional basis', in the promotional cadre, treating him to have been so promoted with effect from the same date, on which, his immediate junior was so promoted, simultaneously, the actual payment of the differential amount of salary and allowances can be deferred for the period beyond three years. Further, if the respondents could establish that there is no vacancy available in the cadre, by placing before the Court all the relevant material, in such a case, the payment of higher salary can be deferred till such time a regular vacancy becomes

available, for, against one single post, two persons cannot be allowed to hold or paid salary. However, in the instant case, the writ petition is instituted in the year, 2014 itself. Therefore, the above principle of deferring the actual payment also may not come to the help or rescue of the Appellants, in the absence of credible material on record with regard to non-availability of any vacancy in the cadre of Executive Officer Grade -I.

8. With these observations, the Writ Appeal is dismissed. No costs.

9. In matters of this nature, we are at a loss to understand as to the reasons why the Appeal has been preferred at all. Firstly, it would amount to wasting precious financial resources of the exchequer. Secondly, it amounts to wasting equally precious time of this Court, and thirdly, it would indicate that the person, who has to take the actual decision is not willing to take the responsibility for the same, but preferred to pass the buck on to the shoulders of the High Court. Any such fruitless enterprise must be stopped. Therefore, Registry is directed to mark a copy of this Judgment to the Government, with the hope that they will take a decision that only in beffiting cases, where, a serious and important question of law or fact requires to be still adjudicated by the Appellate Court, Appeals would be preferred, and the person, who takes such a decision, shall also necessarily record his name and designation in the Office file, so that, if, the High Court wishes to deal with any such case for purposes of imposing costs, the same can be recouped from the same person at any later point of time. Otherwise, useless pursuit of Appeals like this will go on unabated.

10. Consequently, connected Civil Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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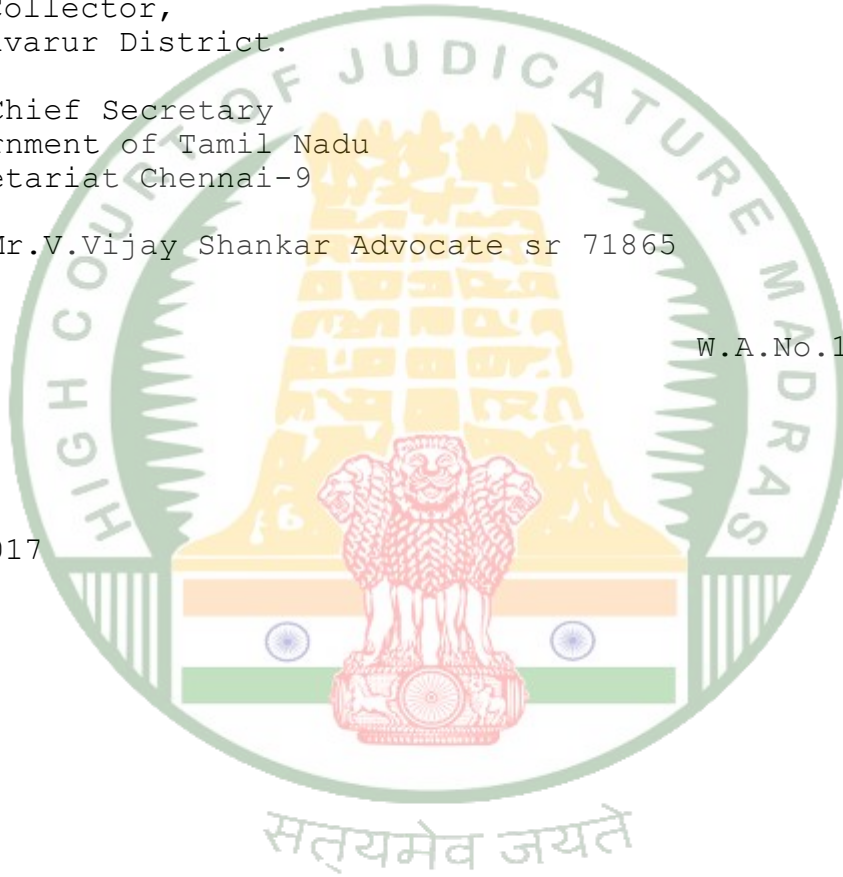
To

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4. The Chief Secretary
Government of Tamil Nadu
Secretariat Chennai-9

+1 cc to Mr.V.Vijay Shankar Advocate sr 71865

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