BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.09.2016
Pronounced on : 24.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition(MD) No.16887 of 2013
and
M.P(MD)No.2 of 2013, 1 and 4 to 7 of 14

A.Ahamed Ibrahim ...Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration and
Water Supply (Corp.4) Department,
Fort St. George,
Chennai - 9.

2.The Commissioner of
Municipal Administration,
Chepauk,
Chennai - 9.

3.The Commissioner,
Madurai Municipal Corporation,
Madurai.

4.V.R.Ramesh Babu
(As per order dated 31.01.2014 made in
M.P(MD)No.2 of 2014, R4 has been impleaded)

5.J.Vijayakumar
(As per order dated 31.01.2014 made in
M.P(MD)No.3 of 2013, R5 has been impleaded)

6.M.Muthuramalingam
(As per order dated 31.01.2014 made in
M.P(MD)No.4 of 2013, R6 has been impleaded)

7.K.E.Mohamed Ismail
(As per order dated 31.01.2014 made in
M.P(MD)No.5 of 2013, R7 has been impleaded)

8.S.Syed Maideen
(As per order dated 21.08.2014 made in
M.P(MD)No.3 of 2014, R8 has been impleaded)
... Respondents

Prayer : Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the first respondent in his proceedings letter (2g) No.85 dated 27.08.2013 and the consequential inter-se-seniority list circular issued by the 3rd respondent in his proceedings Ma.Ne.1/25997/2010 dated 23.09.2013 and quash the same as illegal.

For Petitioner : Mr.B.Saravanan

For Respondents : Mr.K.Guru A.G.P for R1 and R2

Mr.R.Murali for R3
M/S.Ajmal Associates for
Mr.C.Venkateshkumar for R4
Mr.G.Elanchezhiyan for R5
Mr.M.Saravanakumar for R6
Mr.R.Alagumani for R7
Mr.V.Perumal for R8

ORDER

This writ petition has been filed challenging the impugned Clarification Letter passed by the first respondent in his proceedings letter (2g) No.85 dated 27.08.2013 and the consequential issuance of inter-se-seniority list circular issued by the 3rd respondent in his proceedings Ma.Ne.1/25997/2010, dated 23.09.2013.

2.The case of the petitioner is that he was initially appointed as Junior Assistant on 25.06.1993 and thereafter, he was promoted to the post of Assistant on 19.11.2009 in the third respondent Corporation. He also stated that the contesting respondents 4 to 8 were initially appointed as Bill Collector/Revenue Assistant from the year 1986 and then the respondents 4 to 8 were given promotion as Assistant on 18.08.2010. The further case of the petitioner is that as per G.O.Ms.No.237, dated 27.09.1996, the new corporation service rules titled as the Tamil Nadu Municipal Corporation Service Rules 1996 was brought into force. The Tamil Nadu Municipal Corporation General Subordinate Service Rules 1996 deals with the post of Assistant under Category - I of Group II of Clause III. The post of Tax Collector falls under the Category III of Group III of Clause III under the Tamil Nadu Municipal Corporations General Subordinate Service Rules 1996 (in short Service Rules 1996). He has further stated that as the Rule 3 of Service Rules 1996, the method of appointment to various categories of post is provided and as per the method provided under the Rules, the post of Assistant shall be filled by direct recruitment and by promotion from the holders of post of Junior Assistant-cum-Typist at the ratio of 1:9. Subsequently, the Government issued G.O.Ms.No.140, Municipal Administration and Water Supply Department, dated 27.05.1997 and thereby certain clarifications were issued regarding the request of various associations and individuals of the corporations. It was clarified that the Tax Collectors, who had less than 20 years of service as on the date of the issue of the order, will have to work under New Service Rules in other category of post and in respect of Tax Collectors, who had completed 20 years of service as Tax Collectors on the date of issue of the Government Order, may be considered for promotion to the post of Revenue Inspector (Special) in accordance with strict seniority in the post of Tax Collectors. The benefit of G.O.Ms.No.140 was not extended to the Tax Collectors working in the 3rd respondent Corporation. Challenging the service Rules 1996, a writ petition has been filed at the instance of the tax Collectors working in the 3rd respondent.

3.The said writ petition was subsequently withdrawn and thereafter, the Government passed G.O.Ms.No.265 Municipal Administration and Water Supply Department, dated 13.07.2006 and thereby a direction was issued to the 3rd respondent corporation to treat the post of License Inspectors as Revenue Inspectors (Special) and the same shall be filled up by promoting the Tax Collectors, who had 20 years of experience as on 27.05.1997 and the post of Revenue Inspectors (Special) can be disbanded after retirement of the employees. Pursuant to the Government Order in G.O.Ms.No.265, as many as 18 Bill Collectors were promoted to the post of Revenue Inspectors (Special), who had completed 20 years of service in the post of Bill Collectors as on 27.05.1997.

4.The further case of the petitioner is that to his shock and surprise, the first respondent passed an order in G.O (30 years) No.24 Municipal Administration and Water Supply (Ma.Na.4) Department, dated 11.08.2010 and in the said G.O., a direction was given to the 3rd respondent corporation to promote the Tax Collectors to the post of Assistant, who had entered into service before 01.10.1996 and who had not completed 20 years of service on 27.05.1997, strictly on the basis of seniority in the post of Tax Collectors by relaxing the condition of serving for two years in the Junior Assistant-cum-Typist, as a special case.

5.The petitioner also stated that the said G.O(30 Years)No.24, dated 11.08.2010 issued by the first respondent was contrary to the Service Rules 1996. Therefore, this petitioner and 60 others were filed a writ petition in W.P(MD)No.10931 of 2010 before this Court challenging the said Government Order. This Court was pleased to dismissed the said writ petition on 26.04.2013 by holding that the G.O.(30 years)No.24 is not contrary to the Service Rules 1996.

6.The petitioner further come forward by saying that pursuant to the abovesaid G.O., the first respondent has issued the impugned clarification in his proceedings Letter (2g) No.85, dated 27.08.2013 and thereby, a direction has been given to prepare an inter-se-seniority list between the Tax Collectors and Junior Assistants who were appointed prior to 01.10.1996 and based on the inter-se-seniority list, an year wise promotion panel has to be prepared and based on the panel, the vacancy in the post of Assistant shall be filled up. Therefore, the petitioner states that the impugned clarification dated 27.08.2013 issued by the first respondent is not only contrary to the Government Order in G.O.(30 years)No.24 dated 11.08.2010 but also would deny petitioner's accrued right in the post of Assistant and hence, the same is liable to be set aside as null and void.

7.The petitioner further stated that a mere reading of the Government Order in G.O.Ms.No.24, dated 11.08.2010, would make it clear that the promotion of Tax Collectors to the post of Assistant shall be only on the basis of seniority in the post of Tax Collectors, as a special case. Whereas, contrary to the said G.O., by the impugned clarification, the first respondent has directed to prepare inter-se-seniority list without any reference to the existing seniority of the employees who are already working in the post of Assistant in the 3rd respondent corporation.

8. It is the further case of the petitioner that the first respondent by its letter No.21519/MC 4/2003-4 dated 08.11.2006 it was clarified that the post of Junior Assistant-cum-Typist, Steno Typist, Tax Collectors and Conservancy Inspectors are interchangeable and hence, the inter-se-seniority need not be prepared. Therefore, the writ petitioner come forward by saying that the said impugned order dated 27.08.2013 is totally illegal and arbitrary and he further stating that as per the impugned clarification dated 27.08.2013, this petitioner shown as Junior to the Tax Collectors.

9.The petitioner also stated that pursuant to the impugned clarification dated 27.08.2013 will take away his existing seniority which is contrary to the G.O.No.24 dated 11.08.2010 and hence, he stated that the said impugned clarification dated 27.08.2013 is liable to be set aside as null and void. Challenging the said impugned clarification dated 27.08.2013, the present writ petition has been filed.

10. While admitting the writ petition, this Court passed an order of status quo in M.P(MD)No.2 of 2013 on 11.10.2013.

11. On receipt of the notice, the official respondents were appeared through their counsel. The official respondents and the contesting respondents filed their vacate stay petition and their counter. Though the writ petitioner filed the writ petition challenging the inter-se-seniority list, the writ petitioner has not impleaded the aggrieved parties and hence, the respondents 4

to 8 were themselves impleaded and this Court on various dates ordered to implead them as party respondents 4 to 8 in this writ petition.

12.A counter affidavit has been filed by the 5th respondent and other respondents were filed their affidavit in the vacate stay petition by stating that the Government issued service rules in G.O.Ms.No.237, Municipal Administration and Water Supply, dated 27.09.1996, wherein, the Government laid down service condition of the corporation employees including promotion. It is further stated that in the service rules, the Government introduced grouping of posts for the purpose of promotion to the higher post. Accordingly, the government grouped the post of Junior Assistant/Typist, Steno Typist, Tax Collector and conservancy Inspector as Class II and as Group III. In the said Corporation Service Rules, it has been stated in Rule 23 and Rule 24 of the said Municipal Corporation rules that the appointing authority shall prepare a panel in respect of each class (or) group (or) category as the case may be for which appointment is to be made by promotion (or) by transfer. It is further stated that in Rule 29 of the said Rules for the purpose of acquiring knowledge to the administration by a Corporation employees in all categories of service, the Commissioner shall prepare a list of qualified members to be considered for transfer to other categories of each group in every year. From the list so prepared the Commissioner shall transfer members in batches in a particular period i.e., during April to June of a year in accordance with seniority in the list so prepared. The Commissioner shall allow a member in a particular post at least for a minimum period of two years.

13.In the counter it is stated further that subsequent to the above said rules, the Government issued a clarification to the service rules in G.O.Ms.No.140, dated 27.05.1997 clarifying that in respect of Tax Collector those who have completed 20 years of service who are aged more than 50 years on the date of issue of this order they may opt for promotion, but they need not work as Junior Assistant-cum-Typist for a period of two years as required under new service rules and the tax collectors those who have less than 20 of years service as on the date of issue of the order, they have to work under new service rules in other categories of posts. In the said clarification order, the Government has further stated that as the Madurai Corporation Tax Collectors were filed writ petition and challenged the new service rules issued by the Government on 27.09.1996 and got interim order against the said rules and they come forward by saying that the abovesaid clarification is not applicable to them now.

14.It is further stated in the counter affidavit that based on the said clarification order issued in G.O.140, Municipal Administration and Water Supply Department, dated 27.05.1997 all the Corporation Commissioner except Chennai and Madurai were prepared Inter-Se-Seniority among the grouped employees and ordered promotion to the Tax Collectors and Junior Assistant as Assistant. But in the Madurai Corporation alone without considering the Tax Collector post and without fixing inter-se-seniority list among the grouped employees have given promotion as Assistant from the post of Junior Assistant and Steno Typist alone. Subsequently, the Madurai Corporation Tax Collectors Associations has withdrawn the said writ petition in the year 2001, thereafter only, the Madurai Corporation Commissioner has sent a proposal to Government in regard to fixation of inter-se-seniority but there is no response from the Government. In the said circumstances, the fifth respondent, Mr.J.Vijayakumar, has filed the writ petition in W.P.No.5168 of 2009 before the Principal Bench of this Court and got direction to consider his case for promotion. Based on the above direction, the Government issued an order in G.O(3D)No.24, Municipal Administration and Water Supply Department, dated 11.08.2010 and relaxed the condition laid down in Rule 29 of the Municipal Service Rules for the purpose of promotion as Assistant in regard to Tax Collector is concerned (as a special case). Based on the said Government order, the Madurai Corporation Tax Collectors were promoted as Assistant on 18.08.2010. But they were not included in the respective panel based on the inter-se-seniority list to be prepared, that is why, the Madurai Corporation, the third respondent herein has sent a clarification letter to the Government for issuing clarification with regard to inclusion of names of Tax Collector in the respective year of promotion panel. The fifth respondent further stated that when the clarification letter is pending with Government, some of the Madurai Corporation Employees were challenged the G.O(3D)No.24, Municipal Administration and Water Supply Department, dated 11.08.2010 before this Court in W.P(MD)No.10939 of 2010 on the ground that the G.O is against the Madurai Corporation service Rules and obtained interim order. After hearing both side argument, the said writ petition was dismissed by this Court on 26.04.2013, after discussing the Rule 2, 3, 4, 24 and 29 of the Corporation Rules. Thereafter only the Government issued this impugned Clarification Letter to Madurai Corporation on 27.08.2013 to the said G.O.No.24, dated 11.08.2010 in regard to preparation of year wise promotion panel including the Tax Collector post. Based on that, the third respondent/Madurai Corporation has issued the revised seniority list also on 23.09.2013. Therefore, against the said impugned order of clarification dated 27.08.2013, the present writ petition has been filed. Therefore, the fifth respondent stated that originally the writ petition filed against the respondents 1 to 3 only, thereafter, the contesting respondents, namely, the respondents 4 to 7 were filed impleading petitions before this Court in M.P(MD)No.3 of 2014 and the same was ordered.

15.The first respondent Secretary to Government, Municipal Administration and Water Supply Department, has filed counter affidavit stating that the petitioner has not approached this Court with clean hands and suppressed various material facts and on that ground alone the writ petition is liable to be dismissed. It is further stated that the writ petition has filed challenging the proceedings of the first respondent made in letter (2d)No.85, dated 27.08.2013 and the consequential provisional seniority list dated 23.09.2013 issued by the third respondent. The issue in hand in the present writ petition comes under the Tamil Nadu Municipal Corporations General Subordinate Service Rules, 1996. As per the said Rules all the categories come under class III with group I to Group V. The Junior Assistant and Tax Collectors comes under Group III of the Tamil Nadu Municipal Corporations General Subordinate Service Rules, 1996. Further, in the said rules, the mode of appointment and qualifications to each post are specifically given. Prior to 1996 the old service rules was in force. While introducing the new service Rules a saving clause is available to safeguard the interest of service conditions of existing employees. The first respondent also stated that as per the above Rules, under Group III the following posts are available.

1) Junior Assistant cum Typist,
2) Steno Typist
3) Tax Collector
4) Conservancy Inspector

16.The first respondent further stated that the mode of recruitment and qualification was given to each post. In respect of junior Assistant cum Typist the qualifications are prescribed along with mode of recruitment by direct recruitment and by promotion from among the Group IV and Group V service personnel. In respect of Tax Collectors, Steno Typist and Conservancy Inspectors, the mode of recruitment by transfer of service from the holders of the post of Junior Assistant cum Typist has also been prescribed. In fact, the Government has issued new service rules, namely, G.O.No.237, dated 26.09.1996 and another order in G.O.Ms.140, Municipal Administration and Water Supply, dated 27.05.1997 by way of clarifications and the said G.O had taken care of those tax collectors who had completed 20 years of service as on 27.05.1997. Those, who are less than 20 years of service ought to have work under new service rules in other categories of posts. The said G.O not applied to Madurai Corporation Tax Collectors, since the same was challenged by them in W.P.No.17494 of 1996. But subsequently after withdrawal of the writ petition filed by the Madurai Corporation Tax Collectors Association, and based on the order of this Court in W.P.No.10689 of 2003 dated 07.04.2003, the Government by G.O.No.265, Municipal Administration and Water Supply, dated 13.07.2006 had extended the similar benefits of G.O.Ms.No.140 to the Madurai Corporation Tax Collectors, who had completed 20 years of service as on 27.05.1997.

17.The first respondent also stated that the writ petitioner has challenged the seniority list without including the necessary parties in this writ petition. The G.O.No.24, dated 26.04.2013 was upheld by this Court and injustice done to the Tax Collectors, who are having all necessary qualifications to hold the post of Junior Assistants, are not given promotion in time to the post of Assistant by the clarification and the consequential inter-se-seniority the said injustice was now set right by the Government.

18.The first respondent also stated that the petitioner, who got promotion to the post of Assistant from Junior Assistant without working in other category of posts in class III Group III in terms of the Rule 29 of General Rules as well as in terms of para 6 of Annexure - 1 the G.O. No.237 now cannot find fault with the present clarifications issued by the Government and the consequential seniority list. The first respondent further stated that the present clarification issued by the Government and the consequential impugned seniority list are nothing but restoring the right of all the Corporation employees without discrimination. In fact, right from 01.10.1996 onwards the petitioner as well as the other Tax Collectors who are having qualification to hold the post of Junior Assistant are interchanged in their post, there is no scope for present scenario. Hence, the first respondent sought for the dismissal of the writ petition.

19.The second respondent filed the counter adopting the counter filed by the third respondent.

20.The third respondent, the Commissioner of Madurai Municipal Corporation has filed a counter affidavit by way of a vacate injunction filed in M.P(MD)No.1 of 2014.

21.The third respondent has denied the entire allegation contained in the affidavit by the writ petitioner. The third respondent has stated that the impugned clarification letter dated 27.08.2013 and consequential provisional seniority list dated 23.09.2013 challenged by the Writ petitioner itself are not maintainable. The third respondent further stated that the writ petitioner has joined in the corporation as Junior Assistant and subsequently promoted as Assistant and working in the said post till today. The service conditions of employees of Madurai Corporation are governed under Tamil Nadu Municipal Corporation Service Rules vide G.O.Ms.No.237 (MA and WS) Department dated, 26.09.1996. In the said Rules under Part III Specials Rules were framed for different categories of employees, namely, Engineering Section, Town Planning, General Service, Subordinate Service, Public Health and Basic Service. The issue in hand in the present writ petition comes under Tamil Nadu Municipal Corporations General Subordinates Service Rules. As per the said Rules all the categories are comes under Class III with Group I to Group V. The

Junior Assistant and Tax Collectors are come under Group III of Tamil Nadu Municipal Corporations General Subordinates Service Rules and in the said Rules, the mode of appointment and qualifications to each post are specifically given. Prior to 1996, the old Service Rules was in force. While introducing the new Service Rules a saving clause is available to safeguard the interest of service conditions of existing exmployees.

22.The third respondent also stated that as per Municiapl Corporations General Subordinate Service Rules under Group III the following posts are available, namely, Junior Assistant cum Typist, Steno Typist, Tax Collector and Conservancy Inspector. The mode of recruitment and qualification was given to each post. In respect of Junior Assistant cum Typist, the qualifications are prescribed along with mode of recruitment but in respect of Tax Collectors, Steno Typists and Conservancy Inspectors, the mode of recruitment is only by way of transfer from the holders of the post of Junior Assistant cum Typist. Therefore, the third respondent stated that from the above, it is evident that the posts available under Group III - Class III of General Subordinate Service Rules are interchangeable and equivalent one. After the new Service Rules (G.O.No.237, dated 27.09.1996), the Government issued another order in G.O.Ms.No.140 MA & WS department, dated 27.05.1997 by way of clarifications and the said G.O., had taken care of those Tax Collectors who had completed 20 years of service as on 27.05.1997, those, who are less than 20 years of service ought to have work under new Service Rules in other categories of posts. Therefore, the said G.O., is not applicable to Madurai Corporation Tax Collectors since the same was challenged by them. But after withdrawal of the writ petitions filed by the Madurai Corporation Tax Collectors Associations, the Government by G.O.Ms.NO.265 MA and SW Department, dated 13.07.2006 had extended the similar benefits of G.O.Ms.No.140 to the Madurai Corporation Tax Collectors who had completed 20 years of service as on 27.05.1997. Hence, by way of the above G.O.No.265, the grievances of Tax Collectors who had completed 20 years of service are alone considered.

23.The third respondent also stated that the Tax Collectors in Madurai Corporation are not allowed to work in other categories of Group III post even though they are having necessary qualification to hold the post of Junior Assistant. Under the circumstances, those, who are worked in the Junior Assistant posts are alone consider for promotion to the post of “Assistant”. It is further stated that one J.Vijayakumar, the fifth respondent herein a Tax Collector of Madurai Corporation filed a Writ Petition in W.P.No.5168 of 2009 for seeking promotion to him from the post of Tax Collector to next higher post. This Court, by an order dated 26.04.2010 directed the Government to consider the claim in accordance with law. Based on the orders of this Court, the Government had considered the grievance of Tax Collectors had issued G.O.No.24, MAWS Department, dated 11.08.2010 thereby the Government had clarified that the Tax Collectors who had joined before 01.10.1996 had been eligible to be promoted to the post of Assistant based on the date of joining of their seniority in the post of Tax Collector. Though this petitioner along with others filed a writ petition in W.P(MD)No.10931 of 2010 challenging the G.O.No.24, dated 11.08.2010, the said writ petition was dismissed by this Court on 26.04.2013 by upholding the above G.O.No.24, dated 11.08.2010. Therefore, the Tax Collectors, who joined before 01.10.1996 and not completed 20 years of service on 01.10.1996, are entitled to be considered to the post of Assistant by reckoning seniority based on their date of joining in the post of Tax Collectors. The third respondent also stated that admittedly based on the above G.O., the Corporation had promoted two persons as Assistant by proceedings dated 18.08.2010 and Corporation after effecting the promotions made a request to the Government to clarify the seniority position of the persons, who got promotion to the post of Assistant from the post of Tax Collectors. In the meantime, the above said Vijayakumar, Assistant (erst-while Tax Collector) made representations to the Government and on considering the same the Government had passed the clarification dated 27.08.2013. As per the clarification an inter-se-seniority has to be prepared among Junior Assistant and Tax Collectors, who are joined before 01.10.1996 so as to made promotions. Following the said clarification, the Corporation had prepared inter-se-seniority among Junior Assistant and Tax Collectors and made it circulation through proceedings dated 23.09.2013. Challenging the said impugned clarification and consequential inter-se-seniority list, the present writ petition has been filed. When this Court upheld the G.O.No.24, dated 11.08.2010, the same was clarified properly under the impugned proceedings. The third respondent also stated that injustice done to the Tax Collectors, who are having all necessary qualifications to hold the post of Junior Assistants, are not given promotion in time to the post of Assistant by the clarification and the consequential inter-se-seniority the said injustice was now set right by the Government. At any angel the present clarification and as well as the consequential inter-se-seniority had not taken away the legally sustainable accrued right of the petitioner. Therefore, in fact right from 01.10.1996 onwards the petitioner and as well as the other Tax Collectors who are having qualification to hold the post of Junior Assistant are interchanged in their post, there is no scope for present scenario. Hence, the third respondent is seeking to vacate the interim order granted in M.P(MD)No.2 of 2013 in W.P(MD)No.16887 of 2013 and consequently prayed to dismiss the writ petition.

24.Heard Mr.B.Saravanan, learned counsel for the petitioner as well as Mr.K.Guru, learned Additional Government Pleader appearing for the respondents 1 and 2, Mr.R.Murali, learned counsel for the 3rd respondent, Mr.C.Venkateshkumar, learned counsel for the 4th respondent, Mr.G.Elanchezhiyan, learned counsel for the 5th respondent, Mr.M.Saravankumar, learned counsel for the 6th respondent, Mr.R.Alagumani, learned counsel for the 7th respondent and Mr.V.Perumal, learned counsel for the 8th respondent and perused all the relevant records produced by both the parties.

25.The Government issued service rules in G.O.Ms.No.237, Municipal Administration and Water Supply Department, dated 27.09.1996, wherein, the Government laid down service conditions of the Corporation employees including promotion. In the said rules, the Government introduced grouping of posts for the purpose of promotion to the higher post. Accordingly, the Government grouped the post of Junior Assistant/Typist, Steno-Typist, Tax Collector and Conservancy Inspector as Class III and as Group III. In the said Corporation Service Rules, it has been stated in Rule 23 and Rule 24 of the said Municipal Corporation Rules that appointing authority shall prepare a panel in respect of each Class (or) Group (or) Category as the case may be for which appointment is to be made by promotion (or) by transfer.

26.In rule 29 of the said Service Rule, it is stated that for the purpose of acquiring knowledge to the administration by a Corporation employees in all categories of services, the Commissioner shall prepare a list of qualified members to be considered for transfer to other categories of each group in every year. From the list so prepared, the Government shall transfer members in batches in a particular period i.e., during April to June of a year in accordance with seniority in the list so prepared. The Commissioner shall allow a member in a particular post at least for a minimum period of two years.

27.After the above service rules, the Government issued a clarification to the service rules in G.O.Ms.No.140, dated 27.05.1997 and clarified in para-4, part 1, 2 and 3, which read as follows:-

> 1) Those of the Tax Collectors who have completed 20 years of service in the post of Tax Collectors or those who are aged more than 50 as on the date of issue of this order are allowed to work as Tax Collectors till their dates of Superannuation. However, if any of them are willing to be promoted for higher posts, they may opt for promotion. They need not work as Junior Assistant-cum-Typist for a period of two years as required under the New Service Rules.
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> 2) Those who have less than 20 years of service as on the date of issue of this order will have to work under the New Service Rules in other categories of posts.
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> 3) Since there is no provision in the New Service Rules to continue the post of Revenue Inspector, this post of Revenue Inspector will be allowed to continue

for some more years with the designation as 'Revenue Inspector (Special)' The Tax Collectors who have completed 20 years of service as Tax Collectors on the date of issue of this order may be considered for promotion to the post of (Revenue Inspector (Special)' in accordance with strict seniority in the post of Tax Collectors.

28.Based on the said clarification order issued in G.O.Ms.No.140, Municipal Administration and Water Supply Department, dated 27.05.1997 all the Corporation Commissioner except Chennai and Madurai were prepared Inter-Se-Seniority among the grouped employee and ordered promotion to the Tax Collectors and Junior Assistant as Assistant. But in the Madurai Corporation alone without considering the Tax Collector post and without fixing inter-se-seniority list among the grouped employees have been promoted as Assistant from the post of Junior Assistant and Steno Typist alone. The said Clarification in G.O.Ms.No.140, Municipal Administration and Water Supply Department, dated 27.05.1997 was challenged by the Madurai Corporation Tax Collectors Association and they got interim order and subsequent, the said writ petition was withdrawn by the said Association in the year 2001. Thereafter, the 3rd respondent, the Commissioner of Madurai Corporation has sent a proposal to the Government in regard to fixation of inter-se-seniority, but there is no response from the Government. In the above circumstances, the 5th respondent, namely, Vijayakumar, has filed a writ petition in W.P.No.5168 of 2009, wherein, this Court, by an order dated 26.04.2010, granted a direction to consider his case for promotion as per inter-se-seniority to be fixed by the Government. Thereafter only, based on the direction of the Principal Bench of this Court in W.P.No.5168 of 2009, dated 26.04.2010, the Government issued an order in G.O(3D)No.24, Municipal Administration and Water Supply Department, dated 11.08.2010 and relaxed the condition laid down in rule 29 of the Municipal Service Rules for the purpose of promotion as Assistant in regard to Tax Collector is concerned (as a special case). Based on the said Government order, the Madurai Corporation Tax Collectors were promoted as Assistant on 18.08.2010. But they were not included in the respective panel based on the inter-se-seniority list to be prepared, the Madurai Corporation Commissioner has sent a clarification letter to the Government for issuing clarification with regard to inclusion of names of Tax Collectors in the respective year of promotion panel.

29.After issuance of the said G.O., some of the employees of the Madurai Corporation challenged the Government Order in G.O(3D) No.24, Municipal Administration and Water Supply Department, dated 11.08.2010 before this Court by way of W.P.No.10931 of 2010 on the ground that the G.O., is against the Madurai Corporation Service Rules and obtained interim order. After hearing the case of both sides, this Court, by a common order made in W.P(MD)Nos.6403 of 2006 and 10931 of 2010 dated 26.04.2013, dismissed the writ petitions, after discussing Rule 2, 3, 4, 24, and 29 of the Corporation Rules. The relevant para 24, 27, 29, 31 and 32 are extracted hereunder:-

> "24.Bearing in mind this interpretation and the Rule position, if Rule 3 relating to the method of appointment to the post of Assistant is read, the position becomes abundantly clear that the said post of Assistant can be filled up by promotion from the holders of the posts of Junior Assistant-cum-Typist, which is one of the category post in Group III and the other three category posts in Group III being interchangeable in Junior Assistant-cum-Typist, all persons in the said Group III are eligible to be considered for promotion to the post of Assistant. Further, the reason for mentioning only the post of Junior Assistant-cum-Typist in Rule 3 as the feeder category for promotion to the post of Assistant is because the post is being filled up by direct recruitment and by promotion from the holders of the post of Driver (Group IV Category 1) and Record Assistant and Conservancy Supervisor (Group V Category I & III). Even though the post of Steno Typist, there is a direct recruitment, the other mode of recruitment is by transfer from the holders of the post of Junior Assistant-cum-Typist.
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> 27. In this case, this Court is not considering the inter se seniority position in the panel to be prepared for promotion to the post of Assistant and this examining the contention so to whether G.O.Ms.No.24 is contrary to the Service Rule. As stated above, the impugned Government order is not contrary to the Service Rules and the interpretation given by the petitioners is incorrect.
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> 29. As rightly pointed by the learned counsel appearing for the respondent Corporation, the petitioners have not challenged G.O.Ms.No.140, dated 27.05.1997, which makes the position vividly clear.
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> 31. This Court having held that G.O.No.24, is not contrary to the Service Rule and it does not in any manner impinge of sub-plant the Service Rules, the decisions relied on are of no assistance to the case of the petitioners.
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> 32. For all the above reasons, the petitioners have not made out a case for interference and accordingly, the writ petitions fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

30.After dismissal of the above writ petition in W.P.No10931 of 2010, the Government has issued a proper Clarification Letter to the third respondent/Madurai Corporation in Lr(2Pa)No.85, dated

27.08.2013, to the said G.O.Ms.No.24, Municipal Administration and Water Supply Department, dated 11.08.2010 with regard to preparation of year wise promotion panel including the Tax Collector post and based on that only, the third respondent, has correctly issued the revised seniority list also on 23.09.2013 among the grouped employee. In fact, the writ petitioner has not filed any appeal against the order of this Court dated 26.04.2010 in W.P(MD)No.5168 of 2009 and also the order dated 26.04.2013 issued in W.P(MD)No.10931 of 2010. Without filing any appeal, the writ petitioner has come forward making his arguments that the Tax Collectors are not eligible to get promotion as Assistant in the respective due panel as per the Service Rules since their post are not inter changeable.

31.It is made clear that this Court in the above writ petition in W.P(MD)No.10931 of 2010 dated 26.04.2013 elaborately discussed all the relevant Service Rules in para 19, 20, 21, 22, 24 and 25 and clearly held that the 4 categories employees are all eligible to get promotion as Assistant and their post are interchangeable. But this order was not challenged by the writ petitioner till today. Without challenging that order, the writ petitioner cannot advance his argument that the Revenue Assistant are not entitle to retrospective promotion as Assistant as per the Rules.

32.In this case, the fifth respondent has clearly stated that the tax Collectors are entitled to get promotion as Assistant on par with his junior as per the Service Rules and also as per the Government clarification letter. But this was not rebutted by the writ petitioner by way of filing rejoinder. It means the writ petitioner also admitted that Revenue Assistant are all entitled to get promotion as Assistant from the year 1996 onwards. From the above discussion, it is clear that the Government clarification letter, dated 27.08.2013 and revised seniority list dated 23.09.2013 are in accordance with Rules issued in G.O.Ms.No.237, Municipal Administration and Water Supply Department, dated 27.09.1996 and also based on the order of this Court cited above.

33.While put forth his argument, the learned counsel for the petitioner has produced several Judgments, particularly, in 1982 (1) SCC 379, 2001(4) SCC 433 and 2008(1) SCC 744, which are not relevant to this case, because it discussed about the belated challenging of the seniority list, that question does not arise in this case. In the present writ petition, the challenge is that whether the Government Clarification Letter dated 27.08.2013 is in accordance with Rules (or) contrary to the G.O(3d)No.24, Municipal Administration and Water Supply Department, dated 11.08.2010. Therefore, the question of delay and latches are not arises in the present writ petition. But the respondents were produced a Judgment in (i) Accountant General, State of Madya Pradesh vs- S.K.Dubey and another reported in 2012(4) SCC 578, the Hon'ble

Supreme Court has clearly held that;-

> "the State Government has power to issue a executive order or administrative instruction with regard to subject(s) provided in Section 16(2) of 1986, where the State Rules are silent on any of such subject. There is nothing in Section 30(2) or Section 31 of the 1986 Act that abridges the power of the State Government to issue executive order or administrative instructions with regard to pensionable service of the President and Member of the State Commission, although the State Rules have been framed but such Rules are silent on the aspect of the pensionable service. In other words, in the absence of any provision in the State Rules relating to the pensionable service of the President and Members of the State Commission, there is no bar for the State Government in issuing executive order or administrative instructions regarding pensionable service of the President, State Commission".

(ii) in State of Panjab and others vs. Jagdish Kaur reported in 2011(7) SCC 374, the Hon'ble Apex Court very clearly held as follows:-

> "It is well settled that in the absence of statutory rules any subject, the relevant Government orders would hold the field".

34.Therefore, as per the above order of the Hon'ble Apex Court, it is made clear that the Government have power to issue a clarification to the Service Rules by way of executive order. Therefore, the challenge of the present impugned clarification letter dated 27.08.2013 and the consequential circular by the Writ petitioner is not maintainable.

35. In my considered view, the writ petition itself is not maintainable on the main ground that the writ petitioner has not impleaded the parties, namely, 273 employees, who are found in the challe ngeable order of inter-se-seniority list, dated 23.09.2013 passed by the third respondent, since this Court and the Hon'ble Apex Court held in number of cases that the persons whose promotion to be affected, should be impleaded as parties in the proceedings by the persons, who challenged their seniority on the ground that they should also heard equally along with the person concern.

36.Therefore, in my considered view, when this Court clearly upheld the G.O.Ms.No.24, dated 11.08.2010 in W.P(MD)No.10931 of 2010 dated 26.04.2010, it is made clear that the Revenue Assistants are all entitled to get promotion as Assistant from the year 1996 onwards and challenging of the impugned Government Clarification letter dated 27.08.2013 and revised seniority list dated 23.09.2013 in accordance with the rules in G.O.Ms.No.237, Municipal Administration and Water Supply Department, dated 27.09.1996 and based on the order passed in W.P(MD)No.10931 of 2010 dated 26.04.2010 is not warranted to interference by this Court. Hence, the writ petition fails and the same is liable to be dismissed. Accordingly, I pass the following orders:-

(a) The Writ Petition is dismissed by upholding the Government Clarification Letter (2g) No.85 dated 27.08.2013 passed by the first respondent and consequential circular issued by the 3rd respondent in his proceedings Ma.Ne.1/25997/2010 dated 23.09.2013.

(b) The Official respondents are directed to give promotion to the respondents 4 to 8 on par with their juniors as some of them are going to retire from service very shortly. The said exercise shall be completed by the official respondents 1 to 3, within a period of four weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar.

To

1.The Secretary to Government, Municipal Administration and Water Supply (Corp.4) Department,Fort St. George, Chennai - 9.

2.The Commissioner of Municipal Administration, Chepauk, Chennai - 9.

3.The Commissioner, Madurai Municipal Corporation, Madurai.

+1CC to M/S.B.Saravanan, Advocate, SR.No.63122
+1CC to M/S.M.Saravanakumar, Advocate, SR.No. 63016
+1CC to M/S.R.Alagumani,Advocate, SR.No. 63124

Order made in
Writ Petition(MD) No.16887 of 2013
24.10.2016

skn
AM/GSV.PM/SAR-I/25.10.2016/16P/7C (IT)