



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.(MD) No.20615 of 2013

V.JAYAKUMAR

S/O. B. VAITHILINGAM S4 ROYAL PARK
APARTMENT PUTHUR TRICHIRAPPALLI.

...Petitioner

Vs.

1 THE STATE OF TAMIL NADU
REPRESENTED BY ITS SECRETARY MUNICIPAL
ADMINISTRATION & WATER SUPPLY DEPARTMENT
SECRETARIAT CHENNAI- 009.

2 THE COMMISSIONER OF MUNICIPAL
ADMINISTRATION EZHILAGAM ANNEXE BUILDING
CHEPAUK CHENNAI- 005.

3 TRICHY CITY MUNICIPAL
CORPORATION REPRESENTED BY ITS
COMMISSIONER TRICHY.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the entire records in connection with the impugned notice of the 3rd respondent in Na.Ka.No. 4933/2012/C1 (Central) dated 06.09.2013 and quash the same and consequently direct the respondents to promote and appoint the petitioner in the post of Executive Engineer (Planning) in the 3rd respondent Corporation within a stipulated time.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.V.Muruganantham for R1 and R2
Additional Government Pleader
Mr.N.S.Karthikeyan for R3
Additional Government Pleader

ORDER

The prayer in the writ petition is for a Certiorarified Mandamus to call for the entire records in connection with the impugned notice of the 3rd respondent in Na.Ka.No. 4933/2012/C1 (Central) dated 06.09.2013 and quash the same and consequently direct the respondents to promote and appoint the petitioner in the post of Executive Engineer (Planning) in the 3rd respondent Corporation.



2. The petitioner, at the time of filing the writ petition, was working as Junior Engineer Special Grade I in the third respondent Corporation. He was originally appointed in the year 1987 as Town Planning Inspector and in the year 1989 his service was regularised and he had worked as Town Planning Inspector in Thiruvavur Municipality till 03.06.1992. Then, the petitioner was transferred to the third respondent Municipality and joined duty there on 09.06.1992 as Town Planning Inspector. While so, the third respondent Municipality was upgraded as Municipal Corporation in the year 1994. On upgradation, two posts of Executive Engineers were sanctioned to the third respondent Municipality, one is called Executive Engineer (Planning) and another is called Executive Engineer (Regular). The petitioner, after having been subsequently promoted as Assistant Executive Engineer (Planning), he was working as such all along. When he being the seniormost in the category of Assistant Executive Engineer (Planning), he would be eligible to be get promoted further as Executive Engineer (Planning) at the third respondent Corporation. When the petitioner has made his claim for consideration of his candidature for promotion to the post of Executive Engineer (Planning), the same was turned down by the third respondent vide impugned proceedings dated 06.09.2013. By the said impugned order, the third respondent has stated that the post of Executive Engineer (Planning) was no more available at the third respondent Municipality, as the same had already been redesignated as Executive Engineer (Regular). Therefore, in view of non availability of the said post of Executive Engineer (Planning), the plea of the petitioner to get promotion to the said post cannot be considered and therefore, accordingly, the said request was rejected by the third respondent through the impugned order. Challenging the same, the present writ petition has been filed.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleaders for the respondents 1 and 2 and 3.

4. The learned counsel for the petitioner would contend that admittedly, the petitioner is the seniormost Assistant Executive Engineer (Planning) and at the time of the creation of the Municipal Corporation or upgradation of the third respondent as Municipal Corporation, two posts of Executive Engineers were sanctioned, out of which, one shall be Executive Engineer (Planning). Therefore, the line of promotion for the said post is from the feeder category of Assistant Executive Engineer (Planning), the post exactly the petitioner was holding all these years and he being the seniormost in the category of Assistant Executive Engineer (Planning), he would be certainly entitle to claim the promotion to the post of Executive Engineer (Planning). When that being so, when the claim was made by the petitioner for



the said promotion, the same was turned down by the third respondent vide the impugned order. However, according to the learned counsel for the petitioner, the very reasoning cited by the third respondent in the impugned order to state that the said post of Executive Engineer (Planning), since has already been redesignated for want of postings, the plea of the petitioner cannot be granted, is totally unjustifiable, because originally, the post was sanctioned as Executive Engineer (Planning) was subsequently redesignated only at the instance of the third respondent Municipality for want of available hands and therefore, it can very well be once again redesignated to the original position. Without considering the same, the plea of the petitioner was rejected abruptly, according to the learned counsel for the petitioner, which is unjust and arbitrary.

5. Per contra, the learned Additional Government Pleader for the third respondent would contend that no doubt, originally, two posts of Executive Engineers were sanctioned to the third respondent Municipality, out of the two, one post is for Executive Engineer (Regular) and another one is Executive Engineer (Planning). In the year 2005, since in the line of promotion for the post of Executive Engineer (Planning), there were no eligible hands for consideration, the third respondent Municipality had written to the Government to redesignate the said post of Executive Engineer (Planning) also into the post of Executive Engineer (Regular), accepting the said request of the third respondent, the Government ie., the first respondent issued a Government Order in G.O.2D No.46 MAWS Department dated 31.10.2015, by which, the request of the third respondent was accepted and the post of Executive Engineer (Planning) at the third respondent Municipal Corporation was redesignated as Executive Engineer (Regular), wherein, one S.Raja Mohammed was promoted and appointed. Therefore, from the year 2005, the post of Executive Engineer (Planning) was no more available in the third respondent Municipal Corporation. Now, the said Rajamohammed has also got retired and the said post, namely, Executive Engineer (Planning) redesignated as Executive Engineer (Regular) become vacant. Merely because, redesignated post of Executive Engineer (Regular) is vacant, for the said post, the petitioner cannot be promoted, as his line of promotion is only Executive Engineer (Planning) not the Executive Engineer (Regular). Therefore, there is every justification on the part of the third respondent to pass the impugned order. Therefore, the same need not be interfered with.

6. Heard the learned counsel for the respective parties and the materials placed before this Court were perused.

7. For the effective administration of the third respondent Municipality, which was subsequently upgraded as Municipal Corporation, the Government had sanctioned two Executive Engineers Post. Out of the two, one is Executive Engineer (Regular), who



look after the regular engineering works to be undertaken at the third respondent Municipal Corporation. The another one is Executive Engineer (Planning), who would look after the planning and schemes to be undertaken by the third respondent Municipal Corporation. To balance these works only, the Government had initially sanctioned these two posts, one for Executive Engineer (Planning) and another for Executive Engineer (Regular). However, for some time, since there was no eligible hand available to get promoted to the post of Executive Engineer (Planning), the third respondent had written to the Government requiring the Government to redesignate the said post as Executive Engineer (Regular) for giving promotion from the available candidates, so that, the post can be filled up and two officers in the cadre of Executive Engineer can work in the third respondent Municipal Corporation to undertake all engineering works. The said redesignation, of course, made by the first respondent through the said G.O. dated 31.10.2005 is only a stop gap or internal arrangement on the part of the first respondent, of course, pursuant to the request made by the third respondent, only on the alleged reason of want of eligible candidates. Merely because, the said post of Executive Engineer (Planning) was redesignated as Executive Engineer (Regular), it cannot be said that the said post of Executive Engineer (Planning) can never be revived at any point of time, even though eligible candidates in the feeder category are available to get promoted.

8. When a particular post is sanctioned for a particular purpose and the same has been redesignated for certain period, the same cannot be made as a permanent one and if that proposition is accepted that once redesignated is always redesignated and cannot be reverted back to the original position, then, the very purpose of sanctioning original post, namely, in this case, the Executive Engineer (Planning) would be defeated. Planning is a very important job in an administrative side. Without a proper head in the planning Department, that too, in the Engineering service of the third respondent Municipal Corporation, it is very difficult to finalise the planning and schemes, which are basic for effective administration of the civic amenities attached with the third respondent Municipal Corporation Limits. Therefore, the prudent action ought to have been taken by the third respondent was that, instead of rejecting the claim of the petitioner could have approached the Government, ie, the first respondent to again restore the position of Executive Engineer (Planning), as in the said post ie., redesignated as Executive Engineer (Regular), one Rajamohammed, who was originally appointed also got retired and the said post has been kept lying vacant. Instead of keeping the said post lying vacant, the original designation, namely, Executive Engineer (Planning) can be restored, wherein, any eligible candidate, including the petitioner can be considered for further promotion. Even though, it is submitted by the third respondent that one Nagesh was made in-charge of the said post of



Executive Engineer (Planning), now, redesignated as Executive Engineer(Regular), the said arrangement of making a person, in-charge cannot be said to be the actual posting or appointment given to fill up the said post of Executive Engineer (Regular). Therefore, the present reason cited in the impugned order that for want of postings, ie., the Executive Engineer (Planning), the plea of the petitioner is not considered cannot be countenanced, as the same certainly warrants interference by this Court.

9. In view of the aforesaid discussions, this Court is of the considered view that the impugned order is liable to be set aside and the matter is to be remanded back to the third respondent Corporation for reconsideration along with the request made by the petitioner dated 02.09.2013 claiming promotion to the post of Executive Engineer (Planning) and based on which, further action at the third respondent end can be taken to the first respondent, even to get restoration of the original post, namely, Executive Engineer (Planning).

10. In the result, the writ petition is allowed with the following directions:

(i) The impugned order is quashed;

(ii) The third respondent is directed to reconsider the issue by taking into account the request made by the petitioner dated 02.09.2013 with the claim of promotion to the post of Executive Engineer (Planning) (now redesignated as Executive Engineer (Regular)) and on such reconsideration, the third respondent to represent to the first respondent through the 2nd respondent explaining the position that the said post of Executive Engineer (Planning) is required in the third respondent Municipal Corporation for which, eligible hands are available for postings by way of promotion ;

(iii) On receipt of such a proposal from the third respondent through the 2nd respondent, the first respondent shall consider the same and to pass orders, taking into account of the totality of the situation, including the requirement, under which, originally the post of Executive Engineer (Planning) was sanctioned to the third respondent Municipal Corporation and pass appropriate Government Orders on merits and in accordance with law, within a period of three months from the date of such proposal being submitted by the third respondent.

No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.



To

1 THE SECRETARY MUNICIPAL
ADMINISTRATION & WATER SUPPLY DEPARTMENT
SECRETARIAT CHENNAI- 009.

2 THE COMMISSIONER OF MUNICIPAL
ADMINISTRATION EZHILAGAM ANNEXE BUILDING
CHEPAUK CHENNAI- 005.

3 TRICHY CITY MUNICIPAL
CORPORATION REPRESENTED BY ITS
COMMISSIONER TRICHY.

+1cc to M/s.M.Saravakumar, Advocate in SR.81705

+1cc to M/s.N.S.Karthikeyan, Advocate in SR.81786

+1cc to the Special Government Pleader, in SR.81910

W.P.(MD) No.20615 of 2013
and M.P.No.1 of 2013
19.12.2016

rr.

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