

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.12.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.19839, 19840, 20111, 20112, 29688, 30354 of 2014

and

M.P.Nos.1,1,1,1,1,1,2,3 & 1, 2 of 2014,

and

W.M.P.Nos.4538 to 4541 & 5222 of 2016

Meera ...Petitioner in WP.19839/14
V.Arul ...Petitioner in WP.19840/14
A.Ravichandran ...Petitioner in WP.20111/14
G.Srinivasan ...Petitioner in WP.20112/14

1.A.Ravichandran
2.G.Srinivasan
3.Meera
4.V.ArulPetitioner in WP.29688/14

1. K.Vallinayagam
2 P.Sivakumar
3 N.Vinayagam
4 S.Purushothaman
5 P.Venkatakumar
6 M.Dilli Ganesh
7 S.Sankara Narayanan
8 D.Ramesh
9 V.Vijayakumari
10 Bhaskar
11 A.Arunmozhi
12 Deepa
13 K.Vishnu
14 P.Kasthuri
15 K.Nanda Kumar
16 A.Penchilaiah
17 N.K.Elumalai
18 K.Paneerselvam
19 K.Dakshnamoorthy
20 C.Althaf Mohamed Hussain
21 A.Rajendran
22 M.Shanthi
23 T.Nagarani
24 M.Ramesh
25 S.Kalaiarasi
26 Susi Angel
27 S.Shankar

28 N.Kumar
29 G.Neelakannan
30 K.Suresh
31 N.V.Thirupal
32 P.V.Rudhrasairam
33 P.Baskaran
34 R.Sriramulu
35 V.Lakshmi
36 P.Tamilselvi
37 J.Shanthi
38 S.Purusothaman
39 P.Ruby Anithamary
40 V.Balaneelamalai Murugan
41 P.Panchanathan
42 Ranganathan
43 K.Jayaselvam
44 Selvam Ganesh
45 Srinivasalu
46 Moses
47 N.Jayasudha
48 K.Saminathan
49 B.Sathiskumar
50 T.Saravanan
51 M.Saravanan
52 K.Gnanavel
53 G.Arumugam

...Petitioner in WP.30354/14

Vs

1 The Principal Secretary &
Commissioner of Corporation of Chennai
Corporation of Chennai Ripon Buildings
Chennai-3.

2 The Deputy Collector
(Administration) Corporation of Chennai
Ripon Buildings Chennai-3.

3 The Assistant Commissioner
(General Administration & Personnel)
Corporation of Chennai Ripon Buildings
Chennai-3.

4 D.K.N.Dhanasekaran
Basic Health Worker Zone VIII Corporation
of Chennai Chennai. 10

- 5 K.Reenakumari
Basic Health Worker Zone IX Corporation of
Chennai Chennai. 34
- 6 P.Illankodi
Sanitary Worker Zone VI Corporation of
Chennai Chennai. 23
- 7 G.Dillibabu
Sanitary Worker Zone III Corporation of
Chennai Chennai. 60
- 8 R.Ezhillan
Sanitary Worker Zone XII Corporation of
Chennai Chennai. 16
- 9 E.Ashokkumar
Sanitary Worker Zone VII Corporation of
Chennai Chennai. 53
- 10 K.R.Srinivasan
Sanitary Worker Zone V Corporation of
Chennai Chennai. 10
- 11 C.H.Kalarani
Sanitary Worker Zone V Corporation of
Chennai Chennai. 21
- 12 R.Preetha
Sanitary Worker Zone V Corporation of
Chennai Chennai. 21
- 13 S.Amala
Sanitary Worker Zone III Corporation of
Chennai Chennai. 60
- 14 K.Dinakaran
Road Worker Zone V Corporation of Chennai
Chennai. 21
- 15 A.Chandirasoodan
Record Clerk Central Accounts Committee
Corporation of Chennai Chennai. 3
- 16 E.Suresh
Record Clerk Revenue Department
Corporation of Chennai Chennai. 3

- 17 J.Shandhini
Record Clerk Education Department
Corporation of Chennai Chennai. 3
- 18 S.Nadiya
Ayya District Family Welfare Department
Corporation of Chennai Chennai.3
- 19 K.Dineshkumar
Road Worker Zone V Corporation of Chennai
Chennai. 21
- 20 S.Ramprakash
Road Worker Zone VIII Corporation of
Chennai Chennai.10
- 21 S.Raghuraman
Road Worker Zone VI Corporation of Chennai
Chennai. 23
- 22 S.Chandrasekar
Road Worker Zone X Corporation of Chennai
Chennai. 24
- 23 S.Vanitha
Ayya District Family Welfare Department
Corporation of Chennai Chennai. 3
- 24 H.Mary Salomi Preeti
Ayya District Family Welfare Department
Corporation of Chennai Chennai. 3
- 25 R.Lokeshwari
Ayya District Family Welfare Department
Corporation of Chennai Chennai.3
- 26 J.Govindammal
Ayya District Family Welfare Department
Corporation of Chennai Chennai. 3
- 27 M.Baskaran
Road Worker Zone X Corporation of Chennai
Chennai. 24
- 28 P.Lokeshkumar
Road Worker Zone V Corporation of Chennai
Chennai. 21

- 29 G.Purushotham
Road Worker Zone I Corporation of Chennai
Chennai. 3
- 30 S.Jayanthi
Road Worker Zone III Corporation of
Chennai Chennai. 60
- 31 S.Sudhanraj
Road Worker Zone XI Corporation of Chennai
Chennai. 87
- 32 K.Srinivasan
Road Worker Zone XI Corporation of Chennai
Chennai. 87
- 33 M.Sivakumar
Road Worker Zone XII Corporation of
Chennai Chennai. 16
- 34 K.Srinivasan
Worker General Factory Auto Engineering
Department Corporation of Chennai Chennai.
3
- 35 M.A.Christopher Aloshtiyas
Worker General Factory Auto Engineering
Department Corporation of Chennai Chennai.
3
- 36 K.Shankar
Malaria Worker Health Department
Corporation of Chennai Chennai. 3
- 37 D.Deepa
Road Worker Zone VII Corporation of
Chennai Chennai. 53
- 38 V.Hariganesh
Road Worker Zone X Corporation of Chennai
Chennai. 24
- 39 B.Malarkodi
Road Worker Zone XII Corporation of
Chennai Chennai. 16
- 40 R.Sangeetha
Sanitary Worker Zone XII Corporation of
Chennai Chennai. 16

- 41 M.Nithiyanandam
Garden Worker Gardening Department
Corporation of Chennai Chennai. 3
- 42 P.Pandurangan
Garden Worker Gardening Department
Corporation of Chennai Chennai. 3
- 43 M.Vinoth
Garden Worker Gardening Department
Corporation of Chennai Chennai. 3
- 44 C.Mathimalar
Garden Worker Gardening Department
Corporation of Chennai Chennai. 3
- 45 A.Immanualvel
NFCB Worker Zone IV Corporation of Chennai
Chennai. 3
- 46 E.Sujankumari
Road Worker Zone VII Corporation of
Chennai Chennai. 53
- 47 P.Umamaheswari
Road Worker Zone XI Corporation of Chennai
Chennai. 87
- 48 C.Mahendrakumar
Road Worker Zone III Corporation of
Chennai Chennai. 60
- 49 B.Balamurali
Road Worker Zone XI Corporation of Chennai
Chennai. 60
- 50 M.Padmapriya
Road Worker Zone XV Corporation of Chennai
Chennai. 119
- 51 C.Rajasekar
Road Worker Zone XV Corporation of Chennai
Chennai. 119
- 52 C.P.Arunkumar
Road Worker Zone XI Corporation of Chennai
Chennai. 87
- ...Respondents in WP.30354/14

1.The Commissioner
Corporation of Chennai
Chennai

...R1 in WPs.19839,19840
20111, 20112 & 29688/14)

2.The Deputy Commissioner
Revenue & Finance
Corporation of Chennai
Chennai

...R2 in WP.No.29688 of 2014

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to promote the petitioner as Tax Collector in pursuant to the inclusion of her name in the panel for year 2013-14 prepared by the respondent in Po.Thu.Na.Ka.No.E6/25777/2013 dated 24.08.2013 and grant her all consequential service and monetary benefits.

Prayer in WP.No.29688 of 2014:Writ of Certiorarified Mandamus or any other appropriate Writ or direction in the nature of Writ calling for the records of the respondent in connection with the impugned resolution passed by the first respondent in Resolution No.509/14 (Subject No.36) issued in Po.Thu. Na.Ka.No. E6/37000/2013 dated 24.09.2014 and the consequential panel of the Junior Assistants for the year 2014-15 issued by the first respondent in Po.Thu. Na.Ka.No. E6/41718/2014 dated 11.11.2014 and quash the same and further direct the respondents 1 to 3 to consider the claim of the petitioners for inclusion of the petitioners name for promotion as Junior Assistant for the year 2014-15 and promote the petitioners as Junior Assistant with all consequential service and monetary benefits(in WPs.19839,19840,20111 & 20112/14)

For Petitioner : M/s.M.Muthappan

For Respondents : Mr.V.Ayyadurai
Additional Advocate General
Assisted by Mr.V.C.Selvasekaran.

COMMON ORDER

The relief sought for in these writ petitions in W.P.Nos.19839,19840, 20111, 20112 of 2014 is for a direction to the respondents to promote the writ petitioners as Tax Collectors in pursuant to the inclusion of his/her name in the panel for the year 2013-2014 prepared by the respondents in proceedings dated 24.08.2013 and grant all consequential service

and monetary benefits. In respect of other writ petitions in W.P.Nos.29688 and 30354 of 2014, the circular issued by the respondents in proceedings dated 17.10.2014 is sought to be quashed. Further, a direction is sought for to direct the respondents to promote the petitioners as Tax Collectors in pursuant to the inclusion of their names in the panel for the year 2013-2014 prepared by the first respondent in proceedings dated 24.8.2013 and grant all consequential service and monetary benefits.

2. At the outset, the relief sought for in all these writ petitions are common. Thus, all the writ petitions are taken up for hearing together.

3. The learned counsel, appearing on behalf of the petitioners, states that the writ petitioners were initially appointed as Sanitary Workers in the Corporation of Chennai, on temporary basis through an interview conducted based on the sponsorship made by the Employment Exchange concerned. All the writ petitioners were selected and appointed during various period. The services of the writ petitioners were regularized in the cadre of Sanitary Worker and they became the permanent employee of the Corporation of Chennai. The next avenue for promotion to the post of Sanitary Worker is to the post of Tax Collector in the Corporation of Chennai. All the writ petitioners are fully qualified for promotion to the post of Tax Collectors. The feeder categories for the post of Tax Collector are Office Assistant, Corporation Workers, Sanitary Workers, Road Workers etc. The minimum educational qualification prescribed is pass in S.S.L.C. The writ petitioners are fully qualified and eligible for promotion to the post of Tax Collector as per the Rules in force. The crucial date for preparation of the panel for promotion for the year 2013-2014 was 1.7.2013. The respondents had prepared the panel of eligible persons fit for promotion to the post of Tax Collector in proceedings dated 24.08.2013. The names of the writ petitioners were included in the said panel.

4. The grievances of the writ petitioners are that the respondents instead of promoting the writ petitioners, have promoted the other persons by deviating the rules. In this regard, the contention of the writ petitioners are that the juniors were promoted and the method of direct recruitment and by way of transfer of service was resorted to by the respondents, while undertaking the process of promotion.

5. The learned counsel, appearing for the writ petitioners, states that as per rules, the panel has to be prepared every year. Taking into account the number of vacancies available, the panel should be operated from the period of one year from the approval. In the case on hand, the tentative panel was

prepared on 24.08.2013 for the year 2013-14 and was circulated to all the members in which the names of the writ petitioners were found. Even, as per the petitioners, the panel prepared on 24.08.2013 was bound to be lapsed on 23.08.2014. Thus, the writ petitioners are constrained to move these present writ petitions.

6. The learned Additional Advocate General appearing on behalf of the respondent Corporation defended the contentions raised on behalf of the writ petitioners. The counter affidavit filed on behalf of the Corporation states that the Chennai Corporation Subordinate Service Bye-Laws 1981 and 2009 for Class-III& IV service is approved by council and all appointments and promotions relating to Class-III& IV service are being done as per the Bye-Laws of the year 2009, which is pending for approval before the Government. Even the writ petitioners were also appointed in the various categories based on the above said Bye-Laws,, which is pending for the approval of the Government. Appointment, fixation of pay, Sanction of annual increment, retirement and other benefits are implemented as per the said Bye-Laws. The writ petitioners were also benefited by the said Bye-Law. Further, Section 349 of the Chennai City Corporation Act 1919(Tamil Nadu Act IV of 1919) empowers the council of the Chennai Corporation to make Bye-Laws for all matters.

7. Pursuant to the orders passed by the Government in G.O.Ms.No.154, Personnel and Administrative Reforms(P) Department, dated 19.09.2006, the Government have directed that 25% of the vacancies in the post of Junior Assistant (Group-C) to be filled by direct recruitment in the Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service be reserved for appointment on compassionate ground subject to the fulfillment of the other conditions prescribed by Government for such appointment from time to time. Based on the above Government order, the Greater Chennai Corporation has decided to reserve for appointment on compassionate ground as prescribed by the Government.

8. However, the ratio between promotion and Direct Recruitment for the post of Junior Assistant is fixed as 1:1 and the consolidated draft Bye-Laws 2009 for Class-III&IV subordinate services of Greater Chennai Corporation approved by the Council of Greater Chennai corporation for various posts (Including Junior Assistant Post) have been sent to the Government for approval vide proceedings dated 15.07.2017.

9. The method of recruitment, ratio between promotion and Direct Recruitment to the post of Junior Assistant as recommended to Government in proceedings dated 15.07.2017 is submitted below:

GREATER CHENNAI CORPORATION CLASS III & IV SUBORDINATE SERVICES
BYE-LAWS 2009

Name of the post	Method of Recruitment	Qualification prescribed	Crucial Date	Ratio
(2)	(3)	(4)		(5)
JUNIOR ASSISTANT	1) By promotion of approved probationers from all lower categories. i) Must have completed 5 years of service. ii) preference is given to the Graduates who have completed 3 years of service. (The ratio for promotion between graduate and Non-graduate is 1:1) 2) By DIRECT RECRUITMENT Out of the reservation allotted for Direct Recruitment, 50% will be filled up from the legal heirs of the Corporation employees who died in service with degree qualification and remaining 50% will be filled through Direct Rectuitment. Note: The remaining unfilled vacancies in the panel year to be brought forward next year to the respective quotas.	Minimum General Educational Qualification (SSLC passed). Any recognized university degree from approved by the UGC (10th -12th - UG-PG)	1 st AUGUST of every year.	The ratio between promotion and Direct Recruitment:1 :1

10. The learned counsel for the writ petitioners made a submission that the Bye-laws are amended in respect of the fixation of ratio 1 : 1 between the promotees and the direct recruitees approved by the Government. This apart, the names of the writ petitioners were included in the panel of the year 2013-2014 in respect of the vacancies aroused in the year 2013-2014. Therefore, even if the amended Bye-laws are to be implemented and the same is to be implemented only prospectively and the same cannot be implemented in respect of the vacancies arose in the year 2013-2014. At the outset, the learned counsel for the writ petitioners states that the amendment now carried

out in the by laws in respect of the fixation ratio 1 : 1 cannot be implemented retrospectively, in respect of the vacancies aroused in the year 2013-2014.

11. The learned Additional Advocate General appearing on behalf of the respondent brought to the notice of this Court that the ratio of 1 : 1 between the promotees and direct recruitees was implemented by virtue of the resolutions passed by the Corporation Council in resolution No.45/2010 on 28.01.2010. Thus, the ratio was fixed from the year 2009 onwards and the resolution was passed on 28.01.2010 and the same was already implemented and the proposal originally submitted immediately after passing of the resolution is also pending before the Government for approval. The present proposal submitted on 15.07.2017 is a reminder to the original proposal to the Government seeking approval of the amendments. However, the fact remains that the Bye-laws was amended and the ratio of 1 : 1 was fixed, for filling up of the post of Junior Assistant in resolution No.45/2010 dated 28.01.2010 and in respect of the post of the Tax Collector, the ratio of 1 : 2 was fixed, 1 for the promotion and 2 for the direct recruitees. Both the amendments were implemented with effect from 28.01.2010 and the contention of the writ petitioners is that the post of Tax Collector and Junior Assistant to be filled up by way of promotion alone cannot be accepted.

12. At the outset, it is contended that the ratio was fixed in the year 2010 and the question of filling up the post of Tax Collector and Junior Assistant only by way of promotion will not arise at all.

13. The relief sought for in these writ petitions are for a direction to direct the respondents to promote the writ petitioners as Tax Collector in pursuant to the inclusion of their names in the panel for the year 2013-2014, which was already prepared in proceedings dated 24.08.2013. No doubt, the names of the writ petitioners were considered for inclusion in the panel for promotion to the post of Tax Collector. However, the panel was not acted upon and no body in the panel was promoted to the post of Tax Collector. When the panel prepared for the year 2013-2014 was not acted upon then it is to be construed that the panel prepared was lapsed. Life of the panel is one year and therefore, if any panel is prepared and not acted upon for about one year then it is to be construed that the panel stands lapsed, then the authorities have to prepare a fresh panel for next year.

14. Undoubtedly, the writ petitioners had approached this Court before the panel was lapsed. However, this Court is of the opinion that none of the persons included in the panel were

promoted and therefore, the case of the writ petitioners alone cannot be considered at this point of time, based on the inclusion of the names in the panel of the year 2013-2014. In any case, the authorities have to prepare a fresh panel considering all the eligible persons including the writ petitioners, based on the Rules now in force.

15. Filling up of the post of Tax Collector and Junior Assistant are an administrative prerogative of the employer. No employee can claim that a particular post is to be filled up. Whenever, the process of filling up of the post is undertaken then the duty of the authorities is to see that all the eligible persons, who are waiting for promotion to be considered in accordance with the rules in force. Thus, the promotion can never be claimed as a matter of right, however consideration in the panel is a right of an employee.

16. In the case on hand, the names of the writ petitioners were considered and included in the panel for the year 2013-2014. Along with the writ petitioners, the names of other candidates were also considered and included, however, the panel was not acted upon. Since the panel was not acted upon, the same is to be treated as lapsed and now the authorities have to prepare a fresh panel considering all the eligible candidates for promotion. The case of the petitioners alone cannot be considered in isolation and the right of all the employees, who are all eligible for promotion also to be considered in accordance with the rules in force.

17. Mere inclusion of the name of the persons in the panel cannot constitute a right for seeking promotion. All the eligible persons, who are included in the panel to be considered in accordance with the rules. This being the legal principles to be followed, this Court is of the opinion that the case of the writ petitioners cannot be considered in isolation and their case also to be considered along with all other eligible persons who are waiting for promotion.

18. In respect of the amendment, it is the policy of the employer and the amendment or fixation of ratio cannot be questioned by the writ petitioner unless, such a fixation is found to be unconstitutional or in violation of any statute in force. This apart, the right of an employee is to be confined only in respect of the cadre in which they working. In respect of the promotion the employees are bound by the rules in force and all promotions are to be made only in accordance with the rules in force. In view of the fact that the panel of the year 2013-2014 was not acted upon, the respondents are bound to prepare a fresh panel in accordance with the rules in force as on date. While preparing the panel, the names of all the writ

petitioners also to be considered along with all other eligible candidates.

19. This Court records its displeasure in respect of the non approval of the Bye-laws periodically by the Government. The inaction of the officials of the Corporation in this regard also to be deprecated. It is brought to the notice of this Court that many amendments issued long back in the Corporation in respect of the service rules have not been approved by the Government so far. The Commissioner of Corporation is directed to initiate appropriate action against all the erring officials in this regard and if necessary, institute Disciplinary Proceedings for their negligence and dereliction of duty, if found in this regard.

20. The learned Additional Advocate General further drawn the attention of this Court in respect of paragraph 5 of the counter, which states that the existing rule position does not admit giving further preference to the persons appointed on compassionate ground in the feeder category to fill up the promotive post of Junior Assistant. Non-graduates appointed on compassionate ground at the entry post of Class-IV employees are considered along with other employees of the feeder category and promotion to the post of Junior Assistant will be given to graduate persons who have completed 3 years of service and in case of others with 5 years of service. Hence, there is no scope to give double time priority to the employees appointed on compassionate ground in Class-IV, which is the feeder category to the promotive post of Junior Assistant. Hence, the employees appointed under compassionate grounds will not be given any undue preference in considering them to the next promotional post of Junior Assistant.

21. The learned Additional Advocate General, citing the above statement made in the affidavit, assured that the employees appointed on compassionate grounds will not be provided with any undue preference in the matter of further promotion to the post of Junior Assistants.

22. The learned counsel for the writ petitioners states that the qualification of a degree from any recognized university prescribed as a qualification in the Bye-Laws of the year 2009 is contrary to the earlier Bye-Laws. The learned counsel for the writ petitioners states that the new qualification introduced in the Bye-Law in respect of prescription of degree cannot be applied to the writ petitioners, who are already in service and were appointed in the year 1992. In other words, it is contended that the amendment made in the Bye-Laws in respect of the enhancement of educational qualifications cannot be made applicable to the employees, who are already in service and

waiting for their promotion for the post of Junior Assistant.

23. The learned counsel for the writ petitioners is questioning the respondents in respect of their powers to amend the educational qualification in the service rules. Originally, the qualification prescribed for promotion or appointment to the post of Junior Assistant was SSLC passed and now, the same is amended and the degree from any recognized university is prescribed as a qualification. The writ petitioners state that the amended qualifications in the Bye-Laws cannot be applied to them. Earlier, the Bye-Law itself has not been approved by the Government.

24. This Court is of the opinion that the Bye-Laws are not approved by the Government for many years in respect of the Corporation of Chennai. Even, as per the counter affidavit filed by the Corporation of Chennai, the writ petitioners are appointed based on the unapproved Bye-Laws. Further, all the service benefits including fixation of pay, Sanction of annual increment, retirement and other benefits are settled as per the existing Bye-Law, which is yet to be approved by the Government. When the very appointment of the writ petitioners itself are based on the Bye-Law, which was not approved by the Government at that point of time and now, they cannot come out with an argument that the present amendment has not been approved by the Government.

25. The contentions raised on behalf of the writ petitioners in this regard deserve no merit consideration in view of the settled legal principles of law that, prescription of amendment of educational qualifications or the service conditions are the prerogative powers vested with the employer. The amendment of service condition or educational qualifications, promotions as a part of service conditions and it is a condition imposed at the time of issuing the order of appointment itself. When it becomes a part of service conditions flows along with the order of appointment, the employees cannot question any amendments issued thereafter.

26. This Court is of the opinion that promotion or appointment can never be claimed as a matter of right. However, consideration for promotion is a fundamental right. Whenever, the process of preparation of a panel or a provisional list is sought to be prepared, then only the right of the qualified employees will accrue. An amendment issued by the employer in respect of the educational qualifications will not construe any legal right for the employees so as to challenge the same on the ground that they should be given promotion or appointment based on the old educational qualifications prescribed in pre-amendment rules. If such an argument is accepted, then the same will have a disastrous consequence in respect of the development of the State

or State owned organizations. This Court is not inclined to consider such arguments advanced on behalf of the writ petitioners. In a developing nation, change in educational qualifications and other criteria or enhancing the qualifications is certainly imminent to provide constant progress in respect of the development of our great nation. Advancement of educational qualifications, verification of antecedents, transparency and equal opportunity are the essential characters for the purpose of undertaking the process of appointment or promotions. The improvements in the service conditions are certainly required not only for the development of the organization, but also to provide effective public administration by the State as well as by the Union. This Court is of an undoubted opinion that consistent and constant review of all these factors are certainly required and a periodical review would be of more effect in respect of the development of our great nation. It is desirable that an expert committee in this regard, by the State or State owned organizations is to be constituted for the purpose of developing and improving not only the service conditions, but also the other rules in this regard.

27. This Court is of the opinion that the State/Union and the organizations have to look forward in respect of the advancements and the developments of our country. In this regard, it is certainly imminent that the State has to periodically amend the rules for improving the qualifications and other criteria for public appointments and promotions. The Courts have to approve and appreciate such actions of the State for the purpose of taking our nation forward. Progress in prescribing the higher qualifications will be certainly advantageous to the organization and it cannot be held that the same will amount to disadvantage to the existing employees.

28. The existing employees and their service rights are certainly protected in the cadre they work. The protection is to be given in respect of the post they hold, i.e., to say that the salary, emoluments and other perquisites attached to the particular posts alone is to be protected and the protection cannot be extended in respect of further appointments or promotion to any other higher posts. The interpretation of the learned counsel for the petitioner cannot be accepted since the protection of service conditions are to be extended only in respect of the posts in which the employees are working and the same will not cover any further appointment or promotion to the higher post. Such being the concept to be adopted, this Court finds no irregularity or illegality in amending the qualifications for the post of Junior Assistant. The qualification of Secondary School Leaving Certificate [hereinafter referred to as "SSLC"] for the post of Junior Assistant was existing for many decades, unchanged. Even, this Court is of the opinion that there is a long delay in enhancing

the qualifications for the post of Junior Assistant. "SSLC" is the minimum educational qualification prescribed long ago and considering the current day educational growth amongst the citizen, certainly enhancement of educational qualifications in all the departments are required. After the Parliament enacting the Right to Education Act and even prior to that an awareness to provide education to the children had undergone a consistent progress and the literacy level in our country is constantly improving. Under these circumstances, when large number of youth possessing the qualification of degree and they are better qualified for performing the duties and responsibilities of the clerical post, an opportunity is certainly required and this apart, this Court is of the view that prescription of higher qualification will also encourage the students to pursue higher studies.

29. For instance, a student stopping the school education at "SSLC" level, certainly will be kindled to pursue his/her higher studies. Improvement in a consistent manner will also encourage the students to pursue the higher studies and as of now, large number of graduates are unemployed in our country and therefore, enhancement of qualification in this regard will certainly improve the public administration, and also will provide better opportunities to the unemployed youth of this great Nation.

30. The concept of service protection is to be granted to the existing employees are certainly limited to the post in which they are working. Protection cannot be granted so as to prevent the employer from prescribing or modifying the educational qualifications in the rules for the higher posts. The service protection has got a limited purpose and there cannot be any life time protection so as to include all further promotion to the higher posts. Such an argument will create an anomalous situation and the same cannot be considered as an actual purpose for granting such service protection. The service conditions including salary, allowances, perquisites in the posts in which the employees are working alone, deserves to be protected and certainly not the higher posts. An employee aspiring for appointment or protection to the higher posts should acquire the higher qualification prescribed or amended in the rules. Only on acquiring such an amended qualifications, those existing employees would be considered. Contrarily, the employees cannot plead that they should be given promotion or appointment based on the old rules prevailing prior to the issuance of the amendment in respect of the educational qualifications.

31. The learned Additional Advocate General cited the judgment of Hon'ble Supreme Court of India in the case of K.Jagadeesan Vs.Union of India and others reported in (1990) 2 Supreme Court Cases 228, the relevant portion of the order are extracted here under:

"4.The main argument of learned counsel for the appellant is that the Tribunal was in error in holding that the rule affected merely a chance of promotion which the appellant had. It was submitted by him that although the appellant could not claim any right to be promoted, he certainly had the right to be considered for promotion and the amendment to the rule carried out by the said notification depriving of that right was bad in law.

5.Strong reliance was placed by the learned counsel for the appellant on the decision of this Court in T.R.Kapur V.State of Haryana where it was held that right to be considered for promotion is a condition of service. This decision is, however, of no assistance to the learned counsel in support of his argument because the bench which rendered the said decision has stated as follows:(SCCp.595,para16)

"It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect...It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chance of promotion may not be."

It was further held that:(SCCp.595, para 16)

"an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively."

It was, however, clarified that:(SCCp.595, para 16)

"unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled."

6.It is only in this sense, that is, as set out in the immediately preceding paragraph that the view has been taken that the Rules cannot be retrospective. The ratio of this decision is not applicable to the case before us as there is no question of reverting the appellant. Again, it has been held by a bench

comprising three learned Judges of this Court, in State of Maharashtra V.Chandrakani Anant Kulkarni (at paragraph 16, Page 142 of the said report), that mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the condition of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not."

32. Yet another judgment in the case of Hardev Singh Vs. Union of India and Another reported in (2011) 10 Supreme Court Cases 121, the Hon'ble Supreme Court held in paragraph 17, 25 and 26 which is extracted as hereunder:

"17.It cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank of Lieutenant-General but he had a right to be considered for promotion to the rank of Lieutenant-General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant's case was duly considered by the SSB for his promotion to the rank of Lieutenant-General.

25.In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decision of this Court in Virender S.Hooda Vs. State of Haryana where this Court had held in para 4 of the judgment that: (SCC p.699)

"4....when a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commissioner from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

26.Similarly, in Balco Employes' Union Vs. Union of India, it has been held that a court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical."

33. The legal principles in this regard are unambiguously clarified by the Hon'ble Supreme Court of India in the above two cases by stating that the promotion can never be claimed as a matter of right. However, consideration alone can be claimed as

right.

34. Considering the facts and circumstances of the case, this Court is of the view that the amendment effected in respect of educational qualification for promotion to the post of Junior Assistant is certainly in consonance with the powers vested with the respondents under rules. The respondents have ample powers to alter or amend the educational qualifications and other criteria for promotions as well as appointments.

35. In respect of the present writ petitions, the petitioners have not challenged the rules or amended rules. Contrarily, the claim is that their names were included in the panel of the year 2013-2014 and therefore, they are entitled to be promoted. Promotion can never be claimed as a right nor the promotions can be granted in violation of the rules in force. A mere consideration and inclusion in the panel will not confer a right on the employees to claim promotion. If any junior was promoted contrary to the rules or over looking the seniority, then, the employees will get a right to seek promotion on par with their juniors. However, the rules regarding seniority, suitability, educational qualifications are to be considered before granting any such relief of promotion on par with the juniors. In the case on hand, no such averments or grounds are raised in the writ petition. Thus, this Court is of the opinion that the relief sought for seeking promotion based on the old Bye-Laws cannot be considered in view of the fact that the respondents have fixed a ratio of 1:1 between promotion and direct recruitment and this apart, the qualifications and other criteria are prescribed in the rules. Thus, all promotions are to be made only in accordance with the rules in force and the petitioners cannot seek that they should be given promotion based on the old rules, which was in force at the time of their respective appointments.

36. Thus, these writ petitions are devoid of merits. Accordingly, all these writ petitions stand dismissed. However, there shall be no orders as to costs. Consequently, connected miscellaneous petitions are also dismissed.

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Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

kak/ah/Svn

To

1.The Commissioner,
Corporation of Chennai,
Chennai.

2.The Deputy Commissioner
Revenue and finance
Corporation of Chennai
Chennai

3.The Principal Secretary
and Commissioner of Corporation of Chennai
Corporation of Chennai
Ripon Buildings Chennai-3

4.The Deputy Collector (Administration)
Corporation of Chennai
Ripon Buildings, Chennai-3

5 The Assistant Commissioner
(General Administration and Personnel)
Corporation of Chennai
Ripon Buildings, Chennai-3

+6 ccs to Mr.M.Muthappan Advocate sr 92583 to 92588

W.P.Nos.19839,19840, 20111,
20112, 29688, 30354 of 2014

rv(co)
aa29/01/2018

सत्यमेव जयते

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