

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.06.2017

Delivered on : 11.07.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.27061 of 2008  
and M.P.No.2 of 2008 and M.P.No.1 of 2011

B.Prabhakaran .. Petitioner

Vs.

- 1.The State of Tamil Nadu,  
Rep. by the Secretary to Government,  
Municipal Administration and Water  
Supply Department,  
Secretariat, Fort St.George,  
Chennai-9.
- 2.The Commissioner,  
Municipal Administration,  
Chepauk, Chennai-5.
- 3.The Commissioner,  
Coimbatore City Municipal Corporation,  
Coimbatore.
- 4.K.Saravana Kumar  
Junior Engineer (Mechanical),  
Coimbatore Corporation,  
Coimbatore.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3<sup>rd</sup> respondent herein relating to Resolution No.262 in Na.Ka.No.177769/2006/MCI dated 30.10.2007 of the Municipal Council of the Coimbatore City Municipal Corporation and the consequent proceedings in Na.Ka.No.177769/2006/MCI dated 31.10.2008 and the proceedings by the first respondent in G.O.No.526 dated 16.12.2008, quash the same and consequently direct the respondents to consider the petitioner and appoint him to the post of Assistant Executive Engineer (Main Office) with effect from 13.06.2008 and grant of consequential benefits such as seniority, increments, further promotions etc.

[Prayer amended as per the order dated 29.06.2016 in WMP.19181 of 2016 in W.P.No.27061 of 2008]

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel  
assisted by  
Mrs.A.L.Gandhimathi

For Respondents: Mr.K.Dhananjayan,  
Special Govt. Pleader for R1 and R2  
Mr.R.Sivakumar for R3  
Mr.K.Rajkumar for R4

#### O R D E R

The petitioner, challenging the proceedings relating to promotion of the fourth respondent as Assistant Executive Engineer (Main Office) in the services of the Coimbatore City Municipal Corporation, Coimbatore, has filed this writ petition.

2. The petitioner, in the affidavit filed in support of this writ petition, averred as follows:

2.1. The petitioner entered in the services of the third respondent Corporation as a Draughtsman on 30.04.1986 and was promoted as Junior Engineer on 13.05.1988 and he is a Diploma holder in Engineering. The next avenue for promotion is to the post of Assistant Executive Engineer, which is in the cadre of Class II category post. The fourth respondent is a Diploma Holder in Mechanical Engineering and he entered into the service as Foreman on 21.10.1992 and he was promoted to the post of Junior Engineer (Mechanical) on 28.12.1995 and continuing in the said post till the Resolution was passed by the Coimbatore City Municipal Corporation, followed by a Government Order by the first respondent.

2.2. The services in respect of Junior Engineers and Assistant Executive Engineers in the City Municipal Corporation, Coimbatore are governed by the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules, 1996 and for promotion to the post of Assistant Executive Engineer is concerned, Rule 3 provides that the said post shall be filled up by promotion from the holders of the post of Assistant Engineer or Junior Engineer and Rule 4 prescribe the qualification as "must have worked as Assistant Engineer/Junior Engineer for not less than one year in the Engineering Department of the Corporation Main Office and for not less than three years in the Ward Offices". Rule 6 provides that promotion to those posts shall be made in accordance with seniority and appointment on deputation shall be

made only when no qualified person is available in the services of the Coimbatore City Municipal Corporation. Insofar as the requirement contemplated as to the discharging of duties for not less than one year in the Engineering Department of the Corporation Main office, it is the stand of the petitioner that the said experience was not made available to most of the servants in the Corporation, since the Assistant Engineers/Junior Engineers, who were having the qualification, were not posted in the main office and were not given opportunity to serve in the main office to acquire the prescribed service qualification.

2.3. The petitioner also alleges that appointments and postings in the main office was being made according to whims and fancies without reference to seniority and the first respondent has taken note of the said fact and vide communication dated 19.10.2007 had issued a direction that action may be taken to fill up the vacant posts of Assistant Executive Engineers in the third respondent Corporation by promoting Assistant Engineers/Junior Engineers with a minimum of four years experience in the post provided they are otherwise qualified and in that regard also, relaxed Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules, 1996 and the third respondent was also called upon by the first respondent to send necessary amendment proposal for making amendment to Rule 4.

2.4. The third respondent has also drawn the seniority list of Assistant Engineers/Junior Engineers, vide seniority list dated 31.08.2000 and the petitioner's name was found at Sl.No.10 and the fourth respondent's name found place at Sl.No.17 and in the inter se seniority list, which was drawn on 08.06.2001, the petitioner's name found at Sl.No.15 and the name of the fourth respondent found place at Sl.No.22. Later on, seniority list was drawn on 22.06.2001 and the petitioner's name was found at Sl.No.7 and the name of the fourth respondent was deleted from the said list, as Junior Engineer (Mechanical) was not a post which could be considered on par/equal to the post of Assistant Engineers/Executive Engineers in the services of the third respondent Corporation in terms of the above said Service Rules. However, a separate seniority list of Junior Engineer (Mechanical) containing the name of the fourth respondent alone was issued by the third respondent, as confirmed vide proceedings dated 14.08.2007.

2.5. Assistant Engineers/Junior Engineers upto Sl.No.6 were given promotion and one of the incumbents, namely Mr.N.Balasundaram retired from service on 28.02.2007 and according to the petitioner, he is the next person to be considered for promotion as he possess the necessary prescribed qualification. It is also the stand of the petitioner that

Junior Engineer (Mechanical) is not one of the recognized cadres of service in the Tamil Nadu Municipal Engineering and Water Supply Service Rules, 1996 and the only exception was that persons, who were in service at the time of introduction of the service rules, were directed to be protected by the Government by issuance of a clarificatory Government Order in G.O.Ms.No.146, Municipal Corporation Administration and Water Supply Department dated 15.07.1997.

2.6. The grievance expressed by the petitioner is that overlooking the seniority, the fourth respondent tried his level best to get promoted as Assistant Executive Engineer (Main Office) and it cannot be considered for the reason that it is not coming under feeder category for the post of Assistant Executive Engineer and there is no separate post of Assistant Executive Engineer (Mechanical and Solid Waste Management) in the corporation service and the third respondent, acting in an arbitrary, illegal manner and for extraneous reasons, circulated the Agenda for passing a resolution to permit the fourth respondent herein to the post of Assistant Executive Engineer as if he was the only person competent to be appointed as Assistant Executive Engineer, by virtue of his service as Junior Engineer (Mechanical) stating that he had been attending to the work of maintenance of vehicles and Solid Waste Management.

2.7. The petitioner, challenging the legality of the same, has filed W.P.No.14082 of 2008 and it was entertained and an interim order was granted. However, the writ petition was dismissed, vide order dated 22.09.2008, holding that the writ petition was premature and the resolution was only placed for consideration and when the proposed promotion was ratified by the Government, then only the petitioner would have cause of action to make a challenge. The petitioner, challenging the dismissal of the writ petition, filed a Writ Appeal in W.A.No.1212 of 2008 and it was disposed of by this Court on 29.10.2008 by giving opportunity to the petitioner to challenge the resolution, if passed immediately, without waiting for ratification of the same by the Government.

2.8. The Council of the third respondent Corporation passed a resolution dated 30.10.2008 to promote the fourth respondent as Assistant Executive Engineer (Main Office) and in compliance of the same, the Deputy Commissioner of the Municipal Corporation, who was in-charge of the post of Commissioner to the Corporation, has hastily issued the proceedings in Na.Ka.No.177769/2006 dated 31.10.2008, promoting the fourth respondent temporarily to the post of Assistant Executive Engineer subject to ratification of the Government in the pay

scale of Rs.8,000-275-13,500. The petitioner, challenging the legality of the Resolution dated 30.10.2008 as well as the consequential proceedings of the third respondent, has come forward this writ petition.

2.9. The first respondent has also passed G.O.Ms.No.526 dated 16.12.2008 ratifying the said Act and therefore, vide order dated 29.06.2016, this Court permitted the petitioner to amend the prayer by challenging the said Government Order also.

2.10. The Writ Petition was admitted on 14.11.2008 and this Court, in the miscellaneous petition for stay, vide order dated 14.11.2008, taking note of the submission that the fourth respondent has been temporarily promoted, passed an order that the promotion of the fourth respondent is subject to the result of the writ petition and now the fourth respondent is working as Assistant Executive Engineer in the Main Office of the Coimbatore City Municipal Corporation.

2.11. The third respondent has filed a petition in M.P.No.1 of 2011 for vacating the interim order granted by this Court on 14.11.2008 and in the affidavit filed in support of this writ petition would state that the fourth respondent is presently working as Assistant Executive Engineer (Main Office) and he is looking after the maintenance of all the motor vehicles of the Corporation and also looking after the Solid Waste Management Project and the third respondent also traced the service career of the fourth respondent and would state that while he was working as Junior Engineer (Mechanical) was also attending to civil works in the Ward Offices on par with other Assistant Engineers/Junior Engineers from 07.08.1998 onwards till 28.05.2006 along with his regular works of Vehicle Maintenance and Solid Waste Management. In the meanwhile, vide proceedings dated 22.12.2006, a proposal was mooted out to issue a separate provisional seniority list to the post of Junior Engineer (Mechanical) to which the fourth respondent was promoted during December, 1995 and the fourth respondent, objecting to the same, has submitted a representation stating that in the event of deleting his name from the subsequent seniority list published on 04.07.2007, his name must be considered for promotion as Assistant Executive Engineer (Main Office), which was exclusively created for maintenance of all Corporation vehicles and Solid Waste Management as per G.O.(Ms).No.139, Municipal Administration and Water Supply Department dated 27.05.1997 and it was considered and the name of the fourth respondent was deleted from the combined seniority list and a fresh seniority list of Assistant Engineers/Junior Engineers was published, vide proceedings dated 04.07.2007.

2.12. The representation of the fourth respondent was considered and accordingly, vide proceedings dated 14.08.2007, the seniority list to the post of Junior Engineer (Mechanical) was confirmed and the fourth respondent is the only person available in the seniority list for the said post. It is further stated that the third respondent took a decision for implementation of Integrated Solid Waste Management project under the JnNURM Scheme at a cost of Rs.96.51 Crores and for that purpose, the first respondent, vide G.O.(2D).No.105 dated 26.06.2007, had created certain additional posts including 4 posts of Assistant Executive Engineer. The third respondent, vide proceedings dated 02.07.2007, made suggestions to the second respondent as to the method by which the above said sanctioned posts can be filled up and it was suggested that out of four posts, one post may be filled up with the specialization in Environmental/Mechanical Engineering from the Corporation service and another post may be filled up from the regular Assistant Engineers/Junior Engineers of the Corporation and the remaining two posts may be filled up on deputation basis. The fourth respondent, being a Junior Engineer, submitted a representation dated 16.08.2007 praying for consideration for his promotion to the newly created post of Assistant Executive Engineer under the JnNURM Scheme and it was favourably considered and the proposal was sent to the second respondent, vide proceedings dated 28.01.2008 and the said official in-turn had considered the entire matter including the representation of the fourth respondent and appropriate proposal was sent to the first respondent, vide proceedings dated 02.02.2008. However, the first respondent, vide letter dated 13.03.2008, had suggested that all the posts created under the JnNURM Scheme may be filled up on deputation basis.

2.13. It is further stated in the counter affidavit of the third respondent that the fourth respondent once again submitted a representation dated 12.05.2008 to the respondents 1 and 2 objecting for exclusion of his name from the combined seniority list and in the event of deletion of his name from the seniority list of Assistant Engineers/Junior Engineers, his name must be considered for promotion to the post of Assistant Executive Engineer (Main Office) which was created for the maintenance of all the vehicles and Solid Waste Management and it was positively considered in the Council Committee Meeting of the third respondent Corporation. The decision taken by the Council Committee was put to challenge by the petitioner in W.P.No.14082 of 2008 and it was dismissed as premature and on appeal in W.A.No.1212 of 2008, liberty was given to the petitioner to challenge the resolution if passed immediately, without waiting for ratification of the same by the Government as to the promotion of the fourth respondent to the above said post.

2.14. The third respondent also took a stand that the post of Assistant Executive Engineer (Main Office) was sanctioned exclusively for the maintenance of Corporation vehicles and implementation of Solid Waste Management project and the maintenance of motor vehicles can be attended only by a Mechanical Engineer and the fourth respondent was the only person looking after the maintenance of the Corporation vehicles from the year 1995 and therefore, prays for vacating the interim order and dismissal of the writ petition.

2.15. The fourth respondent has filed a counter affidavit and took a stand that as per Rule 4(1) of the Tamil Nadu Municipal Corporation Engineering and Water Supply Service Rules, 1996, the prescribed qualification for promotion to the post of Assistant Executive Engineer is "must have worked as Assistant Engineer, Junior Engineer for not less than one year in the Engineering Department of the Corporation main office and for not less than three years in the Ward Offices". The fourth respondent further stated in the counter affidavit that the third respondent has posted him to work as regular Junior Engineer in the Ward Offices from 07.08.1998 to 29.05.2006 totally for a period of 7 years and 9 months and the fourth respondent was also posted to work as Junior Engineer in the Corporation Main Office of the Engineering Department from 30.05.2006 to 31.10.2008 for a period of 2 years and 5 months and as such, he has the required experience/qualification prescribed for promotion to the said post. It is further stated in the counter affidavit of the fourth respondent that the fourth respondent name was included in the seniority list and subsequently, it was deleted and in this regard, he has submitted a representation dated 04.04.2007, seeking for promotion to the post of Assistant Executive Engineer (Main Office) and taking into consideration of the same, separate seniority list was drawn and the fourth respondent's name was included, as he was the only eligible person available and it was placed before the Council Committee of the Coimbatore City Municipal Corporation and after taking into consideration all the relevant aspects, a resolution was passed recommending his name and it was routed through proper channel and the first respondent had also accorded approval.

2.16. In pursuant to the order of promotion issued by the third respondent on 31.10.2008, he joined in the promoted post and continuously discharging duties for 7 ½ years without blemish. It is also the stand of the fourth respondent the petitioner did not work as Assistant Engineer previously for one year in the Corporation main office and as such, he is

ineligible for consideration for promotion to the said post and therefore, prays for dismissal of this writ petition.

3. Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mrs.A.L.Gandhimathi, learned counsel appearing for the petitioner would submit that as per Rule 4 of the Tamil Nadu Municipal Corporations Engineering and Water Supply Service Rules, 1996, for promotion to the post of Assistant Executive Engineer, the concerned person must have worked as Assistant Engineer/Junior Engineer for not less than one year in the Engineering Department of the Corporation Main Office and for a period not less than three years in the Ward Offices and though the petitioner did not fulfill the qualification with regard to the working in the main office, the fact remains that it is not his voluntary act and such posting should have been given by the Corporation of Coimbatore and admittedly, it was not done and as such, the petitioner cannot be put to blame. The learned Senior Counsel appearing for the petitioner, in support of the said submission, placed reliance upon the order dated 12.06.2015 made in W.P.No.16427 of 2015 [R.Shanthi v. The District Collector (PD Section), Tirupur District, Tirupur]. It is the further submission of the learned Senior Counsel appearing for the petitioner that the seniority list of Assistant Engineers/Junior Engineers have been prepared and after inviting objections, it was issued vide proceedings of the third respondent dated 31.08.2000 and as per the same, the name of the petitioner was found at Sl.No.10 and the name of the fourth respondent was found at Sl.No.17 and the petitioner joined the service on 30.04.1986 and whereas the fourth respondent joined the service on 21.10.1992.

4. The learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the proceedings of the Commissioner, Coimbatore Corporation dated 08.06.2001 and would submit that as per the said proceedings inter se seniority reflects the status of the Assistant Engineers/Junior Engineers prior to 01.10.1996 and in the said list, the petitioner's name was found place at Sl.No.15 and the fourth respondent's name was found place at Sl.No.22 and as such, all along the fourth respondent was junior to the petitioner. The learned Senior Counsel appearing for the petitioner has also drawn the attention of this Court to the proceedings of the Commissioner of Municipal Administration, Chepauk, Chennai-600 005 dated 16.02.2006, wherein it has been stated that with regard to the request made by the fourth respondent for promotion to the post of Assistant Executive Engineer (Main Office), the Commissioner of Coimbatore Corporation has to consider the claim of the fourth respondent for promotion to the post of Assistant Executive Engineer (Main officer) and the third respondent, vide

proceedings dated 16.02.2006, has informed that as per G.O.Ms.No.140, Municipal Administration and Water Supply Department dated 27.05.1997 a clarification has been issued that Junior Engineer (Mechanical) cannot be considered for promotion to the post of regular Assistant Executive Engineer and new Corporation Service Rules have been sought for the said post and further clarified that as on date, the fourth respondent is in seniority list at Sl.No.12 and above him, 11 persons are there in the panel and inclusion of his name in the inter se seniority is an erroneous one. The Commissioner of Coimbatore Corporation also informed in the said proceedings that as per Council Resolution No.235 dated, a request has been made that one post of Assistant Executive Engineer and Assistant Engineer (B.E. Degree) may be appointed for Solid Waste management and therefore, requested the said official to send a fresh proposal for the creation of Assistant Executive Engineer (Mechanical and Solid Waste Management) post at the first instance and then to send necessary proposals for filling up the post by promotion from Corporation Employees.

5. The learned Senior Counsel appearing for the petitioner would submit that subsequent to the said proceedings of the Commissioner, Coimbatore Corporation dated 16.02.2006, a combined seniority list was prepared and objections were raised in the said list and the petitioner's name was found in Sl.No.7. It is also contended by the learned Senior Counsel appearing for the petitioner that Coimbatore City Municipal Corporation, without taking note of the seniority position of the petitioner and his experience and also the reasons for non-posting the petitioner in the main office, seems to have initiated proposal to accommodate the fourth respondent for promotion to the post of Assistant Executive Engineer (Main Office) and accordingly, passed a resolution and the respondents 1 and 2, without due and proper application of mind, had simply accepted the proposal and accorded approval for promotion of the fourth respondent, overlooking the seniority of the petitioner and though the petitioner has been belatedly given promotion as Assistant Executive Engineer, his claim ought to have been considered before accommodating the fourth respondent and prays for interference and prays for appropriate orders.

6. Per contra, Mr.R.Sivakumar, learned Standing Counsel appearing for the third respondent has drawn the attention of this Court to the counter affidavit of the third respondent and would submit that as per G.O.(MS).No.237, Municipal Administration and Water Supply (Elections) Department dated 26.09.1996, the post of Junior Engineer (Mechanical) was also grouped with that of the post of regular Junior Engineers and accordingly, his name was included in the combined inter se

seniority of Assistant Engineers/Junior Engineers, vide proceedings dated 08.06.2001 and in the said seniority list, the fourth respondent name was placed at Sl.No.22 and in the meantime, vide proceedings dated 22.12.2006, it was proposed to issue a separate seniority list to the post of Junior Engineer (Mechanical) to which the fourth respondent was promoted during December, 1995 and objecting the same, the fourth respondent submitted a representation stating that in the event of deleting his name from the subsequent seniority list published on 04.07.2007, his name must be considered for promotion as Assistant Executive Engineer (Main Office), which was exclusively created for maintenance of all Corporation vehicles and Solid Waste Management as per G.O(Ms).No.139, Municipal Administration and Water Supply Department dated 27.05.1997 and accordingly, the name of the fourth respondent was deleted in the combined seniority list, vide proceedings dated 04.07.2007 and a separate list was created and objection was invited and it was confirmed that the fourth respondent is the only person available in the said seniority list.

7. Insofar as the request of the fourth respondent for promotion to the post of Assistant Executive Engineer (Main Office), it is the submission of the learned Standing Counsel appearing for the third respondent that as per G.O.(2D).No.105, Municipal Administration and Water Supply (MA2) Department dated 26.06.2007, certain additional posts including 4 posts of Assistant Executive Engineers were created and it was suggested that insofar as Assistant Executive Engineer is concerned, out of 4 posts, one post may be filled up with the specialization in Environmental Engineering/Mechanical Engineering from the Corporation service and another post may be filled up from the regular Assistant Engineers/Junior Engineers and the remaining two posts may be filled up on deputation basis and in the said circumstances, the fourth respondent has submitted a representation dated 16.08.2007 requesting that in view of his specialization in Mechanical Engineering and involvement in Solid Waste Management, he may be considered for promotion and it was favourably considered and after obtaining ratification through proper channel, the fourth respondent was accommodated in the said post and also took a stand that the post of Assistant Executive Engineer was exclusively created for the maintenance of Corporation vehicles and Solid Waste Management and whereas the fourth respondent has fulfilled all the eligible criteria and his name was rightly selected and prays for dismissal of this writ petition.

8. Mr.K.Rajkumar, learned counsel appearing for the fourth respondent would contend that the fourth respondent, apart from discharging his duty with regard to maintenance of Corporation

vehicles and also worked in dumb yard/land filling for quite long time and even as per Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules, 1996, the fourth respondent is fully qualified and eligible to hold the post of Assistant Executive Engineer (Main Office) and insofar as the claim made by the fourth respondent that he is the only eligible person for the said post and as such, his claim ought to have been considered, the learned counsel appearing for the fourth respondent, apart from adopting the arguments of the learned counsel appearing for the third respondent, would contend that subsequently, inter se seniority list was prepared and the fourth respondent name was deleted from the combined seniority list and separate seniority list was prepared for the fourth respondent in the post of Assistant Executive Engineer and he was the only person in line and after inviting objection, he was rightly selected to the post of Assistant Executive Engineer (Main Office) and in the Council Meeting of the third respondent Corporation, positive recommendation was made, which was also endorsed by the second respondent and it was approved and ratified by the first respondent and he joined in the post of Assistant Executive Engineer (Main Office) on 31.10.2008 and working in that capacity for 7½ years and the petitioner, under the garb of this writ petition wants to march over the fourth respondent by seeking retrospective promotion with all other consequential benefits and his claim is hit by delay and laches.

9. The learned counsel appearing for the fourth respondent would further submit that vide proceedings of the Commissioner of Coimbatore Corporation dated 13.06.2014, the petitioner was promoted as Assistant Executive Engineer and vide, G.O.No.97, Municipal Administration and Water Supply (Corp-IV) Department dated 19.02.2016, the requirement under Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules, 1996 has been relaxed and the petitioner did not perform his duty in the main office for a period not less than one year and got ratification of his promotion to the said post and as such, it is not open to the petitioner to claim for posting in the main office and his claim was unjustly overlooked. It is also contended by the learned counsel appearing for the fourth respondent that though it is open to the petitioner to make a request for his accommodation in the Main Office to satisfy the rule position, the fact remains that he did not submit any representation for posting in the main office for the reason that apart from indulging in the maintenance of motor vehicles, the incumbent has to work in Solid Waste Management and has to oversee operation of the dump yard/land filling which has been created to clear the garbage generated through the city and it is a very cumbersome, tiring and hard process and job and the fourth respondent has performed duties in that capacity, for quite long years and taking into consideration her experience, a

positive recommendation for ratification of his appointment was made in the third respondent Corporation Council meeting and it was forwarded through proper channel and the first respondent, on due and proper application of mind, has also done that exercise and as such, it cannot be faulted with. The learned counsel appearing for the fourth respondent, in support of his submissions, has placed reliance upon the following decisions:

- (i) K. Balarama Raju v. V. Subramanya Sarma and Others [(2011) 13 SCC 574]
- (ii) Hardev Singh v. U.O.I and another [2012 (7) SLR 1 (S.C.)]
- (iii) P. Dasharatha and Others v. Government of Andhra Pradesh and Others [2012 (8) SLR 92 (A.P.)]
- (iv) Dr. S. K. Gupta v. Maharshi Dayanand University, Rohtak [2014 (2) SLR 515 (Punjab and Haryana- DB)]

10. This Court paid it's best attention and anxious consideration to the rival submissions and carefully scanned and analyzed the entire materials placed before it.

11. The following questions arises for consideration in this writ petition:

1. Whether the fourth respondent is eligible to be considered for promotion as Assistant Executive Engineer (Main Office) ?
2. Whether the claim of the petitioner for retrospective promotion as Assistant Executive Engineer, over and above the fourth respondent, is sustainable?

12. As per Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules, 1996, the qualification for promotion to the post of Assistant Executive Engineer is that the concerned person,

"must have worked as Assistant Engineer, Junior Engineer for not less than one year in the Engineering Department of the Corporation Main Office and for a period of not less than three years in the Ward Offices"

(Emphasis Supplied)

Admittedly, the petitioner did not fulfill one of the criterias, namely work experience of not less than one year in the main office.

13. It is the submission of the learned Senior Counsel appearing for the petitioner that non-posting of the petitioner for not less than one year in the main office is not due to his fault and it is for the Coimbatore Municipal Corporation to be to give posting in the said place and for not doing so, the petitioner cannot be blamed and in support of his submission, placed reliance upon the order dated 12.06.2015 made in W.P.No.16427 of 2015 [R.Shanthi v. The District Collector (PD) Section, Tirupur District, Tiruppur], wherein a learned Single Judge of this Court found that one of the service qualifications required for promotion to the post of Assistant is that she should have worked for one year as Junior Assistant and one year as Rural Welfare Officer Grade-II and however, the petitioner therein was not given opportunity to work as Rural Welfare Officer Grade-II for one year and taking into consideration the various decisions rendered by this Court, held that service qualification, that is prescribed in the Rules for inclusion of a Government servant in the panel, could not be placed/used against the Government servant, if the fault is not on the side of the Government servant and therefore, decided in favour of the writ petitioner therein and directed the respondent to include the name of the petitioner at the appropriate place in the panel of Junior Assistants of the year 2012-13.

14. The learned Senior Counsel appearing for the petitioner, in the light of the above said judgment, is correct in making the said submission that the petitioner cannot be blamed for non-posting of the petitioner in the main office for a period of one year. However, the petitioner knowing very well the eligibility criteria for promotion to the post of Assistant Executive Engineer, should have submitted a representation for posting in the main office for not less than one year, but he failed to do so. It is also very pertinent to point out at this juncture that the fourth respondent was promoted to the post of Assistant Executive Engineer and he joined in the said post on 31.10.2008 and the petitioner herein was given promotion on 13.06.2014 as Assistant Executive Engineer, though he did not fulfill the required prescribed qualification of serving in the main office for not less than one year and however, based on the proposal sent by the second respondent for relaxing such condition, for ratification of the promotion of the petitioner and four others, has passed G.O.No.97, Municipal Administration and Water Supply (Corp.IV) Department dated 19.12.2016 and the requirement contemplated under the said rule has also been relaxed and in the light of the same, the petitioner may not have any grievance.

15. Originally, in the combined seniority list of Assistant Engineers/Junior Engineers drawn on 31.08.2000, the name of the petitioner was found in higher in serial number No.10 by virtue of the date of joining and however, the second respondent, namely the Commissioner, Municipal Administration, Chepauk, Chennai-5, vide communication dated 16.02.2006 has indicated among other things that the name of the fourth respondent has been erroneously included in the inter se seniority list and requested the third respondent to send a fresh proposal for the creation of Assistant Executive Engineer (Mechanical and Solid Waste Management) post at the first instance and then to send necessary proposals for filling up of the post by promotion from Corporation Employees. Accordingly, the name of the petitioner was deleted from the inter se seniority list and a separate list was prepared and objections were invited and vide representation dated 04.04.2007, the fourth respondent expressed his anguish with regard to deletion of his name and pleaded that subsequent to the creation of one post of Assistant Executive Engineer in the main office, he must be favourably considered and taking into consideration the work experience. The said proposal was placed before the Council Committee of the Coimbatore City Municipal Corporation and after elaborately considering and discussing the claim, positive recommendation was made and observed that the fourth respondent is fully eligible to hold the said post and accordingly made recommendation. The said proposal was forwarded through proper channel and the first respondent, vide proceedings dated 31.10.2008 has promoted the fourth respondent to the post of Assistant Executive Engineer and the third respondent namely the Commissioner, Corporation of Coimbatore sent a proposal for ratification of his appointment through second respondent to the first respondent and the second respondent, on receipt of the proposal from the third respondent, has considered the said proposal in detail and vide letter in Na.Ka.No.4297/2008/F4 dated 05.12.2008, made a positive recommendation to the first respondent for according approval for temporary promotion of the fourth respondent as Assistant Executive Engineer (Main Office). The first respondent, vide G.O.Ms.No.526 dated 16.12.2008 has ratified/confirmed the said proposal subject to the pendency of this writ petition.

16. It is also to be noted at this juncture that the second respondent, vide communication dated 3.10.2007 addressed to the first respondent, sought relaxation or deletion of the condition of working in the main office for not less than one year and the first respondent in-turn sent a communication to the second respondent on 19.10.2007 to send necessary amendment proposal for deletion of the said condition and however the fact remains

that no amendment has been made to Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules, 1996, deleting the prescription of not less than one year in the main office of the Coimbatore City Municipal Corporation.

17. It is also borne out by fact that the petitioner was given promotion to the post of Assistant Executive Engineer on 13.06.2014, vide proceedings of the third respondent, though he did not fulfill the said criteria and the first respondent, vide G.O.(D).No.97, Municipal Administration and Water Supply (MC-IV) Department dated 19.02.2016, has relaxed the said condition insofar as the petitioner and four others are concerned and ratified their promotion to the post of Assistant Executive Engineers.

18. In K.Balarama Raju and V.Subramanya Sarma and Others [(2011) 13 SCC 574], it is held that relaxation with regard to qualification so as to enable unqualified candidates to get accommodated, resulting in prejudice to qualified candidates, cannot be done.

19. In Dr.S.K.Gupta v. Maharshi Dayanand University, Rohtak [2014 (2) SLR 515 (DB-Punjab and Haryana)] promotion of the appellant therein to the post of Professor contrary to AICTE norms came up for consideration and it was observed that the appellant did not fulfill the mandatory norms for selection and without gaining experience in the post of Assistant Professor for 5 years for considering his promotion to the post of Professor, it could not be applied for the post of Professor.

20. Admittedly, in the case on hand, the petitioner did not fulfill one of the criteria, namely work experience of not less than one year in the main office of the Coimbatore City Municipal Corporation and the fourth respondent all along worked as in-charge of the maintenance of motor vehicles and also in-charge of Solid Waste Management, which involve overseeing the operations in the dump yard/land filling areas of the Coimbatore City Municipal Corporation and gained enough experience. A perusal of the resolution passed by the Coimbatore City Municipal Corporation recommending the promotion of the fourth respondent to the post of Assistant Executive Engineer coupled with the positive recommendation of the Commissioner of Coimbatore Municipal Corporation and Deputy Director of Municipal Administration to the first respondent, a fair and proper decision has been taken to approve and ratify the promotion of the fourth respondent to the post of Assistant Executive Engineer (Main Office) and it cannot be faulted with.

21. The fourth respondent joined the post of Assistant Executive Engineer on 31.10.2008, subject to this litigation and the petitioner did not make any endeavour to make a representation for his posting in the main office and later on, through litigations made a complaint as to his non-inclusion in the said post and he cannot do so. The petitioner has also availed the benefit of relaxation of the said condition through G.O.(D).No.97, Municipal Administration and Water Supply (C-4) Department dated 19.02.2016, which ratified his promotion along with four others and on that ground also, he cannot make any complaint with regard to the promotion given to the fourth respondent.

22. This Court, on a thorough consideration and careful analysis of the entire materials placed before it, is of the considered view that there is no merit in this writ petition and deserves dismissal.

23. In the result, this Writ Petition is dismissed. No costs. Interim Orders already granted is vacated and consequently, connected miscellaneous petitions are dismissed.

Sd/-  
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

jvm  
To

1.The Secretary to Government,  
The State of Tamil Nadu,  
Municipal Administration and Water Supply Department,  
Secretariat, Fort St.George, Chennai-9.

2.The Commissioner,  
Municipal Administration, Chepauk, Chennai-5.

3.The Commissioner,  
Coimbatore City Municipal Corporation, Coimbatore.

+1cc to M/s.K.Rajkumar, Advocate sr.48325

+2ccs to M/s.AL.Ganthi mathi, Advocate sr.48223 and 48337

+1cc to M/s.R.Sivakumar, Advocate sr.48257

W.P.No.27061 of 2008

rsI(co)  
ss(20/7/2017)