

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.35422 of 2003

WMP.No.43052 of 2003

K.Sri Kumar

... Petitioner

-vs-

1. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.
2. Assistant Commissioner,
Tirunelveli Ward Office,
Tirunelveli City Municipal Corporation, Tirunelveli.

... Respondents

Writ Petition filed under 226 of the Constitution of India for issuance of a writ of CERTIORARI FIED MANDAMUS or any other writ or order or direction in the nature of writ calling for the records of the respondents resulting in the impugned order of the first respondent in R.O.C.No.11962/2001/C1 dated 01.07.2002 as revised in order R.O.C.No.11962/2001/C1 dated 13.11.2002 and confirmed in O.MU.No.2531/2003/C1 dated 05.09.2003 and consequential order of the second respondent in R.C.No.C1/4285/2003 dated 25.08.2003 and quash the same and direct the first respondent to grant time for acquiring qualification in Diploma in Engineering.

For Petitioner : Mr.A.Ilango
For Respondents : Mr.S.Kandasamy

O R D E R

The facts in nutshell required to be considered in this Writ Petition is that the writ petitioner was appointed as an Electrician Grade-I in Tirunelveli Municipality on 22th February, 1991, and thereafter the Municipality was designated as City Municipal Corporation and the writ petitioner continued as such in the newly constituted Corporation.

2. Pursuant to the conversion of the Municipality as City Municipal Corporation, new set of Service Rules were framed for the employees working in the Corporation by the Government in G.O.Ms.No.237, Municipal Administration and Water Supply, dated 26.09.1996. Consequent to the new set of Rules, the writ petitioner was designated as Technical Assistant and the next avenue for promotion to the post of Technical Assistant is Junior Engineer. The writ petitioner was promoted as Junior Engineer on 8th December, 1998, subject to the condition that he should acquire the required educational qualification prescribed in the Rules. The required qualification is Diploma in Electrical Engineering and the same to be acquired within a period of three years from the date of promotion as Junior Engineer. The writ petitioner joined in the promotional post of Junior Engineer accepting the conditions therein. But, the learned counsel for the petitioner admitted that the writ petitioner has not qualified himself within a period of three years as stipulated in the promotion order given to him as Junior Engineer.

3. Initially, the writ petitioner requested the respondents for grant of extension of time to complete the Diploma Course and though the said request was accorded by the respondents, as the writ petitioner was unable to get himself qualified to continue in the post of Junior Engineer, no further extension was granted and accordingly the first respondent passed an order in Proceedings dated 1st July, 2002, reverting the writ petitioner from the post of Junior Engineer to the post of Skilled Assistant Grade-II. Consequently his scale of pay was also reduced. Having aggrieved, The writ petitioner preferred an Appeal to the Commissioner to reconsider the decision taken in the order dated 1st July, 2002. Considering the Appeal submitted by the writ petitioner, the first respondent passed an order in Proceedings dated 13th November, 2002, modifying the same from Skilled Assistant Grade-II to Skilled Assistant Grade-I with effect from 1st July 2002. Accordingly one grade was advanced in the Appeal by the first respondent. The writ petitioner has also joined in the reverted post of Skilled Assistant Grade-I on 13th November, 2002. Even thereafter, the writ petitioner submitted further representation on 7th April, 2003, to restore him in the post of Technical Assistant, since the post of Skilled Assistant Grade-I is two stages below that of the post of Junior Engineer. Thus, the writ petitioner requested the first respondent to revert him at least one post below to the post of Junior Engineer instead of reverting him by two stages below.

4. However, the said request of writ petitioner was rejected by the first respondent Proceedings dated 5th September, 2003.

Challenging those orders, the writ petitioner moved this Writ Petition for a comprehensive relief of challenging both the reversion as well as the recovery issued by the first respondent to recover the salary paid to the post of Junior Engineer in order dated 25th August, 2003.

5.The learned counsel appearing for the writ petitioner contended that the writ petitioner actually worked as Junior Engineer from 8th December, 1998, to 13th November, 2002, and the salary paid to the writ petitioner was for the period in which he worked as a Junior Engineer and therefore the same cannot be recovered. In respect of reversion, the learned counsel contended that though the writ petitioner has not completed the required qualification of Diploma in Electrical Engineering, reversion of two posts below is impermissible and the writ petitioner ought to have been reverted to the post of Technical Assistant which he was holding initially.

6.Mr.S.Kandasamy, learned counsel appearing for the respondents opposed the contentions by stating that no doubt the writ petitioner actually performed the duties and responsibilities attached to the post of Junior Engineer from 08.12.1998 to 13.12.2002, but, he had not availed the opportunities given by the respondents to acquire required educational qualification as per the Rules. Therefore, there is no infirmity in the order of reversion and the writ petitioner is not entitled to continue in the post of Junior Engineer, since the conditions stipulated and accepted by the writ petitioner has not been complied with. Secondly, in respect of reversion by two stages, the learned counsel for the respondents argued that in normal circumstances, the reversion orders are passed reverting the employee one step below, but, in the present case reversion of two stages was ordered, since, the very qualification of Diploma in Electrical Engineering is a required qualification even for holding the post of Technical Assistant in Tirunelveli Municipal Corporation. Since the writ petitioner is not having the qualification of Diploma in Electrical Engineering, he cannot be accommodated in the post of Technical Assistant also. Thus, the first respondent has considered all those aspects in the accordance with the Rules and reverted the writ petitioner to the post of Skilled Assistant Grade-II initially and taking a lenient view, again the reversion was modified from Skilled Assistant Grade-II to Skilled Assistant Grade-I and the said concession was shown by the first respondent himself in favour of the writ petitioner and therefore no further concession can be granted in favour of the writ petitioner in this regard.

7.Considering the arguments advanced both by the writ petitioner as well as the respondents, this Court is of the view

that the reversion order passed reverting the writ petitioner by two stages is inevitable. Normally reversion has to be effected by one stage below from the post in which the employee was holding. But, in the case on hand the writ petitioner was reverted from the post of Junior Engineer to the Skilled Assistant Grade-II, which is two stages below. Unfortunately, the writ petitioner has not acquired the required educational qualification contemplated under the Rules, within a period of three years stipulated. While issuing the order of promotion as Junior Engineer, the writ petitioner accepted the said promotion on condition that he will acquire the qualification of Diploma in Electrical Engineering within a period of three years, however, he failed to do so and the writ petitioner has not assigned any reason for not acquiring the required qualification as provided under the Rules. Hence, this Court is of the view that no further concession can be shown in favour of the writ petitioner in this regard.

8.However, in respect of the recovery portion, the writ petitioner has actually performed the duties and responsibilities attached to the post of Junior Engineer with effect from 08.12.1992 to 13.11.2002. When he performed the duties and received the salary, the first respondent cannot recover the same from the writ petitioner. It is unjust on the part of the first respondent to recover the salary paid in favour of the writ petitioner, more specifically, when he performed the duties in the post attached. Thus, the recovery imposed by the first respondent cannot be sustained.

9.Consequently, the order of reversion reverting the writ petitioner from the post of Junior Engineer to the Skilled Assistant Grade-I is confirmed and the order of recovery imposing recovery of Rs.75,288/- is set aside. The Writ Petition is partly allowed only in respect of recovery portion of order passed by the second respondent dated 25th August, 2003, and in all other aspects the order of the first respondent dated 5th September, 2003, is confirmed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

si/rpa

To

1. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.

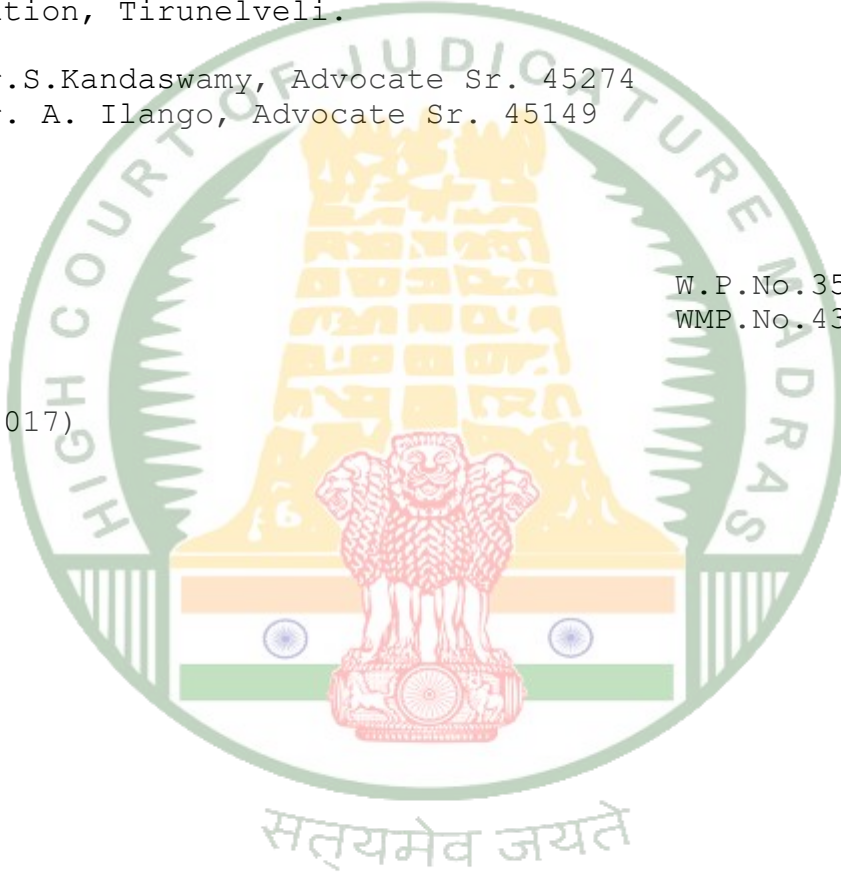
2. Assistant Commissioner,
Tirunelveli Ward Office,
Tirunelveli City Municipal
Corporation, Tirunelveli.

+1cc to Mr.S.Kandaswamy, Advocate Sr. 45274

+1cc to Mr. A. Ilango, Advocate Sr. 45149

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AR(V)
VR(24/07/2017)



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