



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.[MD].No.163 of 2015
and
M.P.(MD).No.1 of 2015

- 1.The Secretary to Government
through its Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George, Chennai-9
- 2.The Commissioner of Municipal Administration,
Ezhilagam, Chennai-600 005.
- 3.The Regional Director of Municipal Administration,
Ezhilagam, Chennai-600 005.
- 4.The Commissioner,
Kuzhithurai Municipality,
Kuzhithurai,
Kanyakumari District. : Appellants/Respondents 1 to 4

Vs.

- 1.M.C.Sheela Evanjalini,
- 2.P.Kuraselvi,
Overseer, Colachel Municipality,
[Cause title amended as fifth respondent
as per order dated 27.07.2009, in
M.P.(MD).No.1 of 2009 in
W.P (MD).No.5698 of 2009] : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 18.06.2014 made in W.P.(MD).No.5698 of 2009, on the file of this Court.

Prayer in WP(MD). 5698/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records relating to the services rendered by the second respondent in proceedings Na.ka.No. 43733/08/KI2 dated 30/12/2008 and quash the same and consequently direct the first and second respondent to appoint the petitioner



as Works Inspector or Town Planning Inspector in any one of the Municipality in Tamil nadu for which the petitioner is qualified

For Appellants : Mr.B.Pugalendhi
Additional Advocate General
Assisted by VR.Shanmuganathan
Special Government Pleader

For Respondents : Mr.A.Thirumurthy
For M/s.Victory Associates

JUDGMENT

[Judgment of the Court was made T.S.SIVAGNANAM, J.]

This Writ Appeal is filed by the State against the order, dated 18.06.2014, made in W.P.(MD).No.5698 of 2009. The said Writ Petition came to be filed by the first respondent/Writ Petitioner praying for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the second appellant herein dated 30.12.2008 and to appoint the first respondent/Writ Petitioner as Works Inspector or Town Planning Inspector in anyone of the Municipalities in the State.

2. The learned single Judge found that the first respondent/Writ Petitioner had been agitating her rights before this Court from the year 1990 onwards and by referring to a letter written by the Commissioner, Nagercoil Municipality to the District Employment Exchange, stating that both the General Rules as well as the Service Rules of Tamil Nadu Municipal Town Planning Service Rules, 1970 are to be followed to fill up the post of Town Planning Inspector and held that there is no justification on the part of the appellants to deny promotion to the first respondent/Writ Petitioner to the post of Town Planning Inspector and accordingly, the Writ Court issued a positive direction to the appellants to promote her to the said post. Aggrieved by the said order and direction, the appellants are before this Court with this Writ Appeal.

3. We have heard Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mr.VR.Shanmuganathan, learned Special Government Pleader for the appellants and Mr.A.Thirumurthy, learned counsel appearing for the first respondent/writ petitioner.

4. The issue, in the instant case, lies in a very narrow campus, though the first respondent/writ petitioner had been litigating before this Court from the year 1990 onwards. The case of the first respondent/writ petitioner is that she had completed ~~her~~ ^{services} ~~in~~ ⁱⁿ Civil Engineering (Concrete Structures and Technology) in first class and registered her name in the Employment Exchange, Kanniyakumari. Subsequently, she made an



application before the appellants to appoint her as Overseer in Kuzhithurai Municipality in a vacancy which had arisen. The said application was not considered. Therefore, the first respondent/Writ Petitioner filed Writ Petition before the Principal Bench of this Court in W.P.No.11518 of 1990. The said Writ Petition was disposed of, by order dated 05.10.1990, directing the appellant/Municipality to consider the case of the first respondent/Writ Petitioner to the post of Overseer.

5. While so, in the year 1992, the first respondent/Writ Petitioner was discharged from service, by proceedings dated 30.11.1992, passed by the fourth appellant herein. This was challenged by the first respondent/Writ Petitioner by filing Original Application in O.A.No.3517 of 2002, before the Tamil Nadu State Administrative Tribunal. The Tribunal, vide order dated 25.06.2002, directed the fourth appellant herein to consider the claim of the first respondent/writ petitioner for absorption in any one of the vacancies available or in any of the vacancies, which may arise in future. Since the direction issued by the Tribunal was not implemented, the first respondent/Writ Petitioner filed yet another Writ Petition before the Principal Bench of this Court in W.P.No.1392 of 2005, seeking a direction to the appellants to appoint her to the post, to which she is eligible. The said Writ Petition was disposed of, by order dated 20.01.2005, directing the appellants to consider the representation of the first respondent/Writ Petitioner dated 19.03.2003, in accordance with law and in the light of the direction issued by the Tamil Nadu State Administrative Tribunal in O.A.No.3517 of 2002.

6. In the meantime, the appellants filed W.P.No.25330 of 2005, challenging the order passed by the Tribunal in O.A.No. 3517 of 2002. While the said Writ Petition filed by the appellants was pending, the first respondent/Writ Petitioner submitted a representation on 03.05.2005, seeking to appoint her as Overseer or Town Planning Inspector in the fourth appellant Municipality. The Hon'ble Division Bench of this Court disposed of the Writ Petition filed by the appellants in WP.No.25330 of 2005, by order dated 09.08.2005, observing that if the first respondent/Writ Petitioner is not otherwise qualified or suitable and if no vacancy is available, it is for the Municipality to intimate the same to the first respondent/Writ Petitioner. Subsequently, the first respondent/Writ Petitioner made another representation in September 2005, stating that her case was not considered. Once again, the first respondent/Writ Petitioner filed another Writ Petition in W.P.No.34131 of 2005 to consider her claim for absorption as Overseer. The said Writ Petition was disposed of, by order dated 02.12.2005, directing the appellants to consider the first respondent/Writ Petitioner, within a time frame.



7. In the year 2006, the Commissioner of Municipal Administration, the second appellant herein, vide proceedings dated 26.06.2006, directed the fourth appellant herein to appoint the first respondent/Writ Petitioner in any one of the existing vacancies. Following the said direction, the second appellant herein, vide proceedings dated 10.08.2006, appointed the first respondent/Writ Petitioner as Revenue Assistant in the fourth appellant Municipality, in which post, the first respondent/Writ Petitioner is continuing till date. Once again, the first respondent/Writ Petitioner approached this Court and filed W.P. (MD)No.8092 of 2007 seeking to appoint her as Works Inspector or Public Works Overseer or Town Planning Inspector in any one of the existing vacancies in any one of the Municipalities, on the basis of her educational qualification. The fourth appellant herein, vide proceedings dated 12.09.2007, made recommendations to the second appellant herein, recommending the case of the first respondent/Writ Petitioner to be posted as Public Works Overseer.

8. It appears that the fourth appellant, vide letter dated 19.11.2007, directed the first respondent/Writ Petitioner to withdraw the Writ Petition filed by her and accordingly, W.P(MD). No.8092 of 2007 was dismissed as withdrawn. Since the assurance said to have been given by the fourth appellant to the first respondent/Writ Petitioner was not complied with, once again, the first respondent/Writ Petitioner approached this Court by filing WP.(MD)No.6825 of 2008 seeking a direction to the appellants to appoint her as Works Inspector or Public Works Overseer or Town Planning Inspector in the existing vacancy in any one of the Municipalities. The said Writ Petition was disposed of, by order dated 21.10.2008, directing the second appellant herein to pass final orders on the recommendations made by the fourth appellant within a time frame.

9. Pursuant to the said direction, the order dated 30.12.2008, was passed by the first appellant herein, rejecting the claim of the first respondent/Writ Petitioner, for the reason that as per the Tamil Nadu Engineering and Subordinate Service Rules, 1970, the post of Public Works Overseer in Group IV can be filled up only by way of promotions from Group VII from Pipe Inspector and Group VIII-B and the post of Works Inspector from among those incumbents, who have qualified with SSLC and Diploma in Civil Engineering. Challenging the said order, W.P.(MD)No.5698 of 2009 was filed by the first respondent/Writ Petitioner. The learned Single Judge of this Court, by order dated 18.06.2014, allowed the said Writ Petition, directing the appellants herein to appoint the first respondent/Writ Petitioner as Town Planning Inspector, in any one of the Municipalities. Questioning the correctness of the said order, the appellants have come up with this Writ Appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

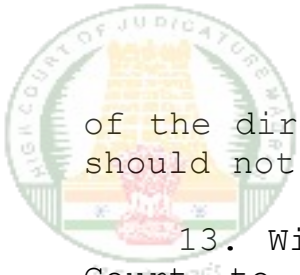
10. The short question, which arises for consideration, is as to whether the Writ Court could have issued a positive direction



to the appellants to promote the first respondent/Writ Petitioner to the post of Town Planning Inspector. The settled legal position is that the Court cannot issue a positive direction to grant promotion or appointment and what the Court can do is to direct the authorities to consider the case of the candidate, in accordance with the Service Rules and therefore, to that extent, the order passed by the Writ Court in the Writ Petition calls for interference. The second aspect would be as to whether the first respondent/Writ Petitioner can be considered for promotion to the post of Town Planning Inspector.

11. The learned Additional Advocate General pointed out that the earlier Writ Petition filed by the first respondent/Writ Petitioner in W.P.(MD).No.8092 of 2007 was dismissed as withdrawn and for the very same relief, W.P.(MD)No.6825 of 2008 was filed, in which a direction was issued and this fact was not brought to the notice of the Writ Court, when the order was passed on 21.10.2008. Further, it is submitted that the relevant Rule for promotion to the post of Town Planning Inspector is the Tamil Nadu Municipal Town Planning Service Rules, 1970 and in terms of Rule 4 of the said Rules, the feeder category for the post of Town Planning Inspector is the Town Planning Assistant Draughtsman. It is also submitted that admittedly, the first respondent/Writ Petitioner is not working in the feeder category and therefore, the Writ Court erred in issuing a positive direction to the appellants to promote the first respondent/Writ Petitioner. It is also submitted that initially, the appointment of the first respondent/Writ Petitioner as a Road Gang Maszdoor in the year 1988 was illegal, in the light of the fact that there was a ban on making such recruitment, vide Government Order dated 01.07.1979. The learned Additional Advocate General further submitted that the first respondent/Writ Petitioner is working as a Revenue Assistant in Revenue Unit of the fourth appellant Municipality and therefore, she cannot be appointed to the post of Town Planning Inspector, which is a Town Planning Unit of the Municipality, governed by a different set of service rules.

12. Per contra, Mr.A.Tirumoorthy, learned counsel appearing for first respondent/Writ Petitioner, pointed out that the reason for withdrawing the earlier Writ Petition in W.P.(MD)No.8092 of 2007 is on account of the letter given by the fourth appellant, dated 19.11.2007, directing the first respondent/Writ Petitioner to withdraw the Writ Petition and this has been specifically stated in the affidavit filed in the subsequent Writ Petition and thus, there is no suppression of any material fact. Further, it is submitted that the first respondent/Writ Petitioner is not a back door entrant and her name has been registered in the Employment Exchange and she was sponsored to the fourth appellant Municipality through the Employment Exchange and she possessed the requisite qualifications for being posted as Town Planning Inspector, yet, she was posted as Revenue Assistant, in the light



of the direction issued by the second appellant and therefore, she should not be put to a disadvantageous position.

13. With regard to the positive direction issued by the Writ Court to the appellants to promote the first respondent/Writ Petitioner as Town Planning Inspector in any one of the Municipalities, the learned counsel for the first respondent/Writ Petitioner referred to the proceedings of the Town Planning Officer and the Commissioner in charge of Nagercoil Municipality, dated 01.04.2014, addressed to the learned Additional Government Pleader, Madurai Bench of Madras High Court, pertaining to the case of one Mrs.R.Maheswari, where she was appointed as Town Planning Inspector, in spite of the fact that she was a back door entrant and her name was not sponsored through the Employment Exchange.

14. After hearing the learned counsel for the parties, we find that the first respondent/Writ Petitioner is not guilty and there is no suppression of any material fact. In fact, there was a proceedings issued by the fourth appellant herein, dated 19.11.2007, directing the first respondent/Writ Petitioner to withdraw the Writ Petition filed by her in W.P.(MD)No.8092 of 2007 and accordingly, the first respondent/Writ Petitioner withdrew the said Writ Petition. The next aspect would be as to whether the initial appointment of the first respondent/Writ Petitioner was illegal. Admittedly, when there was a ban on recruitment, the fourth appellant could not have recruited the first respondent/Writ Petitioner and appointed as Road Gang Maszdoor. Nevertheless, the first respondent/Writ Petitioner was not directly appointed by the fourth appellant, but, her name was sponsored by the Employment Exchange and she possessed requisite qualification for being considered to be appointed in the Town Planning Unit.

15. In the preceding paragraph, we have referred to various litigations between the parties, which commenced from the year 1990 onwards till 2006 and there would be no necessity, once again, to repeat those facts and suffice to note that on 26.06.2006, the second appellant directed the fourth appellant to appoint the first respondent/Writ Petitioner in any existing vacancy. Therefore, the second appellant found that the first respondent/Writ Petitioner was eligible to be considered and to be appointed in the fourth appellant Municipality. The question would be as to what post she had to be appointed. It cannot be disputed that an appointment should be made to a post commensurate to her education qualification of an incumbent. However, it appears that the first respondent/Writ Petitioner was appointed as a Revenue Assistant presumably, because there was no vacancy in the post of Town Planning Inspector. However, the undisputed fact is that the first respondent/Writ Petitioner possessed Diploma in Civil Engineering and qualified to be appointed as Town Planning



Inspector. The first respondent/Writ Petitioner did not sleep over her rights, but, she had been continuously agitating that she should be appointed either as Works Inspector or Town Planning Inspector or Public Works Overseer.

16. Admittedly, no order was passed and therefore, she was compelled to move this Court by filing W.P(MD).No.6825 of 2008 and only after the direction was issued, the impugned order in the writ petition was passed. The objection raised in the impugned order is on the ground that the first respondent/Writ Petitioner is in the Revenue Unit. The facts noted in the preceding paragraph would clearly reveal that it is not on the volition of the first respondent/Writ Petitioner, she posted in the Revenue Unit of the fourth appellant Municipalities, but, pursuant to the order passed by the fourth appellant herein. Therefore, the first respondent/Writ Petitioner cannot be put to a disadvantageous position for having been posted in the Revenue Unit, though she possessed technical qualification to be posted in the Town Planning Unit. Though the learned counsel for the first respondent/Writ Petitioner referred to the proceedings of the Commissioner, Nagercoil Municipality, in the case of the said Mrs.R.Maheswari, in our considered view, the same cannot be drawn as a reference or an inspiration for the first respondent/Writ Petitioner, as the facts therein were entirely different.

17. Be that as it may, we are of the clear view, the first respondent/Writ Petitioner cannot be put to a disadvantageous position, solely on account of the decision taken by the fourth appellant to post her in the Revenue Unit, at the first instance, in the year 2006. Even, at the first instance, the first respondent/Writ Petitioner should have been accommodated in a post commensurate to her qualification. Since there was a binding direction issued by the second appellant dated 26.06.2006, as noticed above and since there were no vacancies, she was accommodated as Revenue Assistant. Thus, as and when vacancy arose, she should have been accommodated as Town Planning Inspector or Works Inspector in the Town Planning Unit. However, this was not done. Therefore, on account of the fault committed by the fourth appellant, the first respondent/Writ Petitioner, in our considered view, cannot be put to a disadvantageous position.

18. The learned counsel for the first respondent/Writ Petitioner referred to Rule 5(2) of the Tamil Nadu Municipal Town Planning Service Rules, 1970 and submitted that the said Rule laid down the procedure to be followed by the Appointment Committee. However, we find that Rule 5(2) of the Rules deals with direct recruitment and what the first respondent/Writ Petitioner seeks is for promotion to the post of Town Planning Inspector and ~~the said Rule 5 [2] of the said Rule will have no application to the case of the first respondent/Writ Petitioner.~~ Thus, we are of the considered view, the positive direction issued by the learned



single Judge, directing the appellants to grant promotion to the first respondent/Writ Petitioner to the post of Town Planning Inspector is incorrect. At the same time, we hold that the first respondent/writ petitioner was eligible to be considered for promotion to the post of Town Planning Inspector, as she possessed requisite qualifications and she has been all along agitating her rights and therefore, she should be posted in the Town Planning Unit and it was due to departmental convenience/inconvenience, she was posted in the Revenue Unit and that should not be a reason to put the first respondent to a disadvantageous position.

19. For the reasons stated above, the Writ Appeal is partly allowed and the direction issued by the learned single Judge to appoint the first respondent/Writ Petitioner as Town Planning Inspector is set aside and the appellants are directed to consider the candidature of the first respondent/Writ Petitioner for being promoted to the post of Town Planning Inspector, in accordance with the Service Rules along with other eligible candidates. The above directions shall be complied with by the appellants within a period of three months from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government
through its Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George, Chennai-9
 - 2.The Commissioner of Municipal Administration,
Ezhilagam, Chennai-600 005.
 - 3.The Regional Director of Municipal Administration,
Ezhilagam, Chennai-600 005.
 - 4.The Commissioner,
Kuzhithurai Municipality,
Kuzhithurai,
Kanyakumari District.
- +1CC to the Special Government Pleader SR.No. 17025

JUDGMENT MADE IN
W.A. [MD] .No.163 of 2015
22.03.2017