



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.[MD].No.712 of 2015

and

M.P. (MD) .No.2 of 2015

1.The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supplies Department,
Secretariat, Chennai - 9.

2.The Commissioner of Municipal Administration,
Chepauk, Chennai.

3.The Commissioner,
Tirunelveli Corporation,
Tirunelveli.

... Appellants/Respondents

Vs.

K.Velammal

... Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Act, praying to allow this Writ Appeal by setting aside the order passed by this Court in WP(MD)No.17081 of 2012, dated 14.11.2014.

Prayer in WP(MD) . 17081/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the respondents 1 to 3 to include the name of the petitioner in the ensuing panel for the post of Assistant Commissioner and to promote the petitioner to the post of Assistant Commissioner.

For Appellants : Mr.Aayiram K. Selvakumar

For Respondent : Mr.C.Jeganathan

JUDGMENT

[Judgment of the Court was made by **G.R.SWAMINATHAN, J.**]

Aggrieved by the order dated 14.11.2014, allowing W.P.(MD) No.17081 of 2012, the official respondents in the writ petition have filed this Intra Court Appeal.

2.The respondent herein, Mrs.K.Velammal, was appointed as a Typist in Palayamkudi Municipality in the year 1979. She was



working as Administrative Officer at Palayamkottai, under the Commissioner, Tirunelveli City Corporation, Tirunelveli, in the year 2009. She was due for retirement on 30.06.2013. In the mean while, she was served with a charge memo dated 17.03.2011 and imposed with penalty of Censure on 11.10.2012. Contending that she was due for promotion to the post of Assistant Commissioner and that she was being denied the said promotion on the ground of levy of the penalty of Censure, she filed W.P.(MD)No.17081 of 2012. According to her, the penalty of Censure cannot be a bar for consideration of her case for promotion in view of the Full Bench decision of this Court reported in **2011 (3) CTC 129 (D.I.G. of Police Tirunelveli Vs. Rani)**. She represented to the respondents, seeking inclusion of her name in the promotion panel for the post of Assistant Commissioner in Tirunelveli City Corporation. Since her request was not considered, she filed the said writ petition.

3.The Commissioner, Tirunelveli City Corporation, filed counter affidavit pointing out that the writ petitioner was having only six months of service left out and therefore, she was not eligible for the post of Assistant Commissioner, as per Corporation Service Rules. This contention was specifically taken in paragraph 10 of the counter affidavit. But the learned Single Judge vide order dated 14.11.2014, allowed the writ petition by holding that the learned counsel appearing for the official respondents was not able to draw the attention of the Court to any Service Rules as contended. The plea that the writ petitioner was not having minimum one year service on the date on which the vacancy arose before the age of superannuation was referred to in paragraph 6 of the order allowing the writ petition. But, the said contention was rejected only on the ground that the relevant Service Rule could not be produced by the Government Advocate appearing for the official respondents.

4.Aggrieved by the said order allowing the writ petition, the Government as well as the Commissioner, Tirunelveli Municipal Corporation are on appeal. The learned counsel appearing for the appellants drew the attention of this Court to Rule 4 of the Tamil Nadu Municipal Corporation General Service Rules, 1996. The said Rule specifically states that no person shall be appointed to the categories specified in the first Column of the table unless, the qualification set out in the third Column is possessed. The writ petitioner seeks promotion to the post of Assistant Commissioner in the third appellant Corporation. One of the conditions for eligibility to the said post is that the candidate must have not less than one year of service before the age of superannuation.

5.In the present case, admittedly, the writ petitioner was about to reach the age of superannuation on 30.06.2013. The writ petition itself was filed only on 23.12.2012. The writ petitioner apprehended that the post of Assistant Commissioner would be filled up by promoting her junior. Admittedly, she was not in possession



of the required left over service of one year. As already pointed out, the only ground for allowing the writ petition was that the relevant Service Rule was not shown before the learned Single Judge.

6.Now, that the relevant Rule has been placed before us, we are clearly of the view that the order allowing the writ petition is liable to be set aside. Hence, we set aside the same.

7.This Writ Appeal stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supplies Department,
Secretariat, Chennai - 9.

2.The Commissioner of Municipal Administration,
Chepauk, Chennai.

3.The Commissioner,
Tirunelveli Corporation, Tirunelveli.

+1cc to VEERA ASSOCIATES in SR. NO.66660

+1cc to Mr.AAYIRAM K. SELVAKUMAR Advocate in SR. No.66753

MR/SMI/GSP

JS/JC/SAR.1/1.8.2017/3P-6C

JUDGMENT MADE IN
W.A. [MD].No.712 of 2015
19.07.2017