



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.01.2017
CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P.(MD)No.2718 of 2011

P.Nagaraj

... Petitioner

Vs.

1.The State of Tamilnadu,

Represented by its Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai.

2.The Commissioner,
Madurai Corporation,
Madurai District.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records passed by the second respondent herein in Ref. No. Ma. Po.2/21825/10 dated 19.07.2010 and to quash the same so far as the petitioner is concerned and consequently direct the respondents herein to treat the petitioner as Skilled Assistant Grade II with effect from the date of his initial appointment with all consequential monetary and service benefits.

For Petitioner

:Mr.Jerin Mathew

For 1st Respondent

:Mr.Gunaseelan Muthiah
Government Advocate

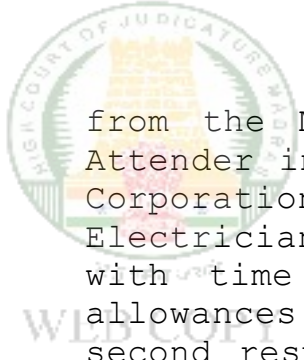
For 2nd Respondent

:Mr.R.Murali

O R D E R

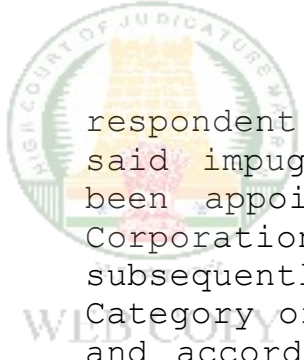
The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Ref. No. Ma. Po.2/21825/10 dated 19.07.2010, passed by the second respondent and quash the same in so far as the petitioner is concerned and consequently direct the respondents herein to treat the petitioner as Skilled Assistant Grade II with effect from the date of his initial appointment with all consequential monetary and service benefits.

<https://hcservices.ecourts.gov.in/hcservices>
2.The case of the petitioner is that he having qualified on I.T.I. in Electrician Course - NCVT, he registered his name in the Employment Exchange (Technical). He had received intimation letter



from the Madurai Corporation for the post of Electrician Motor Attender in the Engineering (Water and Drainage) Branch of Madurai Corporation. After interview, the petitioner was appointed as Electrician Motor Attender on 15.02.1990 and his pay was fixed with time scale of Rs.750-12-870-15-945 with other admissible allowances. Thereafter, he was terminated from service by the second respondent with effect from 30.06.1990 along with 28 other Electrician Motor Attender without assigning any reason. Subsequently, the petitioner and others had been reinstated by the second respondent by his proceeding dated 20.08.1990. Thereafter, he was given permanent status by the proceedings of the second respondent dated 04.06.1993. The petitioner also completed his probation and the same was declared and regularised. The Government had passed G.O.Ms.No.11 Finance (Pay Commission) Department dated 01.08.1992, whereby the Government directed all Grade II Trade Posts such as wiremen, Plumber, Carpenter etc., requiring I.T.I. Certificate irrespective of the academic qualification were allowed to have pay scale of Rs.950-1500. However, even though the petitioner was having the qualification of I.T.I., he was not given the monetary benefits. Instead the petitioner was given the pay Rs.750/-, which was fixed for unskilled worker. The further case of the petitioner is that at the time of appointment, there was no specific rules governing the petitioner and other employees working in the respondent Corporation. Subsequently, in the year 1996, the Government issued G.O.Ms.No.237 Municipal Administration and Water Supply (Election) Department dated 26.09.1996. By the said G.O. three broad categories of services had been made such as General Services, Engineering and Water Services and Public health Services and separate Rules were framed for each of the services. Annexure - I to the said G.O. grouped all the Technical Posts in the Engineering and Water Supplies Department into three categories, namely, (I) Technical Assistant, (ii) Skilled Assistant (Grade - I) and (iii) Skilled Assistant (Grade - II).

3.The petitioner in fact by a proceedings of the second respondent dated 16.12.2005, in Ma.Po.3/24213/2006, had been given Selection Grade from 21.08.2000 and accordingly his pay has been revised. The petitioner's grievance is therefore that even though the petitioner is having qualification of I.T.I., he was not considered to be the Skilled Worker Grade - II. Even at the initial stage of appointment all other persons similarly placed worked in similar posts of Electrician Motor Attender were termed as Skilled Assistant (Grade - II), where pay scale has been fixed as Rs.975 - 1500. Even though the petitioner is entitled to seek the scale of pay equivalent to Rs.975 - Rs.1,500, the same has been denied to the petitioner. Therefore, he requested the second respondent to consider his appointment and posting as one of the ~~persons~~ included within the category of Skilled Assistant (Grade - II) and accordingly his pay scale should be revised from the date of his appointment. In response to the said request, the



respondent has passed the impugned order on 19.07.2010. In the said impugned order it is stated that since the petitioner had been appointed as Electrician Motor Attender at the respondent Corporation under the category of unskilled worker, he had been subsequently conferred Selection Grade and to be under the Category of Skilled Assistant (Grade - II) based on his Seniority and accordingly he is working as such. Therefore, his request to consider to be Skilled Assistant (Grade - II) even at the time of initial appointment stage and further to promote him as Skilled Assistant (Grade - I) is unacceptable. Therefore, the said request was rejected in the impugned order. As against which, the petitioner has come out with the present Writ Petition.

4. Heard both sides.

5. Mr. Jerin Mathew, the learned counsel appearing for the petitioner would contend that even though the petitioner was appointed as Electrician Motor Attender under the category unskilled worker, his qualification was I.T.I. and with that qualification he had been undertaking very many works as Electrician Motor Attender at the second respondent Corporation and even all electricians or fitters appointed with the qualification of I.T.I. now by virtue of the Rules were treated as Skilled Worker (Grade - II) and when that being so, the petitioner position as Electrician Motor Attender with I.T.I. qualification shall also be treated as Skilled Assistant (Grade - II) and accordingly the petitioner should have been brought to the cadre with the scale of pay of Rs.975 - 1500/-. If the petitioner is treated to be Skilled Assistant (Grade - II) based on his qualification of I.T.I. he would be further promoted, after completing 10 years of service, as Skilled Assistant (Grade - I) with the scale of pay of Rs.1,100 - 1660 and that legitimate right has been turned down by the second respondent without any plausible reasons.

6. The learned counsel appearing for the petitioner would further contend that at the time of issuing appointment to the petitioner service rules governing service of the petitioner and other employees attached to the second respondent Corporation has not been framed. Only in the year 1996, as stated supra as per G.O.Ms.No.237 Municipal Administration and Water Supply (Election) Department dated 26.09.1996, service rules were framed, where posts have been categorised and the posts of Engineering and Water Supply Services have been grouped into three categories, namely, Technical Assistant, Skill Assistant (Grade - I) and Skill Assistant (Grade - II) and no other category has been mentioned. The petitioner at least should have been included in the category of Skill Assistant (Grade - II). If the petitioner had been considered as one of the post of Skill Assistant (Grade - II), <https://hcservices.mys.gov.in/services/> he should have been promoted as Skill Assistant (Grade - I). Therefore, there was no occasion for considering his request and for refusing his scale of pay incorporated in the said service



rules. Therefore, the learned counsel appearing for the petitioner submits that the impugned order is totally unjustifiable. Hence, he requests for interference by this Court in the said impugned order.

7. Per contra, the learned Standing Counsel for the second respondent Corporation would contend that no doubt there was no service rules governing the petitioner and other allied categories at the time of making appointment to petitioner and others. Subsequently, service Rules were framed. Posts have been re-grouped and categorization has also been done. In Annexure - I, the following three categories have been given as technical posts:

- (a) Technical Assistant - Rs.1350 - 2200
- (b) Skilled Assistant (Grade - I) - Rs.1100 - 1660
- (c) Skilled Assistant (Grade - II) - Rs. 975 - 1500

The learned Standing Counsel for the second respondent Corporation would further submit that in Annexure - II, some other posts provided in new service rules and the scale of pay, which are in existence also have been grouped with the posts provided in the Rules. In the said Annexure - II under the heading Engineering and Water Supply Service, Serial No.14 speaks about the Skilled Assistants Grade - I and Serial No.15 speaks about the Skilled Assistants Grade - II, which reads thus:

Sl. No.	Proposed designation of Posts	Existing designation of posts of which can be grouped	Scale of pay now proposed
14.	Skilled Asst. Gr. I	Electrician Fitter Meter Reader Work Inspector Mechanic etc. who are now drawing in the basic pay of above Rs.975-1500	1100 - 1660
15.	Skilled Asst. Gr.II	Those who are working in the scale of pay of Meter Reader, Road Inspector, Field Man etc., Electrician II Gr.	975 - 1500

In the same Annexure - II in Serial No.24 under the heading "Basic Service" the following posts are mentioned.

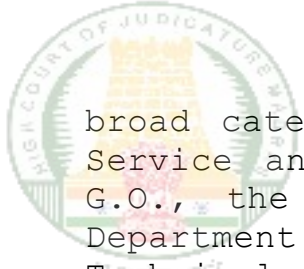
Sl. No.	Proposed designation of Posts	Existing designation of posts of which can be grouped	Scale of pay now proposed
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24.	Office Assistant Watchman Cleaner Male/Female Attender Unskilled worker Sanitary Worker	All those who are now in the scale of pay of Rs.750-940	750 - 940
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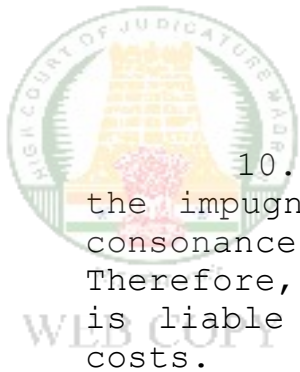
The scale of pay of the post of Skilled Assistant Grade - I is Rs.1100 - 1660 and for Skilled Assistant Grade - II is Rs.975 - 1500 and for basic services it is Rs.750 - 940. Under the category of Skilled Assistant Grade - II posts such as Fitter, Meter Reader, Road Inspector, Field Man has been given. Under the category of Basic Services posts such as Office Assistant, Watchman, Cleaner, Male/Female Attender, Unskilled Worker and Sanitary Worker had been given. Since the petitioner's appointment was made to the post of Unskilled Worker, namely, Electrician Motor Attender and the same is there in the very appointment order and his Pay has been fixed as Rs.750 - 12 - 870 - 15 - 945. Certainly the post held by the petitioner and is continuing now has been categorized only as Basic Service under Annexure - II. As has been rightly pointed out in the impugned order only because of the seniority, only after completion of 10 years service the petitioner has been conferred Selection Grade status, where his post has been revised as Skilled Assistant Grade - II with pay of Rs.975 - 1500. Since Skilled Assistant Grade - I, Skilled Assistant Grade - II and basic services are three different categories, it is fundamental service Jurisprudence that the same cannot be merged for any other reason, that too for an isolated case. Therefore, the learned Standing counsel for the respondent Corporation would submit that the request of the petitioner to treat him as Skilled Assistant Grade - II employee even at the beginning of the appointment is totally against the Rules and therefore, the same has been rightly turned down by the second respondent Corporation. Therefore, the impugned order is not required to be interfered with .

8.This Court has given its anxious consideration to the submissions made by the respective learned counsel appearing for the parties as well as the materials placed before the Court for its perusal.

9.In the very same appointment order itself, the petitioner was appointed as Electrician Motor Assistant. Pay Scale also indicated in the said order as Rs.750 - 870 - 945. At the time of appointment of the petitioner, there was no service rules specifically governing the posts of this nature on the second respondent corporation. Subsequently, realising the said factor, the Government has come forward to frame Rules and G.O.Ms.No.237 Municipal Administration and Water Supply Department dated 26.09.1996 was issued, where services were categorised under three



broad categories, namely, General Service, Engineering and Water Service and Public Health Services. In Annexure - I to the said G.O., the technical posts in the Engineering and Water Supply Department have been grouped into three broad categories, namely, Technical Assistant, Skilled Assistant (Grade - I) and Skilled Assistant (Grade - II) with separate scale of pay, wherein for Skilled Assistant (Grade - II), the Scale of Pay was fixed as Rs.975 - 1500. In the said G.O., as has been rightly pointed out by the learned Standing Counsel for the second respondent, under Serial No.24, in Annexure - II, Basic service category has been mentioned, where posts such as Office Assistant, Watchman, Cleaner, Male/Female Attender, Unskilled Worker and Sanitary Worker had been given, where pay was fixed at Rs.750 - 940. It is the pay category fixed for the post of Electrician Motor Assistant. Therefore, at any stretch of imagination the post wherein the petitioner was originally appointed cannot be categorized as Skilled Assistant Grade - II. It may be his case that some posts like Fitter, Motor Reader, Road Inspector, Field Man etc. had been grouped as Skilled Assistant (Grade - II). For appointment to the said posts, the qualification may also I.T.I. Certificate or equivalent thereto. Merely because of the petitioner having I.T.I. Certificate the post he was having cannot be treated as post on par with the post included in the Skilled Assistant (Grade II) category. If this kind of plea is accepted, then it will create anomaly. Some other person who might have been appointed as Electrician Motor Assistant or any other equivalent post with lesser qualification but got qualification required for the higher post, and those persons would also make such a claim that the post which are included in the basic services also be clubbed with the posts included in the Skilled Assistant Grade - II. Admittedly, the petitioner has not challenged the merits of the said Government Order. If the said Government Order is implemented electrician, motor Assistant shall naturally fall only under the basic service category with the scale of Pay of 975 - 1100. From the said Scale of pay, after completion of 10 years of service rightly the petitioner had been conferred the status of Selection Grade, which is equivalent to Skilled Assistant (Grade - II). Therefore, the further request of the petitioner to treat him to Skilled Assistant (Grade - II) and accordingly he should be considered for promotion to the post of Skilled Assistant (Grade - I) with the further pay scale of pay of Rs.1100 - 1660 etc., shall be counted against the imports of the Rules especially under G.O.Ms.No.237 Municipal Administration and Water Supply (Election) Department dated 26.09.1996. Therefore, for that reasons, the impugned order passed against the petitioner by the respondent cannot be interfered with.



10.Resultantly, this Court has no hesitation to hold that the impugned order is fully sustained and it has been passed in consonance with the relevant Rule governing the services. Therefore, it requires no interference. Hence, this Writ Petition is liable to be dismissed and accordingly it is dismissed. No costs.

Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To
The Secretary to Government,
Municipal Administration and Water Supply Department,
State of Tamilnadu,
Secretariat, Chennai.

+1cc to Mr.M.Jerin Mathew, Advocate Sr.No.923
+1cc to special Government Pleader SR.No.870

sj
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W.P. (MD) No.2718 of 2011