



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.03.2017

CORAM
THE HON'BLE MR.JUSTICE A.SELVAM

W.P(MD) Nos.4868 & 4792 of 2011

R.Baskaran ... Petitioner in both WPs.

-vs-

1. The Secretary, Municipal Administration and Water Supply Department, Fort St. George, Chennai - 9.
2. The Director of Municipal Administration, Chepauk, Chennai - 600 005.
3. The Commissioner, Madurai Municipal Corporation, Madurai - 625 002. .. Respondents 1 to 3 in both WPs.

G.S.Arasu ... Respondent No.4 in WP(MD)No.4868/2011

S.Chandrasekar
S.M.Rajendran ... Respondents Nos. 4 and 5
in WP(MD)No.4792/2011

Writ Petition(MD)No.4868 of 2011 is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings No.Ma.Ne.2/39173/2000 dated 10.10.2001 and the consequential order passed by the 3rd respondent in his proceedings Ma.Ne.1/35042/05 dated 18.01.2007 and quash the same as illegal and in violation of provisions of Tamilnadu Municipal Corporations Engineering and Water Supply Service Rules, 1996 and consequently directing the respondents to draw panel for promotion to the post of assistant executive engineer in the 3rd respondent corporation afresh in accordance with law.

Writ Petition(MD)No.4792 of 2011 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings No.Ma.Ne.2/4924/98 dated 06.10.1999 and the consequential order of confirmation passed by the 1st respondent in G.O.Ms.No.375 dated 09.09.2005 and the consequential order passed by the 3rd respondent in his proceedings Ma.Ne.1/35042/05 dated 18.01.2007 and quash the same as illegal and in violation of Provisions of Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules 1996 and consequently directing the respondents to draw panel for promotion to the post of Assistant Executive Engineer in the 3rd respondent Corporation afresh in accordance with law.

For Petitioner : Mr.B.Saravanan
both WPs.

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For RR - 1 & 2 : Mr.K.Guru
Additional Government Pleader



For R - 3

both WPs.

: Mr.R.Murali

For R - 4

both WPs.

: Mr.T.Cibi Chakrobarthy

WP(MD)No.4868 of 2011

For RR - 4 & 5 : Mr.T.Cibi Chakrobarthy

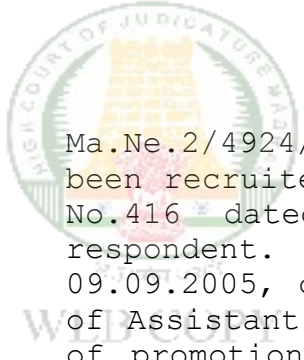
WP(MD)No.4792 of 2011

ORDER

Writ Petition(MD)No.4868 of 2011 has been filed under Article 226 of the Constitution of India praying to call for records relating to the impugned order dated 10.10.2001 passed by the third respondent in No.Ma.Ne.2/39173/2000 and the consequential order passed in his proceedings in Ma.Ne.1/35042/05 dated 18.01.2007 and quash the same as illegal and in violation of provisions of Tamilnadu Municipal Corporations Engineering and Water Supply Service Rules, 1996 and consequently directing the respondents to draw panel for promotion to the post of Assistant Executive Engineer in the third respondent corporation afresh in accordance with law.

2.Likewise, Writ Petition(MD)No.4792 of 2011 has been filed under Article 226 of the Constitution of India praying to call for records relating to the impugned order dated 06.10.1999 passed by the third respondent in his proceedings No.Ma.Ne.2/4924/98 and the consequential order of confirmation passed by the first respondent in G.O.Ms.No.375 dated 09.09.2005 and the consequential order passed by the third respondent in Ma.Ne.1/35042/05 dated 18.01.2007 and quash the same as illegal and in violation of Provisions of Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules, 1996 and consequently directing the respondents to draw panel for promotion to the post of Assistant Executive Engineer in the third respondent Corporation afresh in accordance with law.

3.It is averred in both the petitions that the petitioner has been appointed as Work Inspector in third respondent corporation on 21.01.1987 and subsequently promoted to the post of Technical Assistant on 14.02.1997 and thereafter, promoted to the post of Junior Engineer on 30.06.1998 and now the petitioner has been working as an Assistant Executive Engineer (in-charge) with effect from 15.06.2010. The respondents 4 and 5 in WP(MD) No.4792 of 2011 have been appointed on 09.03.1987 and 05.07.1990 respectively. Likewise, the fourth respondent in WP(MD)No.4868 of 2011 has been appointed on 27.08.1993. In the year 1996, Tamil Nadu Municipal Corporations Engineering and Water Supply Service Rules, 1996 has been introduced. The said Service Rules governed the method of appointments to various posts including the post of Assistant Engineer. Under Rule 3 of the said Rule, 1996, the post of Assistant Engineer shall be filled up only by direct recruitment. Post of technical assistant in third respondent corporation is covered under the Tamil Nadu Municipal Corporations Engineering and Water Supply Subordinate Service Rules, 1996 . The Government of Tamil Nadu have passed G.O.Ms.No.416 dated 15.09.1999, wherein certain clarifications have been made with regard to filling up of post of Assistant Engineer and eligible candidates, who are working in the Corporation, can also be considered for appointment. In the meanwhile, the third respondent has passed the impugned order in



Ma.Ne.2/4924/98 dated 06.10.1999 and thereby the respondents 4 and 5 have been recruited to the post of Assistant Engineer in terms of G.O.(10 year) No.416 dated 15.09.1999 subject to the confirmation of the first respondent. The first respondent by virtue of G.O.Ms.No.375 dated 09.09.2005, confirmed the promotion of the respondents 4 and 5 in the post of Assistant Engineer. The third respondent has passed the impugned order of promotion to the respondents 4 and 5 in proceedings Ma.Na.1/35042/05 dated 18.01.2007 and thereby the respondents 4 and 5 have been promoted to the post of Assistant Executive Engineer. The present Writ Petitions have been filed by way of challenging the impugned order passed by the third respondent on 06.10.1999. Under the said circumstances, these Writ Petitions have been filed to quash the proceedings passed by the third respondent, confirmed by the first respondent.

4.On the side of all the respondents counter has been filed. However, the counter filed by the respondents 4 and 5 is very much essential, wherein it is averred to the effect that the petitioner has already filed WP(MD)No.725 of 2007 on the file of this Court in respect of the same reliefs and the same has been dismissed. The petitioner has conveniently suppressed in both the Writ Petitions and therefore, both the Writ Petitions are liable to be dismissed.

5.The learned counsel appearing for the petitioner has repeatedly contended to the effect that in the year 1996, the Tamil Nadu Municipal Corporations Engineering and Water Supply Service Rules, 1996 has been introduced. Under Rule 3 of the said Rules, the post of Assistant Engineer shall be filled up only by direct recruitment and by virtue of G.O.Ms.No.416 dated 15.09.1999 certain clarifications have been made with regard to filling up of the post of Assistant Engineer. The eligible candidates who are working in Corporation can also be considered for appointment. But despite of the said certain clarifications, the third respondent has recommended for promoting the respondents 4 and 5 and the first respondent has confirmed the proceeding of the third respondent and on the basis of confirmation, the respondents 4 and 5 have been promoted to the post of Assistant Engineer. Under the said circumstances, these Writ Petitions have been filed for getting the reliefs sought therein.

6.The learned counsel appearing for the respondents 4 and 5 in WP (MD)No.4792 of 2011 has befittingly contended to the effect that the petitioner has already filed WP(MD)No.725 of 2007 on the file of this Court, wherein the same reliefs have been sought and this Court after considering the divergent contentions raised on either side has dismissed WP(MD)No.725 of 2007 and therefore, the reliefs sought in the present Writ Petitions cannot be granted.

7.The entire contentions put forth on the side of the respondents 4 and 5 revolves upon the order passed in WP(MD)No.725 of 2007.

8.It is an admitted fact that the present petitioner has already filed WP(MD)No.725 of 2007, wherein it is prayed like thus:

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"In these circumstances, it is prayed that this Hon'ble Court may be pleased to issue a writ of Certiorarified Mandamus



calling for the records relating to the list of seniority of Assistant Engineers/Junior Engineers issued in 1/35042/05 dated 12.1.2007 and consequential order of promotion issued in 1/35042/05 dated 18.1.2007 on the file of 3rd respondent and quash the same as illegal and consequentially to direct the 3rd respondent of revise the list of seniority of Assistant Engineers/Junior Engineers treating the Assistant engineers and Junior Engineers as single category for the promotion to the post of Assistant Executive Engineer in accordance with Rule 5 of Tamil Nadu Municipal Corporation Service Rules 1996."

9. Even in the present petitions, the petitioner has challenged the very same proceedings passed by the respondents 1 and 3.

10. It is also equally an admitted fact that this Court after considering the rival contentions put forth on either side, has dismissed WP(MD)No.725 of 2007 on 30.04.2013.

11. Since the petitioner has filed the present Writ Petitions for identical relief and since WP(MD)No.725 of 2007 has already been dismissed, this Court is of the view that the petitioner is precluded from filing the present Writ Petitions by way of raising the same reliefs already sought in WP(MD)No.725 of 2007.

12. In fact, this Court has perused the entire averments made in both the petitions. No where it is stated about the dismissal of WP(MD)No.725 of 2007. Therefore, it is needless to say that by way of suppressing the earlier order passed by this Court in WP(MD)No.725 of 2007, the petitioner has filed these Writ Petitions and the same are liable to be dismissed.

13. In fine, these Writ Petitions are dismissed with cost. Consequently, MP(MD)No.2 of 2011 is closed.

MEMORANDUM OF CASES

Respondent	Rs. P.
Stamp for Vakalatnama	10.00
Advocate's fee not received	----
Translation Printing/Typing Charges	NIL

To be paid by the Petitioner to the Respondent	10.00

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



TO:

1. The Secretary, Municipal Administration and Water
Supply Department, Fort St. George, Chennai - 9.

2. The Director of Municipal Administration, Chepauk, Chennai - 600 005.

3. The Commissioner, Madurai Municipal Corporation,
Madurai - 625 002.

2CC TO MR. B. SARAVANAN, ADVOCATE SR: 17438 AND 17439

2CC TO MR. T. CIBI CHAKRABORTHY ADVOCATE SR: 17418 AND 17419

+1cc to M/S.R.Murali, Advocate SR.No. 17433

order made in
W.P(MD) Nos.4868 & 4792 of 2011
23.03.2017

mj

KK/RSK/SAR 3/27.04.2017/5P/9C