

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.No.13 of 2013
and M.P.No.1 of 2013

R.M.Bhuvaneswari

.. Appellant

Vs

1.The Commissioner of Municipal
Administration, Chepauk,
Chennai - 5.

2.The Commissioner,
Erode Corporation,
Erode - 1.

3.L.Gowri

4.R.Madhaiyan

5.P.V.Arumugam

...Respondents

Appeal preferred under Clause XV of Letters Patent against the order dated 01.02.2010 made in W.P.No.1456 of 2010.

W.P.No.1456/2010:

Petition praying to issue a Writ of certiorarified Mandamus calling for the records relating to the impugned orders i. final seniority list dt 22.8.2009 made in Na. Ka. C.1/42159/2008 ii. panel list for the promotion to the post of Superintendent dt 25.8.2009 made in Na. Ka. No.C1/42159/2008 iii. Promotion order dt 4.11.2009 made in Na. Ka. No.C1/9620/2009 and iv. order dt. 05.11.2009 made in Na.Ka. No.C1/42159/2008 passed by the 2nd respondent herein quash the same and consequently direct the 2nd respondent to revise the seniority list and panel list for the year 2007-2008 for inclusion of the petitioner in the appropriate place i.e. above the name of the respondents 3 to 5 and give all consequential benefits provided under the law.

For Appellant .. Mr.P.Rajavel

For Respondents.. Mr.V.Kathirvel,

Spl. Govt. Pleader for R1 & R2
R3 to R5 - No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant was working as an Assistant with the second respondent. Though in the temporary/primary panel prepared for promotion, her name was included, it was not found in the revised seniority list issued on 25.08.2009 on the premise that she as given a charge memo on 22.08.2009. Under those circumstances, seeking inclusion, the present writ petition has been filed, which was dismissed by the learned single Judge holding that inasmuch as the charge was pending at the relevant point of time, such a request was not feasible for consideration. Challenging the same, the present writ appeal has been filed.

2. We have heard the learned counsel appearing for the appellant and the learned Special Government Pleader appearing for respondents 1 and 2.

3. What was formulated at the earlier point of time is only tentative seniority list. Admittedly, at the time of publishing the revised seniority list, the appellant was facing charge. This charge also ended in the punishment of withholding of increment for one year without cumulative effect. The appellant also filed an appeal against the same before the first respondent, which is pending consideration.

4. In such view of the matter, we do not find any merit in this appeal. As per the Government Order passed in G.O.Ms.No.368 P & AR Department dated 18.10.1993, an employee is not entitled for being considered for promotion while facing charges. Even otherwise, in law, the appellant cannot be considered while facing charges. Thus, the writ appeal stands dismissed.

5. However, considering the submission made by the learned counsel appearing for the appellant, we direct the first respondent to dispose of the appeal filed against the order imposing punishment of withholding of increment for one year without cumulative effect, which has been made through the office of the Corporation of Erode District viz., the second respondent, within a period of twelve weeks from the date of receipt of a copy of this order, if the same is still pending. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner of Municipal
Administration, Chempauk,
Chennai - 5.

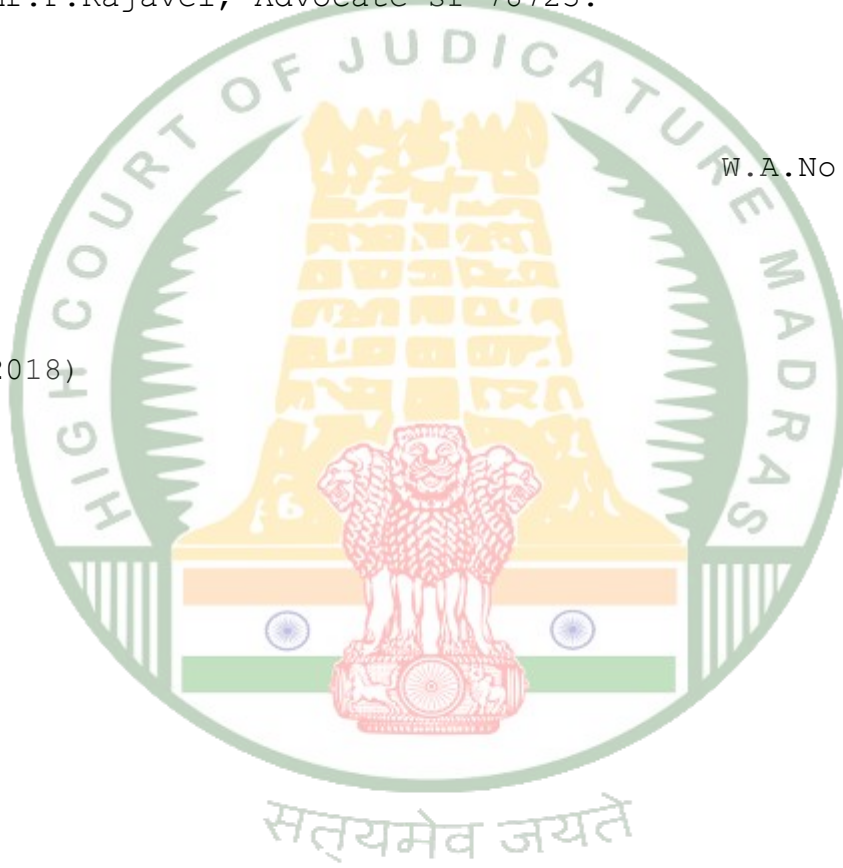
2.The Commissioner,
Erode Corporation,
Erode - 1.

+1 CC to Govt. Pleader sr 79528.

+1 CC to Mr.P.Rajavel, Advocate sr 78723.

W.A.No.13 of 2013

SAI (CO)
SP(05/12/2018)



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