

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

W.A.No.1564 of 2010

P.Kaliaperumal ... Appellant/Petitioner

Vs

- 1.State of Tamil Nadu rep. by
its Secretary,
Department of Municipal
Administration and Water
Supply, Fort St. George,
Chennai - 9.
- 2.Commissioner of Municipal
Administration, Chempauk,
Chennai - 5.
- 3.The Regional Director,
Municipal Administration,
Thanjavur Region, Chengalpattu.

- 4.K.Balraj
- 5.G.Raghunathan
- 6.P.Meerabai
- 7.S.Kathirvel
- 8.T.Syeenyamudhullar
- 9.A.Vazeer Beevi
- 10.R.Ramanan
- 11.R.Jayalakshmi
- 12.Easwaranathasamy
- 13.M.Selvaraj
- 14.R.Sarojini
- 15.C.Vijayakumar
- 16.K.Gandhi
- 17.M.Asina Begum
- 18.S.Sheik Nazurudheen
- 19.G.Kumarasamy
- 20.K.Jayaraj

21.V.Ganesan
22.K.Gowri
23.K.V.Vivekanandan
24.A.Thangaiyan
25.P.Shanmugam
26.S.Tamilarasi
27.M.Indirajit
28.A.Venugopal
29.L.Shanmugam

.. Respondents/Respondents

Appeal preferred under Clause XV of Letters Patent against the order dated 08.06.2010 made in W.P.No.27087 of 2005.

Prayer in W.P.No.27087 of 2005:

Writ Petition filed Under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified mandamus to call for the records conencted to the issuance of the impugned proceedings No.41928/2004/k2 of the 2nd respondnet dated 7.10.2004 togeather with the proceedings No.41928/2004/k2 dated 10.12.2004 and quash the same and consequently direct the respondents 1 to 3 to grant seniority to the petitioner over and above respondents 4 to 29 in class v officers grade on the basis of his appointment of Assistant with effect from 23.01.1990.

For Appellant ... Mr.Muthukumar
for M/s.Paul and Paul

For Respondents... Mr.N.Sakthivel,
Addl. Govt. Pleader for R1 to R3
R4 to R7, R10 to R23, R25 to R29
served

JUDGMENT

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

The appellant filed the writ petition, challenging the impugned order of the second respondent dated 07.10.2004 upholding the final seniority list dated 10.12.2004. The appellant is an Assistant. For the post of Assistant, the feeder category is Junior Assistant. For the post of Junior Assistant, passing of departmental test is not required as against the post of Assistant. Even at the time of entering the post of Junior Assistant, the appellant did complete the departmental test. The private respondents herein completed the departmental test thereafter.

2.The appellant was promoted temporarily to the post of Assistant on 22.01.1990. But the private respondents, who were

otherwise seniors to the appellant in the category of Junior Assistant were promoted thereafter to substantive posts. The seniority list in the cadre of Assistant was drawn by placing the appellant below the private respondents. The appellant challenged the said seniority list and it was revised through the impugned proceedings dated 16.03.2005 inter alia contending that he was actually promoted as an Assistant on 23.01.1990 much prior to the private respondents and even in the cadre of Junior Assistant, he completed the departmental test at the time of entering the said post as against the private respondents, who completed it while working as Junior Assistants. The learned single Judge dismissed the writ petition holding that not only the private respondents were seniors to the appellant in the post of Class V Officers, which is feeder category but they were fully qualified in the said post as well as promotional post at the time of promoting the appellant albeit temporarily. Challenging the same, the present appeal has been filed.

3. Learned counsel appearing for the appellant reiterated the aforesaid two contentions. It is submitted that the order dated 22.01.1990 would enure to the benefit of the appellant. He was promoted ahead of the others. Therefore, it should be deemed as if the merit and ability were taken note of at the relevant point of time. Admittedly, he also completed the departmental test even at the time of entering the post of Junior Assistant. The private respondents completed it thereafter. Therefore, the aforesaid factum will have to be reckoned for the purpose of fixing inter se seniority even in the cadre of Junior Assistant.

4. We do not subscribe to the submission made as for the post of Junior Assistant, no departmental test is required. This is required only at the time of considering a Junior Assistant to the promotional post of Assistant. Admittedly, both the appellant as well as the private respondents were qualified on the date of temporary promotion of the appellant. Thus, these private respondents were never considered and therefore, there was no assessment of inter se merit and ability at the relevant point of time since promotion itself was temporary. It is the specific case of the official respondents that the private respondents were fully qualified to be considered and promoted as Assistants. Therefore, looking from any perspective, we do not find any merit in this appeal. Accordingly, the writ appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Department of Municipal
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Supply, Fort St. George,
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3.The Regional Director,
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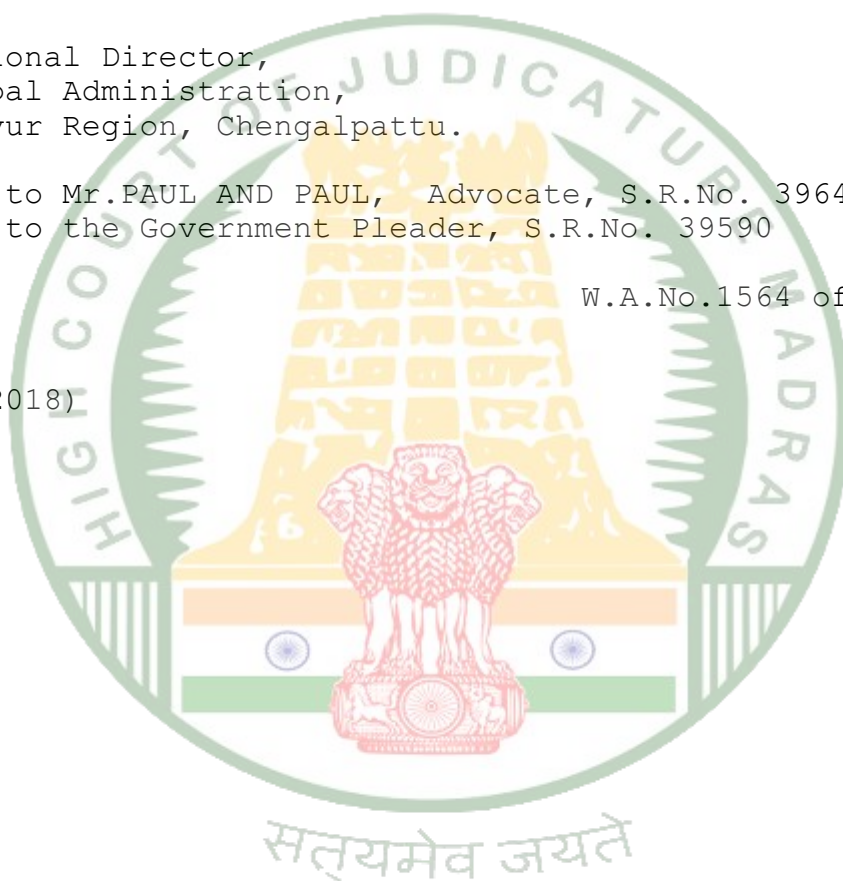
+1cc to Mr.PAUL AND PAUL, Advocate, S.R.No. 39647

+1cc to the Government Pleader, S.R.No. 39590

W.A.No.1564 of 2010

GJ(CO)

TR(04/07/2018)



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