

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.03.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.39204 of 2015

R.Shivakumar

.. Petitioner

Vs.

The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorari Madmamus calling for the records in its Memo No.E2/13617/2012 dated 09.11.2015 and quash the same and consequently direct the respondents to promote the petitioner as Planning Assistant Grade-I with effect from 2008 panel in the light of the directions issued by this Court in W.P.No.9114 of 1998 dated 06.07.2007 (M.Shanmugam's case) with all consequential and attendant benefits.

For Petitioner .. Mr.V.Vijayshankar

For Respondent .. Mr.K.Rajashrinivas

ORDER

The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari Madmamus calling for the records in its Memo No.E2/13617/2012 dated 09.11.2015 and quash the same and consequently direct the respondents to promote the petitioner as Planning Assistant Grade-I with effect from 2008 panel in the light of the directions issued by this Court in W.P.No.9114 of 1998 dated 06.07.2007 (M.Shanmugam's case) with all consequential and attendant benefits.

2. The petitioner was originally appointed as Planning Assistant Grade-IV in 1995. He was promoted as Planning Assistant Grade-III in 2010 and was further promoted as Planning Assistant Grade-II. The petitioner is a Post Graduate Degree Holder and a Member of All India Town and Country Planning Institute having successfully completed the AITP Course which

is equivalent to Master of Town Planning (MTP).

3. The next avenue of promotion to the post of Planning Assistant Grade-II is to the post of Planning Assistant Grade-I and the said post is filled up by Direct Recruitment and promotion in the ratio of 1:2. The qualification for appointment to the post of Planning Assistant Grade-I is as follows:

"(i) Master's Degree or an equivalent Diploma in Town and Country Planning: or Associate Member of the Institute of Town Planners (AITP)

(ii) B.E. (Civil or Highways);

(iii) Post Licentiate Diploma in Town and Country Planning with two Year Town Planning Experience or

(iv) L.C.E. Or D.C.E or D. Arch with four year Town and Country Planning Experience."

According to the petitioner, he is having Master Degree in Town and Country Planning. According to him, he fulfilled his qualification as prescribed under category (i) (MTP/AITP), as extracted above. However, according to the petitioner, the respondent follows two year rule for consideration to the post of Planning Assistant Grade I, despite the fact that no such provision is available in the relevant rules. However, the respondent notwithstanding the practice of adopting the two year rule, in the past, relaxed the two year experience rule in respect of several officers and granted them promotion. When the petitioner sought for promotion, requesting for relaxation of two year experience, there is no action forthcoming from the respondent.

4. According to the petitioner, one Mr. Shanmugam approached this Court in W.P.No.9114 of 1998 seeking promotion to the post of Planning Assistant Grade-I as he was also qualified in respect of category (i) of the qualification prescribed. This Court by order dated 06.07.2007 allowed the writ petition by observing as follows:

"2. There is no representation for the second respondent. On a perusal of the entire materials placed on record and upon hearing the learned counsel for the petitioner and the first respondent, this Court is able to assess that the Planning Assistant Grade-I is a selection post, for which only merit and qualification matters, not the seniority. The qualification for the post of Planning Assistant Grade-I is narrated under Para No.5, Special

Qualifications in the Service Regulations, both for direct recruitment and promotion in the order of (1) Master's Degree or an equivalent Diploma in Town and Country Planning; or (ii) B.E., (Civil or Highways); or (iii) Post Licentiate Diploma in Town and Country Planning or (iv) L.C.E. Or D.C.E. Or D.Arch. Thus, preference has to be given in the order of qualification as mentioned. The fact that the petitioner is a B.E. (Civil) and that the second respondent is only a Diploma Holder is not disputed by the first respondent. Since admittedly the post of Planning Assistant Grade-I is a selection post and when the petitioner is possessing the higher qualification, which he acquired in 1992 itself, the respondent ought to have given preference to the petitioner over the second respondent as per the Service Regulations-1980 and since the first respondent has not followed the said Service Regulations, an illegality has occurred to the petitioner."

5. According to this Court, a preference has to be given in the order of qualification as mentioned. In pursuance of the order passed by this Court in the aforesaid writ petition, the same was implemented in respect of the said Shanmugam.

6. In the above circumstances, the petitioner submitted a representation on 20.09.2013, requesting for promotion as Planning Assistant Grade-I in terms of the order passed by this Court date 06.07.2007 in the aforesaid writ petition. This request was made by the petitioner on the ground that he was the only qualified person working in the feeder category having the qualification stated in category (i) and therefore, he had a preferential right to be promoted as first before others to be considered for such promotion.

7. Since there was no action forthcoming from the respondent, the petitioner approached this Court by filing the writ petition in W.P.No.29044 of 2014 and this Court disposed of the writ petition on 07.11.2014, directing the respondent to consider the representation of the petitioner and pass appropriate orders. Although initially no order was passed in pursuance of the direction of this Court dated 07.11.2014, the petitioner was constrained to file a Contempt Petition in C.P.No.2479 of 2015 and after notice was issued in the Contempt Petition, the respondent passed impugned order dated 09.11.2015 rejecting the petitioner's representation for the following

reasons:

i) he has been promoted as P.A. Gr.II on 12.08.2013 i.e. Just 40 days ago to the representation submitted for promotion to the post of P.A. Gr.I.

ii) he cannot be elevated as P.A. Gr.I by skipping his seniors who were already eligible for promotion to the post of P.A. Grade I which is against the regulations.

iii) and he cannot seek promotion on the basis of Thiru M.Shanmugam case (viz. W.P.No.9114 of 1998) which is applicable only to the individual concerned."

The said proceedings dated 09.11.2015 is impugned in the above writ petition.

8. Upon notice, Sri.K.Rajashrinivas, the learned counsel for the respondent entered appearance on behalf of the respondent and filed a counter affidavit.

9. Sri.V.Vijay Shankar, the learned counsel appearing for the petitioner at the outset, would submit that though initially the petitioner pleaded that the two year experience adopted by the respondent was not provided for under the rules and even assuming that there was any such instruction, the respondent had relaxed the said period of two years in respect of several officers. He would further submit that as on today the petitioner has completed the two year period and therefore, the first reason stated in the impugned order does not hold good any further.

10. As regards, the second reason stated in the impugned order, the learned counsel for the petitioner would submit that the petitioner being qualified in respect of category (i) according to qualification prescribed, he would be entitled to be considered first in preference to other persons, waiting for promotion, since the petitioner is the only person having such qualification, unlike others.

11. The third reason which spelt out in the impugned order is that the promotion of M.Shanmugam in pursuance of the direction passed by this Court in W.P.No.9114 of 1998 was applicable only to the petitioner therein i.e. Mr.M.Shanmugam and not to others. He would submit that this reason cannot be validly pressed on behalf of the respondent since the ruling of this Court in the said writ petition has become final binding upon the respondent and the authority cannot be allowed to take any contra stand in the matter.

12. At this, per contra, the learned counsel for the respondent besides reiterating the reasons spelt out in the impugned communication, dated 09.11.2015, would submit that the petitioner was not senior, since there were several senior persons working in the feeder category and hence, the petitioner could not be considered for promotion. More over, he would submit that the qualification as such prescribed does not give preference to category-wise, as any one of the qualifications possessed by the candidates was fair enough for consideration of promotion on the basis of seniority. Therefore, it is not correct on the part of the petitioner to claim for promotion on the basis of category (i) qualification possessed by him overlooking the claim of the seniors in the feeder category. However, the learned counsel for the respondent would not have any serious objection to the arguments advanced by the learned counsel for the petitioner that the two year period which was originally applied for refusing to grant promotion to the petitioner did not survive any further as the petitioner has completed two year period during the pendency of the litigation before this Court. The other issue regarding the applicability of the direction only to the petitioner therein viz., M.Shanmugam cannot also be a valid objection, since any ratio laid down by this Court is applied uniformly to all the persons similarly placed as otherwise the same would be violative of Article 14 of the Constitution of India.

13. The arguments advanced on behalf of the respondent namely the petitioner was not a senior most as there were other seniors waiting for promotion cannot also be accepted for the reason that it is not in dispute that the petitioner is the only person in a feeder category having category I qualification and therefore, he ought to be considered for subject promotion ahead of others, notwithstanding the petitioner was senior or not. This is particularly so, the impediment of two year is also being removed by passage of time, since the original stand of the respondent was that the rule provided for two year waiting period which is of course disputed by the learned counsel for the petitioner. However, in view of the above stated facts, this Court feels it is not necessary to give any finding on this aspect, as the petitioner admittedly has completed two years as Planning Assistant Grade-I in 2015 itself.

14. For the above said reasons, the petitioner has made out a clear case for grant of relief and therefore, this Court has no hesitation in allowing the writ petition as prayed for. The impugned order passed by the respondent in Memo No.E2/13617/2012 dated 09.11.2015, is hereby quashed and there shall be a direction to the respondent to promote the petitioner as Planning Assistant Grade-I with effect from the date, the petitioner completed two years as Planning Assistant Grade-II

with all attendant benefits as admissible on such promotion. The direction of this Court shall be complied by the respondent within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

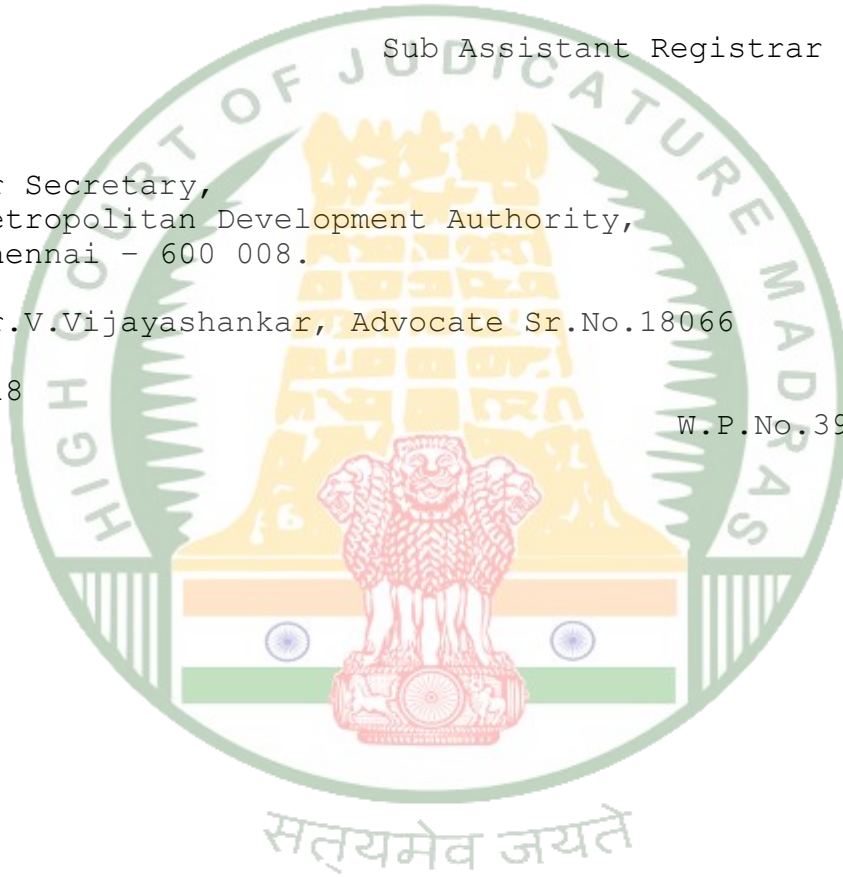
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To

The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.

+1cc to Mr.V.Vijayashankar, Advocate Sr.No.18066

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