

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2723 of 2018
and
CMP No.22413 of 2018

The Commissioner,
Coimbatore Corporation,
Coimbatore.

... Appellant/Respondent

Vs.

N.Jayachandran

... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 14.03.2018 made in W.P.No.11205 of 2010.

W.P.No.11205 of 2010:

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified Mandamus Calling for the records of the Respondent in his proceedings in Na.Ka.No.482/2010/MC2 dated 16.04.2010 and to quash the same as illegal in so far as it rejects the claim of the petitioner is concerned and consequently to direct the respondent to include the Petitioner in the seniority list of Assistant as junior most.

For Appellant : Mr.R.Sivakumar
Standing counsel

For Respondent : Mr.T.Ayengaraprabhu

J U D G E M E N T

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

Commissioner, Corporation of Coimbatore, has filed the present writ appeal against the order dated 14.03.2018, passed in W.P.No.11205 of 2010, by which the writ petition filed by the respondent herein, challenging the proceedings in Na.Ka.No.482/2010/MC2 dated 16.04.2010, passed by the Corporation has been allowed and a further direction has been passed to post the respondent herein as Assistant and include him in the seniority list as Assistant, on par with other 9 persons, who are similarly situated with the respondent herein, in the sanctioned posts, with all attendant benefits.

2. The facts in brief of the writ petitioner are as under:

The respondent/writ petitioner was originally employed under Director of Handlooms and Textiles. He was working in the Directorate of Tamil Nadu Textile Corporation as Lab Assistant. After the closure of the Tamil Nadu Textile Corporation, the respondent/writ petitioner was re-employed as Computer-cum-Clerk in the appellant Corporation by G.O.(3D) No.845, Municipal Administration and Water Supply Department, dated 03.12.2008. The respondent/writ petitioner joined duty on 23.07.2009 in the Corporation and Government issued G.O.(Ms.) No.93, Municipal Administration and Water Supply (MC4) Department dated 08.06.2009. Under the said Government Order, ten posts of Computer-cum-Clerk were created. The respondent/writ petitioner and nine other persons were appointed as Computer-cum-Clerk in these posts and they were doing the same work.

3. The post of Computer-cum-Clerk was merged with Assistant under Tamilnadu Municipalities Subordinate Services General Rules, 1996. By proceedings in Na.Ka.No.482/2010/MC2 dated 06.03.2010, a tentative seniority list as on 01.12.2009 was issued. Final seniority list was issued in Na.Ka.No.482/2010/MC2 dated 16.04.2010. The grievance of the respondent/writ petitioner is that although ten posts were sanctioned in the rank of Assistant, the other nine Computer-cum-Clerks were appointed as Assistants, leaving alone the respondent/writ petitioner. The respondent/writ petitioner therefore, filed the instant writ petition challenging the final seniority list dated 16.04.2010, showing the seniority list of Assistants, wherein the respondent/writ petitioner has been left out.

4. The appellant Corporation have filed a counter. According to the appellant Corporation, the respondent/writ petitioner was originally working with the erstwhile Tamilnadu Textile Corporation, which was facing the winding-up proceedings. On the request made by the Director of the Tamilnadu Textile Corporation, the Commissioner of Municipal Administration, Chennai advised the appellant Corporation to give their approval to absorb the service of few of the staff working in the erstwhile Tamilnadu Textile Corporation. In pursuant to the above advice the subject was placed for the consideration of the Council. The Council after due deliberation, by their resolution No.251 dated 17.09.2001, resolved to absorb 10 Lab Assistants of the erstwhile Tamilnadu Textile Corporation into the 10 vacant post of Computer-cum-Clerk, which are originally created under the Indian Population Project-V. The Council had resolved that they may be absorbed subject to the following conditions:-

1. that necessary consent may be obtained from the Director of Family Welfare, Chennai for the sanction of appropriate grant towards their salary.

2. to seek appropriate relaxation from the Government of Tamilnadu against the requisite educational qualification.

3. that they will be fixed at the pay scale applicable to the category of Assistants at its initial stage.

4. In so far as their seniority is concerned that they will be considered as Junior Most to the existing Computer-cum-Clerk.

5. In the counter, the appellant Corporation has further stated that the above resolution of the appellant Corporation was forwarded to the Municipal Administration, Chennai, which in turn by its proceedings dated 10.07.2002 recommended to the Government of Tamilnadu for absorption of 11 persons with the conditions as it was imposed by the Council of the Corporation. The entire issue was once again considered by the State Government. The Government after considering the entire facts decided that out of the said 10 person 8 of them were not sponsored by the Employment Exchange at the time of their initial recruitment to the Tamilnadu Textile Corporation, therefore, those 8 persons are not eligible for further absorption and the remaining 2 persons, including the respondent/writ petitioner alone may be appointed to appellant Corporation.

6. Accordingly by G.O.(3D) No.845, MA & WS Department dated 03.12.2008 the Government accorded necessary relaxation towards their educational qualification and the appellant Corporation was permitted to appoint the respondent/writ petitioner in the existing post of Computer-cum-Clerk. The above Government Order was placed before the Appointment Committee of the appellant Corporation and the Appointment Committee by their resolution dated 10.07.2009 had resolved to appoint the respondent/writ petitioner to the post of Computer-cum-Clerk in the pay scale of Rs.4000-100-6000 which is the pay scale applicable to the category of Assistant as per the recommendation of the 5th Pay Commission. Accepting those conditions the respondent/writ petitioner had joined duty on 23.07.2009. Thus, his appointment was only against the Project which is funded by the Central Government.

7. Appellant Corporation has further stated that the above mentioned facts would make it clear that those 9 persons who were absorbed into the regular establishment of this Corporation by including their name in the category of Assistants are belonging to a totally different class than the respondent/writ petitioner. It was stated that the respondent/writ petitioner cannot compare himself along with those 9 persons whose service grievance was considered separately by the Government. The respondent/writ petitioner is not entitled for the benefit of G.O.Ms.No.93, MA & WS Department dated 08.06.2009, because his

service is differently placed.

8. The learned Single Judge found that the respondent/writ petitioner and the nine other persons could not be treated differently as they are identically placed in the Corporation. The learned Single Judge therefore allowed the writ petition and directed that the respondent/writ petitioner must be also appointed as Assistant. The Corporation has challenged the order in the instant Writ Appeal.

9. When we pointedly asked the learned counsel for the Corporation as to what is the difference between the respondent/writ petitioner and nine other Computer-cum-Clerks, who had been given the benefit, no concrete answer was forthcoming. The learned counsel would agree that there is absolutely no distinguishing factors in terms of service output and the nature of duties between the respondent/writ petitioner on the one hand and nine other persons on the other hand.

10. There are ten sanctioned posts, which were created in G.O.(Ms.) No.93, Municipal Administration and Water Supply (MC4) Department dated 08.06.2009. There is no reason as to why the respondent/writ petitioner alone has been singled out and not included in the seniority list of the Assistants. The reasons assigned by the Corporation in their counter affidavit cannot be accepted, while applying the test of Article 14 of the Constitution of India. The reasoning of the appellant Corporation, if accepted will result in treating equals unequally, which is not permissible under Article 14 of the Constitution of India. Writ Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner
Coimbatore Corporation
Coimbatore.

+1 CC to Mr.M. Muthappan, Advocate sr 87014.

+1 CC to Mr.R.Sivakumar, Advocate sr 87213.

W.A.No.2723 of 2018
and CMP No.22413 of 2018

NMI (CO)
SP(21/01/2019)