



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.(MD)No.713 of 2015 and
M.P.(MD)No.2 of 2015

1. The Secretary to Government of Tamil Nadu,
Municipal Administration Department,
Secretariat, Chennai - 9.

2. The Director of Municipal Administration,
Ezhilaga Inaivagam,
Chepauk, Chennai.

3. The Commissioner,
Tirunelveli Corporation,
Tirunelveli - 1,
Tirunelveli District.

... Appellants/Respondents

Vs.

1. V.Leela
2. Jeyalakshmi
3. A.Kumaresan
4. T.V.Shanmugam
5. S.Mariappan
6. R.Arunachalam
7. C.Mahalakshmi
8. S.Subramanian

... Respondent/Petitioner

... Respondents/Respondents

PRAYER: Writ appeal is filed under Clause 15 of the Letters Patent Act, to allow this Writ appeal by setting aside the order passed by the learned Judge in W.P.(MD)No.16814 of 2014, dated 29.10.2014.

Prayer in WP(MD)No. 16814/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in Na.Ka. No. Si1/11129/2001, dated 24.07.2014 on the file of the Respondent No.3 and quash the same as illegal and consequently to direct the Respondents to promote the petitioner to the post of Superintendent by re-fixing the seniority of the petitioner in the cadre of Assistant within the time stipulated by this Honourable Court.



For Appellants : Mr.Aayiram K.Selvakumar,
Standing Counsel.

For Respondents : Mr.S.Rajasekar,
for Mr.T.Lajapathy Roy

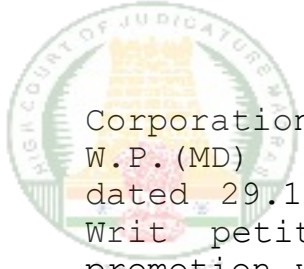
JUDGMENT

[Judgment of the Court was made by G.R.SWAMINATHAN, J.]

This Intra Court appeal is directed against the order dated 29.10.2014 allowing W.P.(MD)No.16814 of 2014 filed by the first respondent herein. The first respondent was appointed on 16.12.1989 in the post of Junior Assistant in Tirunelveli Municipality. She became eligible for promotion to the post of Assistant in the year 2001. When the panel was prepared on 09.02.2001, the petitioner was placed below one S.R.Malliga and above R.Jeyalakshmi who is figuring as the second respondent in this Writ appeal. However, while giving promotion based on the panel dated 09.02.2001, the first respondent herein was left out. The others in the panel were given promotion to the post of Assistant on 30.05.2001.

2. The reason for leaving out the first respondent was that she was facing a charge of misappropriation and recovery proceedings were pending against her. The defence of the first respondent is that the misappropriation was committed by another employee, by name, Gnanasamuthram who passed away on 01.04.2000. His wife acknowledged that her husband was guilty of misappropriation and she had deposited the entire amount of Rs.65,428.50/-. As a result, the Corporation did not suffer any loss. Taking note of this development, the Assistant Commissioner(Administration) of the Corporation passed an order dated 07.03.2002, exonerating the first respondent and others from the charges of misappropriation. In fact the amount recovered from the first respondent was refunded to her.

3. The grievance of the first respondent is that notwithstanding the said order of exoneration dated 07.03.2002, there was grant of promotion only on 18.09.2006. Therefore, the first respondent sent representations claiming that she must be given promotion to the post of Assistant with effect from 30.05.2001, the date on which the second respondent was granted promotion. Since there was no response from the authorities, she filed W.P.(MD) No.14812 of 2012, for redressal of her grievances. She also filed one more Writ petition, namely, W.P.(MD)No.19459 of 2013. The Writ petitions were disposed of with a direction to the authorities to take a decision based on the orders of exoneration passed by the Assistant Commissioner of Tirunelveli Municipal Corporation. But her request was negatived by the Commissioner of Tirunelveli Municipal



Corporation by order 24.07.2014. Questioning the same, she filed W.P. (MD) No.16814 of 2014. The learned single Judge by order dated 29.10.2014 allowed the Writ petition and directed that the Writ petitioner/the first respondent herein should be granted promotion with effect from 2001 and that she must be placed between one S.R.Malliga and one R.Jeyalakshmi who is the second respondent herein. Aggrieved by the aforesaid order, this Writ appeal has been filed.

4. Heard, Mr.Aayiram K.Selvakumar, learned Standing counsel appearing for Tirunelveli City Municipal Corporation as well as Mr.T.Lajapathy Roy, learned counsel appearing for the contesting respondent/Writ petitioner.

5. It is seen that the first respondent was aged 55 years at the time of filing the Writ petition. She must have attained the age of superannuation by now. Though the disciplinary proceedings were initiated against the Writ petitioner, the fact remains that the first respondent was not visited with any order of punishment. In fact, proceedings dated 07.03.2002 was issued exonerating the first respondent. The Corporation is now taking a stand that the authority who exonerated the first respondent was not competent to do so. It is however not denied that on account of deposit of the entire amount by the wife of Gnanasamuthram, the loss that occurred to the Corporation had been made good. In these circumstances, we are of the view that the interest of justice will be better served by directing the appellants to extend the monetary benefits alone to the first respondent/Writ petitioner. In other words, the relief granted in favour of the first respondent by the order impugned in this Writ appeal will not result in redrawing of any seniority or any other consequence. The first respondent will however be entitled to revised pensionary benefits, as if she was granted promotion to the post of Assistant on 30.05.2001. The first respondent cannot claim any difference in salary or other increments for the period from 30.05.2001 to 18.09.2006. This period will be counted only for granting her revised and enhanced pensionary benefits.

6. With this clarification, the Writ appeal is partly allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Secretary to Government of Tamil Nadu,
Municipal Administration Department,
Secretariat, Chennai - 9.



2. The Director of Municipal Administration,
Ezhilaga Inaivagam,
Chepauk, Chennai.

3. The Commissioner,
Tirunelveli Corporation,
Tirunelveli - 1,
Tirunelveli District.

+1 cc to Mr.T.Lajapathi Roy, Advocate, SR.No.95809

pmu
SS/RSK/SAR 2/19.12.2018/4P/5C

W.A. (MD) No.713 of 2015
and
M.P. (MD) No.2 of 2015
15.11.2018