



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.16746 of 2014

and

M.P. (MD) No.1 of 2014

S.Padmanabham

... Petitioner

Vs.

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9.

2. The Commissioner of Municipal Administration,
Ezhilagam Annex, Chepauk, Chennai.

3. The Commissioner,
Tiruchirappalli City Corporation.

4.S.N.Shanmugam

5.Mumtaj

6.A.Rasheetha Begam

7.N.Rajamanickam

8.R.Sathishkumar

(R4 to R8 are impleaded vide

Court order dated 25.04.2017 made in

W.M.P. (MD) Nos. 12746 to 12750 of 2016).

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to promote the petitioner as Administrative Officer in the 3rd respondent Corporation with all service and monetary benefits on par with the juniors.

For Petitioner : Mr.Veerakathiravan
Senior counsel for Veera associates

For R1 & R2 : Mr.M.Muthu
Additional Government Pleader.

For R3 : Mr.B.Pugalendhi
Additional Advocate General assisted
by Mr.N.S.Karthikeyan

For R4 to R8 : Mr.K.K.Ramakrishnan

**ORDER**

The relief sought for in this writ petition is to direct the respondents to promote the petitioner as Administrative Officer in the 3rd respondent Corporation with all service and monetary benefits on par with the juniors.

2. Heard the learned counsel appearing on behalf of the parties to the lis.

3. The present writ petition is a classic one, where the authorities had created a confusion in the matter of following the rules in force and in promotions in order to show some favoritism to the writ petitioner on extraneous considerations. The noble principles of equality is absolutely diluted. If the competent authorities followed the rules and regulations uniformly in its letter and spirit and scrupulously, there would be no room for any discrimination, confusion or unnecessary litigations. Showing certain favoritism and nepotism is undoubtedly causing not only discrimination, it affects the constitutional rights of the other equally placed employee. For every action or ill action there would be some reaction. The action of providing certain undue advantage are unwarranted. Concession in favour of certain employees results in denial of opportunity to the other sector of the employees, who all are otherwise eligible and longing for their turn for further promotion.

4. The facts in nutshell to be considered for the purpose of deciding this case is that the writ petitioner namely, S. Padmanabham, was appointed as Steno-typist in the Tiruchi City Corporation on 10.12.1998. The category of Steno-typist is a separate category. There are avenues for promotions from the cadre of Steno-Typist to every post on ministerial lines, so also to the post of Steno-Typist Grade II and Grade I. However, the writ petitioner was appointed by way of transfer of service to the post of Junior Assistant on 10.11.2005. The writ petitioner was transferred based on Rule 28 of the Tamil Nadu Municipal Corporation Service Rules, which states that a member in a class or a category of a service may be required to serve in any post of equal cadre in the same or in other services of the Corporation.

5. In view of the above Rule, the writ petitioner was posted as Junior Assistant from the cadre of Steno Typist. Thereafter, he was appointed in the post of Personal Assistant on 03.10.2008 from the post of Junior Assistant. It was brought to the notice of this Court that the appointment to the post of Personal Assistant by way of transfer can be done from amongst the holders of the post of Assistant. Thereafter, once again the rule relating to



promotion to the post of Reporter was relaxed in favour of the writ petitioner in G.O.Ms.No.114, and he was appointed as Reporter with effect from 18.11.2009. The relaxation of rule was granted by the Government so as to appoint the writ petitioner to the post of Reporter.

6.After joining in the post of Reporter, the writ petitioner had submitted an application, within three months, on 19.02.2010 to post him as Superintendent / Assistant Revenue Officer. The request of the writ petitioner was considered and he was transferred and posted as Assistant Revenue Officer on 01.10.2010 with a condition that he should not claim any preference and the said order of transfer was issued only based on the work arrangements. The writ petitioner had submitted further representation to the committee to consider him for appointment as Superintendent. Accordingly, the appointment committee has passed a resolution on 28.02.2012, recommending the writ petitioner to the post of Superintendent.

7.However, the Government has not passed any order, accepting the same and it remains as it is. In this regard, the resolution was challenged by way of writ petition in W.P.(MD) No. 4240 of 2012 and an interim stay was granted in respect of the resolution on 17.04.2014. Thus, the case of the writ petitioner stood at that stage. Meanwhile, the writ petitioner was again transferred and posted as Superintendent under work arrangement on 04.03.2014, subject to the condition that he should not claim any preference from and out of the work arrangement order given in favour of the writ petitioner.

8.Under these circumstances, the writ petitioner moved the present writ petition for a direction to direct the respondents to promote him as Administrative Officer on the ground that the post of Reporter is an equivalent category that of the Superintendent.

9.The learned Senior counsel appearing on behalf of the writ petitioner made a submission that the posts of Superintendent, Assistant Revenue Officer and Reporter are equivalent categories carrying the same scale. Thus, all the three posts are to be treated as feeder category for the purpose of granting promotion to the post of Administrative Officer. The learned Senior counsel further contended that the writ petitioner was holding the post of Superintendent and acquired necessary experience both in the post of Superintendent as well as in the post of Assistant Revenue Officer. Thus, in all respects, he is a qualified candidate for consideration for promotion to the post of Administrative Officer.

10.The case of one, K.Kalaiselvan who was holding the post of ~~Reporter~~ ~~Assistant Revenue Officer~~ in the City Corporation also referred by the learned Senior counsel by stating that his case was considered for promotion. However, the same was disputed by the competent



authorities stating that he was not possessing the requisite qualification. When the case of one K.Kalaiselvan considered, the writ petitioner is also eligible for consideration in view of the fact that he is fully qualified.

11.The learned Senior counsel further referred to an order passed in W.A.(MD) No.988 of 2014 holding that the equivalent categories are also to be considered for promotion to the post of higher category. In other words, all the holders of the equivalent posts are to be considered for promotion to the higher posts.

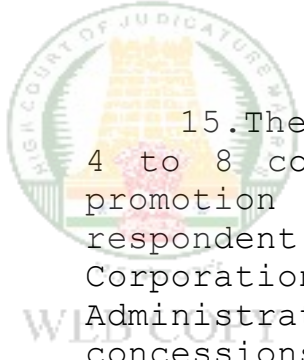
12.The learned Additional Advocate General appearing on behalf of the third respondent contended that the case of the writ petitioner cannot be considered in view of the fact that the post of Reporter is not a feeder category for promotion to the post of Administrative Officer. The equivalent scale of pay cannot be a ground to claim promotion. The scale of pay is no way connected with promotion provided under the rules. As per the amended rule in respect of Tamil Nadu Municipal Corporation Service Rules, the Government issued G.O.Ms.No.179, Municipal Administration and Water Supply (MC-4) Department dated 05.10.2009. The rules relating to the post of Administrative Officer was amended and the amended rules are extracted here under:

Administrative Officer:

- i) By transfer from the holders of the post of Class - II.
- ii) By promotion from the holder of the posts of Superintendent or Assistant Revenue Officer in the Tamil Nadu Municipal Corporations General Subordinate Service.
- iii) "Must have worked for a period of not less than two years in the post of Superintendent or Assistant Revenue Officer".

13.As per the amended rule, the post of Administrative Officer shall be filled from amongst the eligible holders in the posts of Superintendent or Assistant Revenue Officer. The post of Reporter has not been incorporated as feeder category under the rule, thus, the writ petitioner is not qualified for promotion. Further, it is contended that the writ petitioner was granted certain concessions right from his appointment. He was initially appointed as Steno Typist and the post of Junior Assistant was granted in favour of the writ petitioner and further the rule was relaxed so as to appoint him to the post of Reporter.

14.Thus, all along certain concessions are provided to the writ petitioner for the reasons not known. Thus, the learned Additional Advocate General is of an opinion that the case of the writ petitioner cannot be considered for promotion to the post of Administrative Officer, since the post of Reporter is not included as a feeder category for promotion to the post of Administrative Officer in the service rules.



15. The learned counsel appearing on behalf of the respondents 4 to 8 contends that the writ petitioner is not qualified for promotion to the post of Administrative Officer and the 4th respondent is the Senior-most Superintendent working in the Corporation and waiting for promotion to the post of Administrative Officer. The writ petitioner has availed the concessions granted by the authorities all along from his date of appointment and therefore, now the authorities should not be allowed to grant any further concession in contravention to the service rules in force.

16. The learned counsel for the respondents 4 to 8 is of an opinion that granting relaxation or concession should not affect the other eligible candidates, who are waiting for promotion in the order of seniority. The resolution was passed on 28.02.2012 in favour of the writ petitioner and the same is under challenge in W.P.(MD) No.4240 of 2012.

17. The learned counsel for the respondents 4 to 8 states that even the resolution states that the consideration can be shown prospectively and the respondents 4 to 8 were already qualified even before passing the resolution and promoted to the post of Superintendent and waiting for their turn for promotion to the post of Administrative Officer. At the outset, the learned counsel for the respondents 4 to 8 states that they were promoted long before the resolution was passed by the Corporation showing same concession and therefore, the respondents 4 to 8 cannot be deprived of their right of promotion to the post of Administrative Officer in accordance with their seniority and in accordance with the rules in force.

18. At the outset, the learned counsel for the respondents 4 to 8 states that the writ petitioner was treated as a special employee in respect of granting certain preferences and such preferences granted in each stage is affecting the right of other employees, more specifically, the respondents 4 to 8. The respondents 4 to 8 are going in the order of seniority and waiting for promotion as per the rules in force. Such being the factum, the writ petition deserves to be rejected.

19. Considering the arguments of the respective counsels, this Court has to consider the legal principles in the present writ petition.

(i) Promotion can never be claimed as a matter of right. However, consideration for promotion is a fundamental right. A person eligible as per the rules ought to be considered for the purpose of granting promotion and after preparing the panel of eligible persons fit for promotion. Thus, promotion per se cannot be a right and the consideration alone is a right.



(ii) The question arises, whether the competent authorities provided equal consideration in respect of all the eligible employees in such order of seniority and as per the rules in force for the purpose of grant of promotions to the higher category. In the present case, the writ petitioner had been provided with certain concessions facilitating him to secure certain posts in a specialized manner. In fact, the writ petitioner was treated as a special employee by the respondents 1 to 3. Such concessions created a hot burning issue amongst the other employees of the Corporation.

(iii) Adherence of the service rules is also a criteria to be followed at the time of preparation of the panel. It is to be noted that the authorities competent are bound by the rules and regulations in force. The promotional opportunities are to be provided equally to all the eligible employees, who are waiting and aspiring for promotion. The Non Adherence of rules or providing certain preferences or concessions will create unrest amongst the employees, so also, the same will create frustration in the minds of the employees and would affect efficiency in administration. Thus, the authorities competent are to be cautious in granting certain concessions or privileges to a particular employees or for a class of employee.

20. All employees are to be treated equally and equal opportunity in promotion is a constitutional prospective. This being the principles to be followed, now this Court has to examine the facts and circumstances in respect of the present writ petition. The fact remains that the writ petitioner was appointed as Steno Typist at the first instance. Subsequently, he was posted as Junior Assistant by way of transfer of service. Thereafter, directly he was promoted as Personal Assistant from the post of Junior Assistant. As per the rules, transfer to the post of Personal Assistant is to be made in letter and spirit. In this regard, it is stated that the writ petitioner alone was a qualified person for appointment to the post of Personal Assistant. The writ petitioner was further appointed to the post of Reporter from the post of Personal Assistant by granting relaxation of rules. Thus, concession was provided to the writ petitioner while appointing him to the post of Reporter.

21. Now the Court has to examine the scope and power of rule of relaxation by the competent authorities. The power of relaxation is a default provision. The power of relaxation has to be examined judicially. In exceptional circumstances, the relaxation can be granted to mitigate the injustice, if any, caused to a person or to a class of person. Relaxation can never be granted in a routine manner. The relaxation is not provided for the purpose of extending any favour to an individual. The power of relaxation is restricted scope on account of certain administrative actions and not for the purpose of extending certain concession or favoritism and nepotism.



22. This Court is of an undoubted opinion that the power of relaxation can never and ever be abused by the competent authorities. In current day situation, the competent authorities of the Government are granting relaxation in order to favour certain individuals, more specifically, on extraneous consideration and such exercise of power is to be certainly construed as arbitrary exercise. This Court is of an opinion that such arbitrary exercise has to be deprecated and in the circumstances, the authorities misguided should be proceeded under Discipline and Appeal Rules. Relaxation in the rules is provided to mitigate certain genuine circumstances and therefore, this Court is of an opinion that when there is a provision in the rules for regular appointment, when there is a mode of recruitment available for a particular post by way of direct recruitments, then it is always preferable that the competent authorities shall undertake the process of selection by providing an opportunity to all the eligible candidate in accordance with the rules in force.

23. Even, in another angle, the benefit of relaxation granted in favour of a person or group of persons is depriving the rights of all other persons, who are eligible. The equal opportunity in public employment is a constitutional mandate.

24. Equal opportunity in the matter of promotion amongst the employees is a valuable constitutional right. All the public posts are to be filled up only in accordance with the rules in force and by providing equal opportunity to all the eligible employees. Thus, an uniform approach is certainly essential for the purpose of considering the employees for promotion to the higher posts.

25. In the present case, the rules relating to the promotion to the post of Administrative Officer enumerates that the post of Administrative Officer shall be filled up by way of promotion from the holders of post of Superintendent or Assistant Revenue Officer.

26. The writ petitioner admittedly was not appointed to the post of Superintendent or to the post of Assistant Revenue Officer, he was posted to the post of Superintendent and Assistant Revenue Officer only by way of work arrangement. Posting the writ petitioner as Superintendent as well as the Assistant Revenue Officer categorically states that the writ petitioner should not claim any benefits from and out of the order passed permitting him to work on work arrangement basis. Thus, the order of posting was granted with a condition that the writ petitioner should not claim any concession. Apart from this fact, the writ petitioner made a representation to the Corporation and that was placed before the committee and the committee considered the representation and passed resolution that the writ petitioner is to be considered as Superintendent. However, that remained in the stage of resolution and that was challenged by way of writ petition in W.P. (MD) No. 4240 of 2012. Thus, the fact remains that

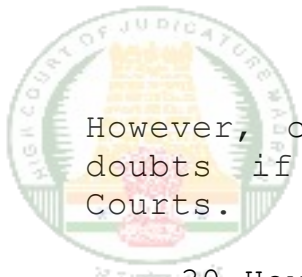


the writ petitioner was not appointed as Superintendent nor as Assistant Revenue Officer.

27. The fact remains that the writ petitioner was appointed as a Reporter more specifically, by granting relaxation of the relevant rules. Thus, the further resolution granted or concession granted itself is irregular and in contravention to the procedures and the rules in force. Concession can never be claimed as a matter of right. Even, if a concession is granted in a particular post as a one time measure then the same need not be continued in all other subsequent promotions in perpetuity. The writ petitioner is the holder of the post of Reporter and the post is a distinct one and the scale of pay was granted equivalent to that of the post of the Superintendent and Assistant Revenue Officer. However, in respect of the duties and responsibilities, one cannot come to the conclusion that the post of Reporter and the Superintendent carried the same nature of the duties and responsibilities. However, the post of Reporter has not been considered as a feeder category in the rules in force for the purpose of grant of promotion to the post of Administrative Officer. Thus, the rule in this regard is unambiguous that the post of Reporter is not a feeder category for promotion to the post of Administrative Officer as per the rules.

28. In respect of promotion in the service rules, it is the policy decision of the Government and such rules are formulated with proper consultation with the departments concerned. The administrative policies, which all are culminated into service rules cannot be interfered with in this writ petition, in view of the fact that the writ petitioner himself had been appointed to the post of Reporter by way of on relaxation of the relevant rules in force. Thus, the question of considering the case of the writ petitioner for promotion to the post of Administrative Officer cannot be further considered by diluting the existing service rules in force. Even, if the Government decides that the posts are to be arrayed as feeder category for promotion to the higher posts, then the decision is to be taken at the appropriate level. It is an administrative exercise and the Court cannot have any say in this regard, more specifically, in this writ petition and in view of the facts and circumstance of the case on hand. The fact remains that the post of Reporter is not a feeder category for promotion to the post of Administrative Officer.

29. This Court cannot travel beyond the scope of the rules in existence. While interpreting the rule, the Court has to consider the very principles and object of the rules. More specifically, in relation to the promotions, the Courts cannot alter or interpret the rules beyond its scope so as to provide any ~~concession~~ ^{relaxation} to the employees. Different views may not be possible in respect of the service rules. There is no possibility of two views in relation to the recruitment and promotion rules.



However, certain ambiguity if any, can be clarified and certain doubts if any aroused can be explained or elaborated by the Courts.

30. However, different interpretations are not possible. The promotional rules are formulated for the purpose of granting promotion to all the eligible employees in an uniform and particular manner. If such rules are found to be illegal or unconstitutional then the Courts can interfere with, but not otherwise. Thus, in all other normal circumstances, the Courts are bound to interpret the rules as it is and in its letter and spirit and in consonance with the objectives of the rules.

31. The relief sought for in this writ petition is for a direction to direct the respondents to promote the writ petitioner to the post of Administrative Officer in the third respondent Corporation. As discussed above, promotion can never be claimed as a matter of legal right. Consideration for promotion alone is the right. The question aroused, whether the writ petitioner on the basis of the discussions made out his eligibility to be considered for promotion or not. Admittedly, the writ petitioner is the holder of the post of Reporter. As per the service rules in force, the post of Reporter is not a feeder category for promotion to the post of Administrative Officer. This Court cannot consider the reason for non incorporation of the post of Reporter as a feeder category for promotion. However, the fact remains that it is not a feeder category.

32. In view of the facts stated above, it is to be concluded that the writ petitioner is not eligible for promotion to the post of Administrative Officer, in view of the fact that he is not the holder of any one of the posts of feeder categories to the promotional post as per the service rules. Thus, if the respondents 4 to 8 are otherwise qualified in accordance with the rules and working in the feeder categories then their cases can be considered at the time of undertaking the process of promotion by the competent authorities. This being the view taken by this Court, the relief as such sought for in the present writ petition to promote the writ petitioner as Administrative Officer cannot be considered at all.

33. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9.

WEB COPY

2. The Commissioner of Municipal Administration,
Ezhilagam Annex, Chepauk, Chennai.

3. The Commissioner,
Tiruchirappalli City Corporation.

+1cc to Spl.Government Pleader Sr.No.46139

+1cc to M/s. Veera Associates, Sr.No.45942

+1cc to Mr.K.K.Ramakrishnan, Advocate Sr.No.46001

+1cc to Mr.N.S.Karthikeyan, Advocate Sr.No.45704

MM

VB/SKN/RSK/SAR2/14/03/2018/10P/8C

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01.02.2018