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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.09.2017

PRONOUNCED ON : 11.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) Nos.21079, 20600 & 20268 of 2014

01. G.Maragatha Meenakshi
02. S.Arunkumar
03. K.Kannan
04. P.Muthuraman
05. P.Panchu
06. A.Vasanthi
07. V.Veeramani
08. A.Thamayanthi
09. M.Malaisamy
10. J.Sujatha Shanthi
11. D.Gnana Asir
12. K.S.Saravanan .. Petitioners in W.P. (MD) No.21079 of 2014
- S.Krishnan .. Petitioner in W.P. (MD) No.20600 of 2014
- T.Muthukumaravel .. Petitioner in W.P. (MD) No.20268 of 2014

-vs-

1. The Secretary to the Government of Tamil Nadu
Municipal and Water Supply Administration
St.George Fort
Chennai
2. The Commissioner of Municipal Administration
and Water Supply
Ezhilagam, Chepauk Respondents 1 & 2 in WP (MD) Nos.21079
Chennai. .. & 20268 of 2014
3. The Commissioner
Madurai City Municipal Corporation
Madurai.
4. The Commissioner
Thoothukudi City Municipal Corporation
Thoothukudi.
5. The Commissioner
Tiruchirappalli City Municipal Corporation
Tiruchirappalli. .. Respondents 3 to 5 in
WP (MD) No.21079 of 2014



6. The Principal Secretary
Municipal Administration and
Water Supply Department
Fort St.George
Chennai-9

7. The Commissioner of Municipal Administration
Ezhilagam
Chennai-5

8. The District Collector
Madurai District

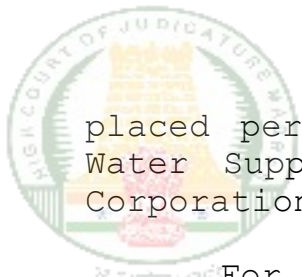
9. The Commissioner
Madurai Corporation
Madurai

.. Respondents 1 to 4 in WP (MD)No.20600 of 2014

W.P.(MD) No.21079 of 2014 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.Ms.No.154, Municipal Administration and Water Supply (MC.5) Department dated 05.12.2014 on the file of the first respondent and to quash the same and consequently direct the respondents to absorb the petitioners as Junior Assistants/Revenue Assistants/Bill Collectors with all monetary and service benefits w.e.f. 25.10.2011 in the light of G.O.Ms.No.178 Municipal Administration and Water Supply Department dated 29.09.2009 in Tirunelveli Municipal Corporation passed pursuant to the order of this Hon'ble Court in W.P.No.24513 of 2001 dated 25.04.2003.

W.P.(MD) No.20600 of 2014 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned G.O.Ms.No.154, Municipal Administration and Water Supply (MC.5) Department dated 05.12.2014 on the file of the first respondent and quash the same as illegal and consequently direct the first and second respondents to pass Government Order based on the G.O.Ms.No.178 of Municipal Administration and Water Supply Department dated 29.9.2009 by fixing the scale of pay of the petitioner on par with the Junior Assistant serving with the fourth respondent from the date of the merger of Chinthamani Village Panchayat with Madurai Corporation that is on 25.11.2011.

W.P.(MD) No.20268 of 2014 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.Ms.No.154, Municipal Administration and Water Supply (MC.5) Department dated 05.12.2014 on the file of the first respondent and quash the same and consequently directing the respondents to give similar monetary and service benefits to the post of Junior Assistant to the petitioner in par with the similarly



placed persons as per G.O.Ms.No.178, Municipal Administration and Water Supply Department dated 29.9.2009 in Tirunelveli Municipal Corporation.

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For Petitioners

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Mr.Isaac Mohanlal

Senior Counsel for

Mr.J.Ashok in W.P.(MD) No.21079 of 2014

& for Mr.M.Daniel Manoharan in
W.P.(MD) No.20268 of 2014

Mr.C.M.Arumugam in W.P.(MD) No.
20600 of 2014

For Respondents

::

Mr.R.Karthikeyan

Additional Government Pleader

for R1 & 2/R1 to 3/R1 & 2 in all W.P's

Mr.J.Gunaseelan Muthiah

for R3 & 4 in WP (MD) No.21079 of 2014

& for R4 in WP(MD) No.20600 of 2014

Mr.N.S.Karthikeyan

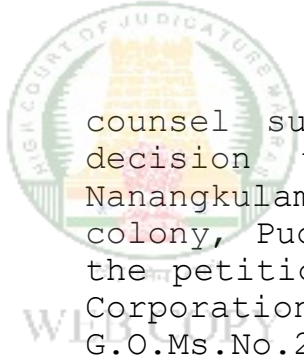
Additional Government Pleader for R5

in WP (MD) No.21079 of 2014

ORDER

These writ petitions for a common relief have been filed challenging the correctness of the impugned G.O.Ms.No.154 Municipal Administration and water Supply (MC.5) Department dated 5.12.2014 issued by the Principal Secretary to Government, Municipal Administration and Water Supply Department, the first respondent herein, to quash the same with a consequential direction to the respondents to absorb the petitioners as Junior Assistant/Revenue Assistant/Bill Collector with all monetary and service benefits with effect from 25.10.2011/25.11.2011, in the light of G.O.Ms.No.178 Municipal Administration and Water Supply Department dated 29.9.09 in Madurai/Tirunelveli/Thoothukudi Municipal Corporation, pursuant to the order dated 25.4.2003 passed in W.P.No.24513 of 2001, respectively.

2. Mr.Isaac Mohanlal, learned senior counsel for the petitioners in W.P.(MD) No.21079 of 2014, assailing the impugned order, submitted that all the petitioners were originally appointed as Panchayat Clerks in the respective village panchayats, namely, Nanangkulam, Vandiyoor, Melamadai, Uthangudi, Thiagarajanagar colony, Pudukulam Bit II, Chinna Anupanady, Iravathanalloor, Muthiahpuram, Thoothukudi Rural, Sankaraperi, Pappakuruchi and the service registers were also opened in their names. Later on, the post of Panchayat Clerk was redesignated as Panchayat Secretary with special time scale of pay of Rs.2500-5000+Special Pay Rs.500 in G.O.Ms.No.52 dated 29.8.2011. Adding further, the learned senior



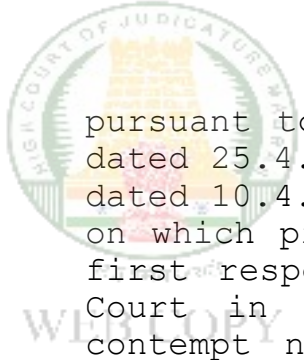
counsel submitted that when the State Government took a policy decision to merge the different village panchayats, namely, Nanangkulam, Vandiyoor, Melamadai, Uthangudi, Thiagarajanagar colony, Pudukulam Bit II, Chinna Anupanady & Iravathanalloor, where the petitioners 1 to 8 are working with the Madurai City Municipal Corporation, the third respondent w.e.f. 25.10.2011 vide G.O.Ms.No.220 dated 28.9.2010 and G.O.Ms.No.10 dated 6.1.2011, consequently, they are also deemed to have been absorbed and treated as employees of the Madurai City Municipal Corporation without any change in their service conditions, with a specific condition therein that the length of service in the erstwhile village panchayats also should be counted for all purposes. Again, the State Government issued another G.O.Ms.No.235 dated 7.10.2010 merging five village panchayats namely, Athimarapatti, Muthiahpuram, Thoothukudi Rural, Sankaraperi & Melavittan, where the petitioners 10 & 11 are working with the Thoothukudi City Municipal Corporation, the fourth respondent w.e.f. 25.10.2011 and consequently by virtue of Section 9 (6) of the Thoothukudi City Municipal Corporation Act, 2008, they are deemed to be absorbed and treated as the employees of the Thoothukudi City Municipal Corporation without any change in the service conditions and their length of service in the erstwhile village panchayats were also treated to be counted for all purposes. Again G.O.Ms.No.218 dated 28.9.2010 and G.O.Ms.No.244 dated 5.10.2010 were also issued by the State Government making the four village panchayats, namely, Pappakuruchi, Ellakudi, Alathur and Keelakalkandar Kottai, where the 12th petitioner is working, therefore, they are also deemed to be absorbed and treated as the employees of the Tiruchirappalli City Municipal Corporation, the fifth respondent without any change in the service conditions, as per section 9(6) of the Tiruchirappalli City Municipal Corporation Act, 1994 and their length of service in the erstwhile village panchayats were also directed to be counted for all purposes.

3. Since all the petitioners were all absorbed on 25.10.2011 and assigned duties in the post of Junior Assistant/Revenue Assistant in the respondents/Corporations 3 to 5 by taking into account similar nature of work in the erstwhile panchayats and qualifications, they are all discharging their duties to the utmost satisfaction of their superiors. Therefore, as per the service rules applicable to the respondents/Corporations 3 to 5, the posts of Junior Assistant and Revenue Assistant are interchangeable and the educational qualifications are also one and the same. Moreover, the third respondent also assigned duties to the petitioners 1 to 8 through proceedings passed in Ma.Ne.2/39037/2010 dated 2.12.2011 as Revenue Assistants/Junior Assistants. Subsequently, based on the resolution No.161 dated 25.4.2012, the third respondent Corporation recommended their case to be brought as part of the employees of the third respondent Corporation. Based on the said representation, the first respondent also issued G.O.Ms.No.116 dated 19.12.2012 granting formal permission to the third respondent Corporation to absorb them with pay protection in the special time scale of pay and the said government order stated that the posts of absorption would be



decided later by another order. Similarly, the fourth respondent Corporation also assigned duties to the petitioners 9 to 11 vide proceedings bearing Na.Ka.No.18244/2010/A1 dated 7.5.2012 as Revenue Assistants/Junior Assistants and based on the resolution No.59 dated 30.3.2012 passed by the fourth respondent Corporation, the first respondent also issued G.O.Ms.No.119 dated 19.12.2012 granting formal permission to absorb them with the fourth respondent with pay protection mentioning therein that the posts of absorption would be decided later. Similarly, the fifth respondent Corporation also assigned duties to the 12th petitioner vide proceedings dated 30.12.2011 passed in Na.Ka.No.7655/2011/C1/Ariya as Revenue Assistant and subsequently resolution No.37 dated 30.4.2012 was passed by the fifth respondent Corporation, based on which the first respondent also issued G.O.Ms.No.115 dated 19.12.2012 granting formal permission to absorb the 12th petitioner as an employee of the fifth respondent with pay protection with a specific order that the post of absorption would be decided later.

4. Continuing his arguments, the learned senior counsel submitted that the third respondent Corporation also, by resolution No.382 dated 17.5.2013 recommended the case of the petitioners 1 to 8 to be absorbed in the cadre of Junior Assistant/Revenue Assistant in the third respondent Corporation and a proposal also was sent in letter bearing no.Na.Ne.2(Ma.Ne.10)/13763/2013 dated 28.1.2014. Finding no response, one another proceeding in Ma.Ne.10/13763/2013 dated 30.6.2014 was sent reiterating the earlier recommendation for absorbing the Panchayat Secretaries in the post of Junior Assistant. Subsequently, they were also absorbed and working in the post of Revenue Assistant/Junior Assistant w.e.f. 25.10.2011 in the third respondent Corporation. However, their grievance is that while they are all working as Revenue Assistants/Junior Assistants in the respondent Corporations 3 to 5, the regular scale of pay of Rs.5200-20200+2400 GP applicable to the post of Revenue Assistant/Junior Assistant were not fixed on par with the regular employees. Mr.Isaac Mohanlal, arguing further, submitted that as a matter of fact, in similar circumstances, when W.P.No.24513 of 2001 was filed before this Court for a mandamus to absorb the Panchayat Secretaries therein as employees of the Tirunelveli City Municipal Corporation, pursuant to the order of this Court dated 25.4.2003, they were all appointed as Junior Assistants by issuing G.O.Ms.No.178 dated 29.9.2009 with all benefits from the date of absorption. Therefore, when the petitioners are also similarly placed, they also made representation on 17.2.2014 to the first respondent with a request to absorb them in the post of Junior Assistant/Revenue Assistant/Bill Collector w.e.f. 25.10.2011 with all monetary and service benefits, in the light of G.O.Ms.No.178 dated 29.9.2009 along with the order passed by this Court in W.P.No.24513 of 2001 dated 25.4.2003. As there was no response on their representation, W.P.(MD)No.8515 of 2014 was filed on the file of the Madurai Bench praying for a mandamus directing the respondents to implement the order passed by the first respondent in G.O.Ms.No.178 dated 29.9.2009, which was passed



pursuant to the order passed by this Court in W.P.No.24513 of 2001 dated 25.4.2003 and yet another order passed in W.P.No.19693 of 2004 dated 10.4.2006. Subsequently, representations were also made, based on which proposals were also sent by the respondents 3 to 5 to the first respondent, who did not pass any order as directed by this Court in W.P.(MD)No.8515 of 2014 dated 24.5.2014, as a result contempt notice was issued on 17.11.2014 to implement the order passed by this Court on 24.5.2014 in W.P.(MD)No.8515 of 2014. On receipt of the said contempt notice, the present impugned G.O.Ms.No.154, Municipal Administration and Water Supply (MC.5) Department dated 5.12.2014 was passed absorbing the petitioners on the following four conditions:-

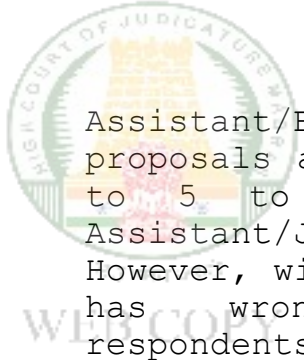
"(a) For absorbing the 35 Panchayat Secretaries, 35 Body Constituted posts may be created in the same scale of pay now they are drawing with pay protection.

(b) The above posts will exist till the existing incumbent continues in this post. Consequent on their retirement, promotion, death and transfer to other posts, this post will lapse automatically.

(c) In order to get training on the establishment related matters of the Madurai, Tiruchirappalli, Tiruppur, Erode, Vellore and Thoothukudi Corporations, they may be given training in the Record Rooms at least for a period of 3 years.

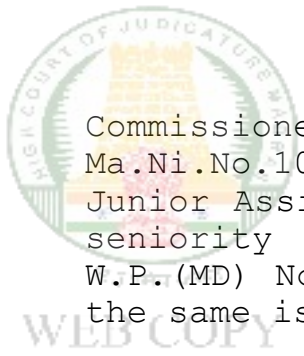
(d) After completion of 3 years training, they may be considered for promotion and appointment as Record Clerks based on their Education Qualifications."

5. Learned senior counsel for the petitioners further argued that the impugned order issued by the first respondent runs contrary to the G.O.Ms.No.178 dated 29.9.2009, which was passed pursuant to the order dated 25.4.2003 passed in W.P.No.24513 of 2001. Therefore, the petitioners alone cannot be arbitrarily discriminated by not absorbing them in the post of Revenue Assistant/Junior Assistant. It was also stated that the impugned order reverting the petitioners from the post of Revenue Assistant/Junior Assistant to supernumerary post is highly whimsical and arbitrary, because the impugned order failed to adopt a just and equitable benefit of equivalent cadre, which is violative of Articles 14 and 16 of the Constitution of India. Therefore, the same is liable to be set aside. Continuing his arguments, the learned senior counsel submitted that the impugned order passed by the first respondent has overlooked the service jurisprudence that if a service (panchayat) is merged with another service (Corporation), the merged service gets its berth in the integrated service and loses its original identity. On this score also, the impugned order is liable to be set aside. Moreover, the first respondent has completely forgotten to keep it in mind that the nature of work of Panchayat Secretaries is more or less similar to the nature of work performed by the Junior Assistant/Revenue



Assistant/Bill Collector in the Corporation service. Hence, the proposals and recommendation made by the respondents/Corporations 3 to 5 to the first respondent to absorb them as Revenue Assistant/Junior Assistant/Bill Collector should have been accepted. However, without any authority or jurisdiction, the first respondent has wrongly interfered with the functions of the respondents/Corporations 3 to 5, which are the institutions of self-government, as per Article 243-W of the Constitution of India. Again referring to section 9(6) of the respective Municipal Corporation Act, it is submitted that the petitioners are deemed to be employees of the respective Corporation as Revenue Assistant/Junior Assistant w.e.f. 25.10.2011. While so, the impugned Government Order has to be held as violative of the same, since the petitioners are sought to be absorbed in the supernumerary post, which is unknown to the service rules, namely, the Tamil Nadu Municipal Corporation Service Rules, he pleaded. On the same lines, he also canvassed the case of the petitioner in W.P.(MD) No.20268 of 2014 to extend him the monetary and service benefits in the post of Junior Assistant in Thoothukudi City Municipal Corporation with effect from 25.10.2011 on par with similarly placed persons.

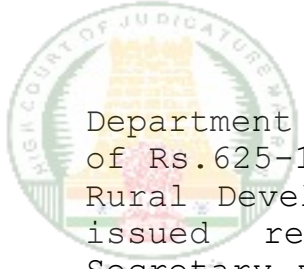
6. Mr.C.M.Arumugam, learned counsel appearing for the petitioner in W.P.(MD)No.20600 of 2014, adopting the arguments of the learned senior counsel, further submitted that when the Government issued G.O.Ms.No.220 dated 28.9.2010 merging the Chinthamani village panchayat with Madurai City Municipal Corporation, his client was posted as Revenue Assistant (Bill Collector) in the Madurai Corporation. While he was serving as Panchayat Secretary, he completed his undergraduation in Arts and Law. Besides he has also completed Typewriting Junior Grade in English. Therefore, followed by the merger, he has been posted as Revenue Assistant in the Madurai City Corporation as per G.O.Ms.No.116 dated 19.12.2012. The said Government Order says that the incumbents in the post of Junior Assistant/Revenue Assistant in the merged local bodies shall be absorbed as Junior Assistant/Revenue Assistant and they should acquire the minimum educational qualification within two years and that the incumbents who have completed 20 years of service are exempted from the above condition. Hence, when the petitioner's services were absorbed in the Corporation service as Revenue Assistant/Junior Assistant, he cannot be reverted from the post of Junior Assistant. In any event, when the petitioner filed W.P. (MD) No.1600 of 2014 praying for a direction to regularize his service with all benefits as Junior Assistant in the regular scale of pay on par with the case of Junior Assistant as mentioned in the resolution of the Madurai Corporation dated 17.5.2013, finally, this Court has directed the Commissioner, Madurai Corporation to consider the representation of the petitioner dated 5.12.2013 within a period of eight weeks vide order dated 30.1.2014. However, there was no response. Hence, the petitioner approached the Madurai Corporation with a copy of the order dated 30.1.2014 along with the representation to consider his grievance. When the matter stands as above, to his shock and surprise, the



Commissioner, Madurai Corporation passed a proceeding in Ma.Ni.No.10/00446/2013 dated 11.2.2014 appointing 17 persons as Junior Assistants by flouting the order of this Court, ignoring the seniority of the petitioner, which compelled him to file another W.P.(MD) No.2694 of 2014 for regularization as Junior Assistant and the same is also pending before this Court.

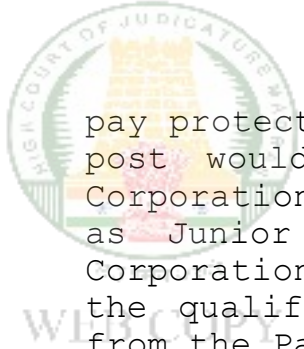
7. Continuing his arguments, he submitted that in similar circumstances, a writ petition was filed by the employees of merged local bodies in W.P.No.24513 of 2001. By order dated 25.4.2003, the said writ petition was allowed directing the Tirunelveli Corporation to fix the time scale of pay to the merged local body employees equal to the pay scale of the employees of the Tirunelveli Corporation. Pursuant to the said order, G.O.Ms.No.178, Municipal Administration and Water Supply Department dated 29.9.2009 was issued fixing the time scale of pay to the merged local body employees. Citing the said Government Order and the order passed by this Court, a representation was sent to the Commissioner of Madurai Corporation on 28.3.2014 for fixation of the pay scale to the corporation employees. In reply thereto, a communication dated 24.6.2014 was sent to the petitioner informing him that the Government was already addressed to consider his case. However, even after a lapse of ten months, the respondents have not come forward to fix the pay scale. But all of a sudden, the impugned G.O.Ms.No.154, Municipal Administration and Water Supply Department dated 5.12.2014 has been passed with the four conditions, as aforementioned, which are totally arbitrary and unnecessary, for the reason that so far as the petitioner's services as Panchayat Secretary is concerned, he has extended and discharged 16 types of work as contemplated in G.O.Ms.No.5, Rural Development and Panchayat Raj Department dated 29.8.2011. Therefore, the stipulations made in the impugned G.O., creating 35 posts in the same scale of pay is quite illegal, as there are nearly about 65 vacancies in the post of Junior Assistant available in Madurai Corporation as pointed out in letter dated 30.6.2014 issued in Ma.Ni No.10/13763/2013. Concluding his arguments, he has submitted that the respondents are duty bound to regularize the services of the petitioner as Junior Assistant with all service benefits including promotion by calculating his service from the date of joining as Panchayat Assistant till he was absorbed with the service of the Madurai Corporation. Moreover, the impugned Government Order is also contrary to the earlier G.O.Ms.No.178 dated 29.9.2009. Hence, the same is liable to be set aside, he pleaded.

8. A detailed counter affidavit has been filed by the first respondent in W.P.(MD) No.21079 of 2014. Mr.R.Karthikeyan, learned Additional Government Pleader for the State, opposing the above prayer, submitted that some of the petitioners were initially appointed as part time Assistants in various panchayats and they were not appointed in the time scale of pay at the time of appointment, since they were paid monthly remuneration of Rs.350 only. By G.O.Ms.No.175, Rural Development and Panchayat Raj



Department dated 5.12.2006 they were brought into time scale of pay of Rs.625-10-725-30-925 from 1.9.2006. After sometime, G.O.Ms.No.52, Rural Development and Panchayat Raj Department dated 29.8.2011 was issued re-designating the Panchayat Assistant and Panchayat Secretary with the time scale of pay at Rs.2500-5000+GP 500, which is also lower than the scale of pay of the Junior Assistant. While so, G.O.Ms.No.220, Municipal Administration and Water Supply Department dated 28.9.2010 and G.O.Ms.No.110 Municipal Administration and Water Supply Department dated 6.1.2011 were issued absorbing them as employees of Madurai Corporation. Since there are two kinds of Assistants in panchayat service, as per G.O.Ms.No.175 Rural Development and Panchayat Raj Department dated 5.12.2006, one being full time Assistant and another is part time Assistant, the full time Panchayat Assistants were brought in the time scale of pay of Rs.1300-20-1500-25-2000 and the part time Assistants were brought in the time scale of pay of Rs.625-10-725-20-925. While so, the full time panchayat Assistants were called Assistant Grade-I and the part time Assistants were called as Assistant Grade-II. In the cases on hand, petitioners were Assistants Grade-II, as they were only part time panchayat Assistants, which were not equivalent to the post of Junior Assistant. While so, when the adjacent village panchayats were merged with the Thoothukudi and Tiruchirappalli Corporations, the employees working in the local bodies were absorbed as Record Clerks, as there is no Panchayat Secretary post in the Corporation Service Rules, 1996 and the work of Revenue Assistant was temporarily allotted to the petitioners by the administration as a stop-gap arrangement, which did not mean that they were absorbed as Junior Assistant by the Corporation as claimed by the petitioners. Further, they were all absorbed equivalent to the original post namely, Panchayat Secretary.

9. Again specifically denying the contentions made by the petitioners that they were not working in the post of Revenue Assistant/Junior Assistant w.e.f. 25.10.2011, it is submitted that the competent authority to absorb the petitioners from rural local bodies to the urban local bodies is the Government and the Corporation Council is not the actual authority to decide their service conditions. Therefore, the proceedings of the Commissioner of the respective Corporations recommending their case for absorption as Junior Assistant etc., have no legal sanctity, as it is only a stop-gap arrangement to do the work of Revenue Assistant/Junior Assistant and this will not confer any service right to them as Revenue Assistant from Junior Assistant. However, considering the change in circumstances, when there was a merger of various panchayats with the respective Corporations, the Government issued G.O.Ms.No.116 Municipal Administration and Water Supply Department dated 19.12.2012, among other conditions, specifically stating that the seniority of the Panchayat Secretaries shall be maintained and the post in which they are to be absorbed in Thoothukudi City Municipal Corporation would be decided later and orders also will be issued separately. When they were absorbed with



pay protection specifically stating that the name/designation of the post would be decided later by the Government, the respective Corporation Councils have no locus standi to absorb the petitioners as Junior Assistants, since the method of appointment in the Corporation service is different from Government service. Moreover, the qualifications for the post of Junior Assistant is different from the Panchayat Assistant or Panchayat Secretary.

10. The learned Additional Government Pleader further submitted that when W.P.No.24513 of 2001 was filed praying for a direction to refix the pay scale of the petitioners therein on par with the Revenue Assistant of Tirunelveli Corporation at Rs.3200-85-4900, an order was passed by this Court on 25.4.2003 to give them the pay on par with the Revenue Assistant in Tirunelveli Corporation. Pursuant to the order, the Commissioner of Municipal Administration recommended the scale of pay in G.O.Ms.No.178 dated 29.9.2009 and consequently they were all absorbed in the regular post of Revenue Assistant in the Tirunelveli Corporation, which is in compliance of the order passed by this Court. Subsequently, the Government took a policy decision to absorb them as Record Clerks in G.O.(D)No.197 Municipal Administration and Water Supply Department dated 15.4.2013 subject to the conditions (a) to (d) as aforementioned, on the ground that the post of Panchayat Secretary was not equal to the post of Junior Assistant. When the mode of recruitment and the educational qualification for the said posts are different, there is no infirmity with the impugned order. Therefore, when the petitioners are drawing lesser pay in the cadre of Assistant Grade-II, they cannot aspire for the post of Junior Assistant, as this will affect the seniority of the Junior Assistants who were appointed through a different mode of recruitment, he pleaded.

11. I find merits in the submissions made by the learned Additional Government Pleader for the respondents. Firstly, the post of Panchayat Assistant/Panchayat Secretary is not equivalent to the post of Junior Assistant. Secondly, the recruitment for the post of Junior Assistant is being done by the Tamil Nadu Public Service Commission. Thirdly, the educational qualification for the post of Junior Assistant is quite different from the educational qualification for the post of Panchayat Secretary/Panchayat Assistant. Therefore, when the mode of recruitment and the educational qualification for these two posts are not commensurate with the rules specified in the Tamil Nadu Municipal Corporation Subordinate Service Rules, a policy decision was taken by the Government to absorb them as Record Clerks based on their educational qualification in the impugned G.O.Ms.No.154 dated 5.12.2014 with the following four conditions,

"(a) For absorbing the 35 Panchayat Secretaries, 35 Body Constituted posts may be created in the same scale of pay now they are drawing with pay protection.

(b) The above posts will exist till the existing incumbent continues in this post. Consequent on their



retirement, promotion, death and transfer to other posts, this post will lapse automatically.

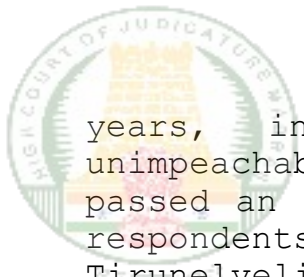
(c) In order to get training on the establishment related matters of the Madurai, Tiruchirappalli, Tiruppur, Erode, Vellore and Thoothukudi Corporations, they may be given training in the Record Rooms at least for a period of 3 years.

(d) After completion of 3 years training, they may be considered for promotion and appointment as Record Clerks based on their Education Qualifications."

which cannot be found fault with.

12. Fourthly, the contention made by the petitioners that when the Government had merged the village panchayats into respective Municipal Corporations, the employees serving in the village panchayats should also be absorbed as employees of the respective Municipal Corporations, has not been denied by the respondents, because, while merging the village panchayats into Municipal Corporations, all the employees working in the village panchayats were also absorbed as the employees of the Municipal Corporations. While doing so, taking note of the factor that the petitioners were not appointed in the time scale of pay at the time of appointment and they were all paid with monthly remuneration, they were brought into the time scale of pay in G.O.Ms.No.175, Rural Development and Panchayat Raj Department dated 5.12.2006 at Rs.625-10-725-30-925 from 1.9.2006. Again, one another G.O.Ms.No.52, Rural Development and Panchayat Raj Department dated 29.8.2011 was also issued re-designating the Panchayat Assistant post as Panchayat Secretary by revising the time scale of pay at Rs.2500-5000+GP 500, which is also lower to the scale of pay of Junior Assistant, which has not been questioned or disputed by the petitioners at any point of time.

13. Fifthly, when the adjacent village panchayats and municipalities were merged with the Thoothukudi and Tiruchirappalli Corporations, the employees working in the said local bodies were absorbed as Record Clerks. It may be mentioned that the work of Revenue Assistant was allotted temporarily to the petitioners by the administration as a stop-gap arrangement. That cannot be construed that they were absorbed as Revenue Assistants by the Corporation. Moreover, when the Commissioner of Thoothukudi, Tiruchirappalli and Madurai Corporations have ordered the petitioners to act as Revenue Assistants and subsequently passed resolutions to absorb them as such, the same need not be accepted by the Government, because the Government is the competent authority to absorb them from rural local bodies to urban local bodies. When there was an arrangement made by the respective Municipal Corporations, the decision taken by the Government in the impugned G.O., to absorb them as Record Clerks with pay protection and that the posts will exist till they continue in the post and also ordered for their training as Record Clerk atleast for a period of three



years, in my considered opinion, the impugned order is unimpeachable. At the last, it may be mentioned that when this Court passed an order in W.P.No.24513 of 2001 on 25.4.2003 directing the respondents to give them pay on par with Revenue Assistant in Tirunelveli Corporation, the Commissioner of Municipal Corporation, accepting the legal opinion from the legal department, made recommendation to pay their salary in the scale of pay on 3200-85-4900 on par with the Revenue Assistant. Finally, they were all absorbed in the regular post in Tirunelveli Corporation alone. But the Government, having analysed the case that the method of appointment and the educational qualification are different to the post of Junior Assistant, directed the absorption of the petitioners as Record Clerks in supernumerary posts, which will no way affect their service conditions. Therefore, this Court finds no infirmity with the impugned Government Order.

14. Reliance was also placed on the judgment of the Apex Court in Panchraj Tiwari v. Madhya Pradesh State Electricity Board and others, (2014) 5 SCC 101 to say that once the service gets merged with another service, the employee concerned has a right to get positioned appropriately in the merged service. In my considered opinion, the facts of the said case are totally different from the one cited here. In Panchraj Tiwari's case, the appellant, being a graduate, started his career as Junior Engineer in the Rural Electricity Cooperative Society, Rewa and in 1995, a decision was taken by the State Government to dissolve all the societies and merge the same with the Madhya Pradesh State Electricity Board. Considering the educational qualification of the Junior Engineers like the appellant, the State Government directed their merger with the employees of the Madhya Pradesh State Electricity Board and in that context, the Apex Court held that once the service gets merged with another service, the employee concerned has a right to get positioned appropriately in the merged/integrated service, as even after such merger or integration, they cannot maintain a stand that they will retain a distinct identity in the merged cadre.

15. But in the present cases, as mentioned above, the petitioners were all appointed only as Panchayat Secretaries and they were also drawing the pay lower than the scale of pay of Junior Assistant. However, while merging the village panchayats, the services of the Panchayat Assistants were integrated with the services of the Municipal Corporations and they were accommodated in supernumerary posts and that to cope up with the service conditions, they were also given training for a period of three years and after completion of three years training, they are being considered for promotion based on their educational qualification. On this score also, the impugned order cannot be found fault with.

16. For all the aforementioned reasons, the writ petitions fail and they are dismissed. Consequently, interim order stands



vacated and the M.P.(MD) Nos.1 to 3 of 2014 are also dismissed. No costs.

Sd/-
Assistant Registrar(W)

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/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary
Municipal Administration and
Water Supply Department
Fort St.George
Chennai 600 009
- 2 The Secretary,
The Government of Tamil Nadu,
Municipal and Water Supply Administration,
Fort St.George, Chennai
3. The Commissioner of Municipal Administration
Ezhilagam, Chepauk
Chennai 600 005
4. The Commissioner
Madurai City Municipal Corporation
Madurai
5. The Commissioner
Thoothukudi City Municipal Corporation
Thoothukudi
6. The Commissioner
Tiruchirappalli City Municipal Corporation
Tiruchirappalli
7. The District Collector
Madurai District

+1CC to Mr.J.Ashok, Advocate, SR.No. 41843
+1CC to Mr.Daniel Manoharan, Advocate, SR.No. 41844
+1CC to the Special Government Pleader SR.No.41724

Order in
W.P. (MD) Nos.21079, 20600 & 20268 of 2014
11.01.2018