

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2019

Coram

The Honourable Mr.Justice D.KRISHNAKUMAR

W.P.No.16978 of 2010

R.Pachaiyappan

...Petitioner

Versus

- 1.The State of Tamil Nadu rep. by the
Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 600 009.
- 2.The Director of Municipal Administration,
Ezhilagam, 6th Floor,
Chepauk, Chennai - 600 005.
- 3.The Commissioner,
Salem Corporation,
Salem - 636 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the third respondent in rp6/5881/09, ehs; 23.04.2010 and quash the same and re-fix the petitioner's salary and pensionary benefits par with his Junior Mrs.Vijayalakshmi and pay all the arrears along with 18% interest to the petitioner.

For Petitioner : Mr.A.R.Nixon

For Respondents - 1 & 2 : Mr.A.Ansar,
Government Advocate

For Respondent No.3 : Mr.K.Sridhar

O R D E R

With the consent of both sides, this Writ Petition is taken up for final disposal.

2. The relief sought for in this writ petition is to call for the records relating to the order passed by the third respondent in rp6/5881/09, ehs; 23.04.2010 and quash the same and re-fix the petitioner's salary and pensionary benefits on par with his Junior Mrs.Vijayalakshmi and pay all the arrears along with 18% interest to the petitioner.

3. It is a case of the petitioner that he was appointed as Record Clerk in Salem Municipality and he joined service in Salem Municipality on 04.11.1963. By order dated 27.11.1984, the petitioner was promoted to the post of Junior Assistant and later he became permanent in the said post. In the year 1982, the petitioner passed the departmental test for further promotion and by order dated 07.03.1988, a seniority list cum panel was notified by the second respondent. In the said list, the petitioner's name was placed at S.No.47 and one Mrs.Vijayalakshmi was placed at S.No.48. On the basis of the said placement, the petitioner was promoted as Assistant and posted in Edapadi Municipality and later he was transferred to Tiruppur Municipality. Thereafter, once again, he was transferred back to Edapadi Municipality.

4. While so, the Salem Municipality was upgraded as Corporation and it became an autonomous body. Therefore, the petitioner had forwarded several representations to the respondents expressing his willingness and option to go to Salem Corporation. However, his representations were not considered by the respondents. Hence, the petitioner filed an application in the Tamil Nadu Administrative Tribunal and got a direction, dated 10.9.1996 for the disposal of his representations. Thereafter, the petitioner was transferred to Salem Corporation.

5. Though he was transferred to Salem Corporation, his earlier service was not taken into account and his seniority has not been re-fixed before the said Vijayalakshmi. So the petitioner made representations, but, there is no reply to any of his representations. Therefore, the petitioner has filed a Writ Petition in W.P.No.9506 of 1998 before this Court for considering his case for promotion to the post of Superintendent and by order dated 13.07.1998, this Court directed the first respondent to consider the petitioner's representations and dispose of the same on merit. However, the said order was flouted by the respondents. In fact, the second respondent herein had passed an order in Na.Ka.No.1407/90-K dated 05.01.1990, wherein, the petitioner was placed in Rank No.12 and the said Vijayalakshmi was placed in Rank No.14.

6. The petitioner was appointed on 04.11.1963 and his junior, Mrs.Vijayalakshmi was appointed on 25.06.1965. The writ petitioner was promoted as Junior Assistant on 25.08.1965 whereas the said Vijayalakshmi was promoted as Junior Assistant only on 23.09.1965. As per the proceedings of the second respondent dated 05.01.1990, the petitioner and his junior, Vijayalakshmi were promoted as Assistant on a same date i.e., 05.01.1990. However, the petitioner's seniority number is 12 and his junior, Vijayalakshmi's seniority number is 14, overlooking the seniority list, the third respondent has promoted Mrs.Vijayalakshmi as Superintendent on 03.07.1998 and the petitioner was not given the said promotion at that time. Hence, the petitioner made so many representations seeking for promotion to the post of Superintendent, however, he was not given any promotion.

7. Both the petitioner and his junior, Mrs.Vijayalakshmi have passed Accounts Test on 13.11.1982. The petitioner was granted only one increment, whereas said Vijayalakshmi was granted two increments. As per the V Pay Commission Report dated 01.10.1990, the petitioner's basic pay was increased to Rs.1,470/-, whereas, his junior, Mrs.Vijayalakshmi's basic pay was increased to Rs.1,530/-. Subsequently, on 19.01.1990, the petitioner's pay was fixed as Rs.1,600/- and his junior, Mrs.Vijayalakshmi's pay was fixed as Rs.1,680/-. Thus, the pay of the said Mrs.Vijayalakshmi was fixed more than that of the petitioner.

8. Even though the petitioner made several representations, however, the same were not considered by the respondent till date. On 07.08.2009, the Information Officer (Appellate Authority) has passed an order stating that the petitioner requests were under consideration and after removing the anomaly, the pay of the petitioner will be re-fixed. However, by order dated 23.04.2010, the third respondent has rejected all the claims of the petitioner. Hence, left with no other alternative, the petitioner has come before this Court with the present writ petition seeking for the relief stated supra.

9. The third respondent has filed the counter affidavit wherein, he has stated as follows:

(i) The Information Officer as well as the Appellate Authority were responding to the petitioner's application seeking information about the anomaly in fixation of pay between himself and his Junior Mrs.Vijayalakshmi.

(ii) The Appellate Authority under the RTI can give only information and cannot grant any relief as sought for by the petitioner.

(iii) The petitioner retired as Superintendent Salem Corporation on 28.02.2002 on attaining the age of superannuation and was sanctioned gratuity and pension by the third respondent pursuant to the proceedings of the Deputy Director.

(iv) The Deputy Director, Local Audit Fund Salem Corporation vide his proceedings Ni.Mu.No.543/2002/2012 dated 03.07.2002 has noted the excess payment made to the petitioner, to the tune of Rs.45,254/-. The petitioner is aware of the amount so recovered, however, he has not chosen to challenge the said recovery order and the same has become final.

(v) In the present writ petition, the petitioner challenging the information obtained by him under RTI. If the petitioner is not satisfied with the information, he has to file Appeal before the State Information Commission, Chennai. Hence, the present writ petition is not maintainable in law.

(vi) Further, the petitioner has not impleaded Mrs.Vijayalakshmi as a party respondent and that the present writ petition is liable to be dismissed on the ground of non impleading necessary parties.

10. The learned counsel for the petitioner submitted that the petitioner was not yet furnished with a copy of the recovery order dated 03.07.2002, passed by the Deputy Director of Local Fund Audit, Salem Corporation and that he has filed the present writ petition challenging the order passed by the Appellate Authority under the Right to Information Act.

11. The petitioner has not chosen to challenge the recovery order, dated 03.07.2002, passed by the Deputy Director of Local Fund Audit, Salem Corporation, instead, the petitioner has challenged the order dated 23.04.2010, passed by the Executive Engineer (Appellate Authority) under the Right to Information Act in the present writ petition. The said Appellate Authority is not the respondent herein. Therefore, the present writ petition is not maintainable and the same is liable to be dismissed.

12. In view of the above facts and submissions made by the learned Government Advocate for the respondents 1 & 2, this Court is of the view that the relief sought for by the petitioner cannot be granted, since the petitioner's case deserves no merit of consideration. Apart from that, in the present case, the petitioner has not impleaded said Vijayalakshmi as party respondent and therefore, this Writ Petition is liable to be dismissed.

13. Accordingly, this Writ Petition is dismissed. However, liberty is granted to the petitioner to work out his remedy in the manner known to law. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mrr

To

- 1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 600 009.
- 2.The Director of Municipal Administration,
Ezhilagam, 6th Floor,
Chepauk, Chennai - 600 005.
- 3.The Commissioner,
Salem Corporation,
Salem - 636 001.

+1cc to Mr.A.R.Nixon, Advocate, SR.No.88651.
+1cc to Mr.K.Sridhar, Advocate, SR.No.88076.
+1cc to Government Pleader, SR.No.887171.

W.P.No.16978 of 2010

SR(CO)
CSR: 30.01.2020

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