

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.03.2019
CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.1119 of 2019

M.Srinivasan

... Appellant

Vs.

- 1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Municipal Administration & Water Supply Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
- 3.The Commissioner,
Erode Corporation,
Erode.
- 4.S.Selvaraj
- 5.A.M.Thangaraj
- 6.K.Shanmugasundaram
- 7.G.Tirupathi
- 8.S.Sivasubramanian
- 9.P.Robert Antonyraj

... Respondents

Prayer:

Writ appeal filed under Clause 15 of the Letters Patent Act against the interim order dated 20.03.2019 made in W.M.P.No.9967 of 2018 in W.M.P.No.5767 of 2018 in W.P.No.4668 of 2018.

WMP.5767/2018 AND WMP.9967/2018 in WP.4668/2018:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant interim stay of all further proceedings pursuant to the impugned order issued by the 3rd respondent in Na. Ka. No.C1/8401/2011 dt 22.1.2018 with respect to respondents 4 to 9 and Na. Ka. No. C1/8401/2011 dt 24.1.2018, with respect to

respondents 4 to 7 and 9 herein (in WMP.No.5767/18) pending disposal of the above writ petition 4668/18 and;

(ii) to vacate the interim stay granted by order dated 02.03.2018 in WP.No.5767/18 in WP.No.4668/18 (in WMP.9967/18) in WP.No.4668/18 respectively.

For Appellant : Mr.R.Neelakandan
for Mr.P.Rajavel

For Respondents : Mr.V.Kathirvelu
Special Government Pleader
for R1 and R2

Mr.M.Rajamathivanan for R3
Mr.AR.L.Sundaresan
Senior Counsel for
Ms.AL.Ganthimathi for R8

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

The Writ Court in W.P.No.4668 of 2018 initially granted an order of Interim Stay of operation of the order in Na.Ka.No.C1/8401/2011, dated 22.01.2018 and 24.01.2018 respectively, pending disposal of the said writ petition. Subsequently, after the appearance of the contesting respondents, the interim order was vacated with an observation that any promotion made during the currency of the writ petition would be subject to the final outcome. Feeling aggrieved by the said order, the writ petitioner has come up with this intra court appeal.

2. We have heard the learned counsel for the appellant, the learned Special Government Pleader appearing for the respondents 1 and 2, the learned counsel for the 3rd respondent and the learned Senior Counsel appearing for the 8th respondent.

3. The appellant was appointed as Pipeline Fitter Grade - II in the Sivagiri Town Panchayat, Erode District. The initial appointment was on 24.05.1984. Subsequently, he was transferred to Surampatti Town Panchayat on 23.05.1991.

4. The Erode Municipality was upgraded as Corporation by annexing eleven Local bodies including Surampatti Town Panchayat. The appellant was absorbed as Pipeline Fitter Grade-II in the Erode Corporation. The service conditions of the employees of the Erode Corporation is governed by the Government Order in G.O.Ms.No.237, Municipal Administration and Water

Supply (Election) Department, dated 26.09.1996.

5. The respondents 4 to 9 were employed as Electrician Grade-II in the erstwhile Erode Municipality from the year 1989, 1991, 2006, 2006, 2007 and 2008 respectively. Subsequent to the upgradation of the Erode Municipality as a Corporation, the post held by the existing employees were re-designated. The respondents 4 to 9 were re-designated as Skilled Assistant Grade-II as per the proceedings dated 01.09.2009, on the file of the Commissioner, Erode Corporation. Similarly 8th respondent was designated as Technical Assistant.

6. The audit wing appears to have made certain objections with regard to the promotion given to the respondents 4 to 7 and 9 in the post of Skilled Assistant Grade-I, resulting in their reversion to a lower post. Similarly, the 8th respondent was reverted from the post of Technical Assistant to the post of Skilled Assistant Grade-I. The order reverting them to a lower post were challenged before the High Court in W.P.Nos.18951, 18952, 18953 and 25066 of 2011. The writ petitions were disposed of by the learned Single Judge by order dated 03.11.2017. The learned Single Judge set aside the audit objection and directed the Erode Corporation to consider the question of promotion of the writ petitioners therein.

7. The Erode Corporation pursuant to the order dated 03.11.2017 restored the promotion by order dated 22.01.2018 and 24.01.2018. Those two orders were challenged by the appellant before the Writ Court, primarily on the ground that after cancelling the promotion given to the respondents 4 to 7 and 9, a fresh seniority list was published, wherein his name was placed above the other employees.

8. The Writ Court initially granted interim stay of operation of the order. Thereafter, the interim stay was vacated, on the ground that the promotees have already assumed office.

9. There is no dispute that even before the transfer of service of the petitioner and other employees to the Erode Corporation, consequent to the conversion of the Municipality into a Corporation, the respondents 4 to 9 were promoted. The promotions were cancelled only on account of the audit objection. The said order was set aside by the Writ Court. It was only thereafter the respondents 4 to 9 were once again given promotion by the Corporation.

10. The legality and correctness of the order giving promotion requires to be decided only in the writ petition. There are documents to substantiate the contention taken by the

respondents 4 to 9 that they have already assumed office and as such, the prima facie case is not in favour of the appellant.

11. The counter affidavit filed by the Erode Corporation before the Writ Court indicates that the respondents 4 to 9 were given the earlier post subsequent to the order passed by the Writ Court in W.P.Nos.18951, 18952, 18953 and 25066 of 2011. The Commissioner in his counter affidavit submitted that in view of the interim order granted by the High Court, the monetary benefits were not paid to the respondents 4 to 9. It is therefore clear that the respondents 4 to 9 were given promotion and the order was also acted upon. Such being the factual position, there is no prima facie case made out by the petitioner to keep the promotion pending till the disposal of the writ petition.

12. While confirming the order passed by the learned Single Judge, we make it clear that the present status quo shall be maintained till the disposal of the writ petition. The question of granting further promotion to the respondents 4 to 9 should await the disposal of the writ petition in W.P.No.4668 of 2018. Since the Writ Court has already modified the order, the Corporation shall sanction the appropriate scale of pay to the respondents 4 to 9. We make it clear that even the promotion given by way of the orders impugned in the writ petition would be subject to the result of the writ petition.

13. The intra Court appeal is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ms/pri

To

1.The Secretary to Government,
The State of Tamil Nadu,
Municipal Administration & Water Supply Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Commissioner,
Erode Corporation,
Erode.

+2cc to Mr.M.Rajamathivanan, Advocate sr.30221

+1cc to Mr.P.Rajavel, Advocate sr.30235

+1cc to Mr.AL.Ganthimathi, Advocate sr.30818

+1cc to Government Pleader sr.31594

W.A.No.1119 of 2019

ln(co)
nr 18/06/2019



WEB COPY