



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.23652 of 2019

and

W.M.P (MD)Nos.20256 and 20257 of 2019

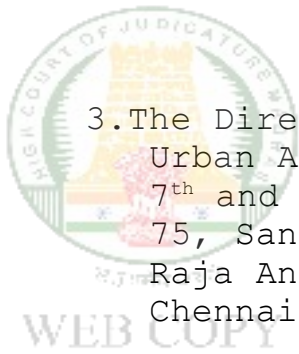
WEB COPY

- 1.K.Gopi
- 2.S.Karuppaiah
- 3.R.Janarthanan Prabhu
- 4.U.Chandramohan
- 5.N.Sridharan
- 6.E.Mariyappan
- 7.M.Kalaignanasundaram
- 8.S.Singarayar
- 9.S.Thomas Anand
- 10.G.P.Ravichandar
- 11.D.Rajajayaboopalan
- 12.N.Vijayakumar
- 13.M.Avudaipandi
- 14.S.Sethuramalingam
- 15.M.Manickam
- 16.C.Poosamy
- 17.M.Palani
- 18.K.Sivakumar
- 19.N.Palani
- 20.V.Sundaram
- 21.K.Manimudayan
- 22.C.Sambandamoorthy
- 23.R.T.Saravanan
- 24.M.Seerpadhavelan
- 25.K.V.Baskaran

... Petitioners

Vs.

- 1.State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai-600 009.
- 2.The Commissioner of Municipal Administration,
Urban Administration office Complex,
9th and 10th Floor,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028.



3.The Director of Town Panchayats,
Urban Administration Office Complex,
7th and 8th Floor,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028.

4.N.Prabhakaran
5.P.Nalini
6.B.Gomathi Sankar
7.C.Venkatesan
8.R.Ganapathy Venkatesan
9.N.Annam
10.R.Rajkumar
11.R.Jayakumar
12.E.Geetha
13.R.S.Venkatachalam
14.M.Shanmugam

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in connection with two impugned proceedings issued in Roc.No.98/2019/F-2 dated 30.10.2019 and quash both in respect of sending the Respondents 4 to 13 on deputation to the third respondent Department as illegal, arbitrary and without jurisdiction and consequently direct the Respondents 1 and 3 to consider the case of eligible Overseer working in the third respondent department for promotion to the post of Junior Engineer/Assistant Engineer in the vacancies available in the third respondent Department within the time limit that may be stipulated by this Court without waiting for approval of draft rules pending before the first respondent.

For Petitioners : Mr.B.Saravanan
For R1 to R3 : Mr.S.Dhayalan,
Government Advocate

ORDER

The present writ petition is filed challenging the orders of the second respondent issued in ROC.No.98/2019/F-2, dated 30.10.2019.

2.Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents 1 to 3.



3. The petitioners are working as Overseer in various Town Panchayat under the control of the third respondent. According to the petitioners, they are eligible to be promoted as Junior Engineer/Assistant Engineer in various Town Panchayat under the control of third respondent. The second respondent, without any authority, depute their employees to work in the third respondent. Earlier, when such an order was passed, the same was challenged by filing writ petition in W.P(MD)No.3782 of 2018 and this Court, by order, dated 23.02.2018, granted interim stay. The petitioner and others gave representation to the second respondent. The second respondent, without considering the said representation, without any authority, is deputing the employees to work in the Town Panchayat under the control of the third respondent. By such deputation, the petitioners promotional opportunities are affected. Earlier, when the second respondent deputed the Draftsmen to the third respondent, the same was challenged in the writ petitions in W.P.Nos.10804 to 10899 of 2019. The second respondent has no authority to depute his employees to work in the third respondent. The employees of the third respondent are entitled to be promoted. This Court, by judgment dated 13.03.2014 in W.A.(MD)No.1136 of 2013 etc., batch held that the Tamil Nadu Municipal Engineering Subordinate Service Rules, 1970 is not applicable to the Town Panchayat and directed the first respondent to consider and approve the Draft Rules sent by the third respondent.

4. The learned counsel appearing for the petitioners extensively referred to the order, dated 28.07.2010 passed in W.P.Nos.10894 to 10899 of 2010 etc., batch, wherein this Court has elaborately considered this issue and set aside the order of deputation made by the second respondent. In the said judgment, this Court held that the employees of third respondent are cadre employees and the third respondent, in the absence of any rule, can promote his employees on temporary basis as per the Rule 39(a) (i) of the Tamil Nadu State and Subordinate Services Rules.

5. From the above materials, it is seen that, this Court has already decided that the second respondent has no authority to depute his employees to the service of the third respondent and that employees of the third respondent have to be promoted in the vacancies arise in the Town Panchayat under the control of the third respondent in the Engineering Division. The dictum laid down in the order, dated 28.07.2010 in W.P.Nos.10894 to 10899 of 2010 etc., batch and the judgment, dated 13.03.2014 in W.A.(MD)Nos.1136 of 2013 etc., batch, to which, I was a party (V.M.VELUMANI.J.), are squarely applicable to the facts of the present case. If the employees of the second respondent is deputed, the promotional avenue of the employees of the third



respondent like that of the petitioners herein are affected. The Municipal Engineering Rules are not applicable to the employees of the third respondent. In the absence of any Rules, the third respondent has power to promote its employees as per Rule 39(a)(i) of the Tamil Nadu State and Subordinate Service Rules.

6. For the above reasons, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORD)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Municipal Administration,
Urban Administration office Complex,
9th and 10th Floor,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028.

3.The Director of Town Panchayats,
Urban Administration Office Complex,
7th and 8th Floor,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028.

+2 CC to MR.B. SARAIVANAN, Advocate (SR-102025[F] dated 28/11/2019)

+1 CC to MR.AL.KANNAN, Advocate (SR-102104[F] dated 28/11/2019)

+1 CC to SPL GP (SR-102368[F] dated 28/11/2019)

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