



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.568 of 2017

P.Nagaraj ... Appellant/Writ Petitioner

-vs-

1.The Government of Tamil Nadu
rep.by its Secretary to Government
Municipal Administration and
Water Supply Department
Secretariat, Chennai

2.The Commissioner
Madurai Corporation
Madurai.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 04.01.2017, passed in W.P.(MD) No.2718 of 2011, on the file of this Court.

Prayer in WP(MD). 2718/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records passed by the second Respondent herein in Ref. No.Ma.Po.2/21825/10 dated 19-07-2010 and quash the same so far as the Petitioner is concerned and consequently direct the Respondents herein to treat the Petitioner as Skilled Assistant Grade II with effect from the date of his initial appointment with all consequential monetary and service benefits.

For Appellant : Mr.M.E.Elango
for Mr.M.Jerin Mathew

For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader for R1
Mr.R.Murali for R2



J U D G M E N T

[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.M.E.Elango, learned counsel appearing for Mr.M.Jerin Mathew, learned counsel on record for the appellant, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the first respondent and Mr.R.Murali, learned counsel appearing for the second respondent - Corporation.

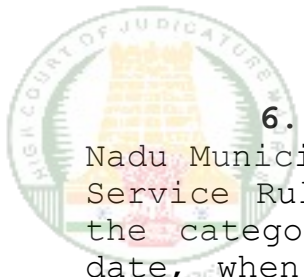
2. This writ appeal is directed against the order, dated 04.01.2017, passed in W.P.(MD) No.2718 of 2011.

3. The writ petition was filed by the appellant challenging the order dated 19.07.2010, passed by the second respondent - Corporation, whereby and whereunder, the request to consider him as Skilled Assistant (Grade-II) from the date of his initial appointment was rejected.

4. The undisputed facts are that the appellant has passed Tenth Standard Examination and has ITI Trade Certificate from the Institute recognized by the Government of Tamil Nadu. The appellant had enrolled his name in the Employment Exchange, Madurai, and his name was sponsored for appointment to the post of Electrician Motor Attendor in the time scale of pay of Rs.750-12-870-15-945 and he was appointed as such in the second respondent - Corporation.

5. There are four categories of posts in terms of Rule 2 of the Tamil Nadu Municipal Corporations Engineering and Water Supply Subordinate Service Rules, 1996 and Category-4 is Skilled Assistant (Grade-II). There are two modes of recruitment. One by direct recruitment and the another one is by promotion. It is not in dispute that the appellant possessed the requisite qualification for direct recruitment for the post of Skilled Assistant Grade-II. The appellant had continued as such, but his services were temporary and not regularized and the regularization took place only in the year 2005 with retrospective effect from 21.08.1990, the date on which he was appointed in the services of the second respondent - Corporation. In the interregnum, the Government by G.O.Ms.No.237, Municipal Administration & Water Supply (Election) Department, dated 26.09.1996, framed common Service Rules applicable to all the Corporations in the State and while doing so, certain categories of posts were not included and categorization of posts was done. We are concerned with the grouping of technical posts in the Engineering and Water Supply Department. It is found in Clause (3) of the Annexure-I to the said Government Order that under the said technical post, there are three categories of posts, namely,

- | | | |
|----------------------------------|---|----------------|
| (a) Technical Assistant | - | Rs.1350 - 2200 |
| (b) Skilled Assistant (Grade-I) | - | Rs.1100 - 1660 |
| (c) Skilled Assistant (Grade-II) | - | Rs.975 - 1500 |



6. As pointed out earlier, in terms of Rule 2 of the Tamil Nadu Municipal Corporations Engineering and Water Supply Subordinate Service Rules, 1996, there are four categories of posts and one of the categories was deleted under the new Service Rules. On the date, when the new Service Rules came into force, the appellant's basic pay of Rs.950/- was less than the basic pay of Skilled Assistant (Grade-II) i.e. Rs.975/-. Consequently, it appears that the appellant may not be suited for the said post, but he was treated as a basic servant. These are all the internal administrative matters, which were taken place. But, what is relevant is that the services of the appellant were regularized in the year 2005 with retrospective effect from 21.08.1990. Therefore, obviously, the appellant could not have raised any objection, because he was continued as a temporary candidate for nearly 20 years. After his services were regularized, the appellant sent a representation stating that he should be treated as a Skilled Assistant (Grade-II) from the date of his initial appointment and to promote him as Skilled Assistant (Grade-I), as he possessed the requisite qualification under the Tamil Nadu Municipal Corporations Engineering and Water Supply Subordinate Service Rules, 1996, because, he passed Tenth Standard and has ITI Trade Certificate from the Institute recognized by the Government of Tamil Nadu. Based on the representation given by the appellant, dated 29.04.2010, the second respondent - Corporation passed an order, dated 19.07.2010, stating that since the appellant had joined the services of the Corporation as an Unskilled Worker and promoted as Skilled Assistant (Grade-II), he cannot be accommodated as Skilled Assistant (Grade-II) from the date of his initial appointment and promoted as Skilled Assistant (Grade-I). The said order dated 19.07.2010, passed by the second respondent - Corporation, was put to challenge in the writ petition on the ground that the appellant, having been appointed as a Skilled Assistant (Grade-II) even at the time of his initial appointment, could not have been treated as a basic servant upon the advent of the new Service Rules. The second respondent - Corporation resisted the writ petition as stated in the order dated 19.07.2010.

7. By the impugned order, dated 04.01.2017, the writ petition has been dismissed, whereby the learned Single Judge has accepted the stand of the second respondent - Corporation and observed that merely because the appellant has ITI Trade Certificate, the post in which he was functioning cannot be treated as a post on par with the post included in the Skilled Assistant (Grade-II) category and if such a plea is accepted, it will create anomaly. Further, it is contended that the appellant has not challenged the Government Order in G.O.Ms.No.237, Municipal Administration & Water Supply (Election) Department, dated 26.09.1996, by which the new Service Rules came to force for the second respondent - Corporation.



8. After elaborately hearing the learned counsel for the parties, we find that the controversy involved in this appeal lies in a very narrow compass. Unfortunately, the appellant did not refer to the proviso in Clause (3) of Annexure-I of G.O.Ms.No.237, dated 26.09.1996. At this juncture, it would be relevant to extract Clause (3) of the said Government Order.

"(3) GROUPING OF TECHNICAL POSTS IN THE ENGINEERING AND WATER SUPPLY DEPARTMENT:-

All the technical posts in the Engineering and water supply Department have been classified in three categories as mentioned below:

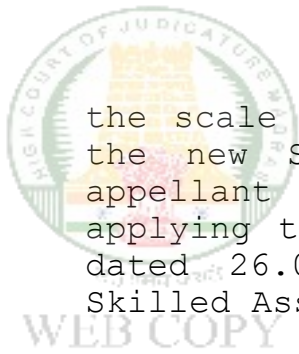
- (a) Technical Assistant - Rs.1350-2200
- (b) Skilled Assistant (Grade-I) - Rs.1100-16600
- (c) Skilled Assistant (Grade-II) - Rs.975-1500

However, at present there are number of technician posts in different scales of pay and in various designations in the Corporations. The Commissioner of all these Corporations should group all the existing technical posts within the above said three categories only, taking into account their present scales of pay and nature of work. Technical posts having pay less than the scale of Rs.975-1500 may be grouped with posts in the scale of Rs.975-1500. Similarly, posts having scale of pay of more than Rs.975-1500 and less than Rs.1100-1600 may be grouped with posts in the higher scale of pay of Rs.1100-1600.

However, all the existing persons will get their pay in the scales of pay in which they are now getting their pay, till the scales of pay are revised by the next pay Commission.

Similarly, the posts in other categories may also be grouped and orders issued by all the Commissioners."

9. The proviso under Clause (3) of Annexure-I of G.O.Ms.No.237, dated 26.09.1996, deals with the contingencies faced by the employees, such as, the appellant herein. It states that the Commissioners of all the Corporations should group all existing technical posts within the above three categories, namely, Technical Assistant, Skilled Assistant (Grade-I) and Skilled Assistant (Grade-II), taking into account their present scale of pay and nature of work. Further, it states that Technical Posts having pay less than the scale of pay of Rs.975 - 1500 may be grouped with the posts in



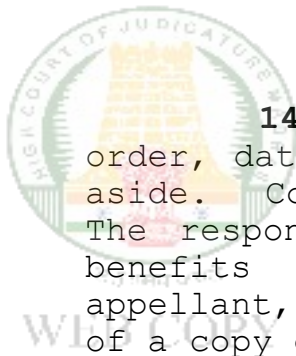
the scale of pay of Rs.975 - 1500. Admittedly, on the date, when the new Service Rules came into force, the pay drawn by the appellant was less than Rs.975 - 1500 i.e. Rs.950/-. Thus, by applying the proviso to Clause (3) of Annexure-I of G.O.Ms.No.237, dated 26.09.1996, the appellant should have been grouped with Skilled Assistant (Grade-II) category.

10. An argument was putforth before the Writ Court as well as before us that the appellant did not challenge the Government Order in G.O.Ms.No.237, Municipal Administration & Water Supply (Election) Department, dated 26.09.1996. In our considered view, there could not have been no occasion for the appellant to challenge the said Government order, because, his services were regularized during December, 2005 with retrospective effect. Assuming that the appellant was aware that problem would arise on implementation of G.O.Ms.No.237, dated 26.09.1996, if any representation is given, he would have had a genuine apprehension that his services might not be regularized. Therefore, the appellant cannot be non-suited on the ground that he did not challenge the Government Order in G.O.Ms.No.237, dated 26.09.1996. In our considered view, there is no necessity for the appellant to challenge the said Government Order as the proviso under Clause (3) of Annexure-I of G.O.Ms.No.237, dated 26.09.1996, clearly covers the cases, like the case of the appellant herein.

11. It may be true that the appellant did not refer to the proviso under Clause (3) of Annexure-I of G.O.Ms.No.237, dated 26.09.1996 before the Writ Court. However, the second respondent - Corporation also did not place the same before the Writ Court. There can be no escape from applying the proviso. The issue / problem involved in the present case is the common issue / problem, whenever new Service Rules are implemented and whenever categorization of posts are occurred. Therefore, we are of the view that the appellant could not have been treated as a basic servant, but should have been grouped with Skilled Assistant (Grade-II) category by applying the proviso under Clause (3) of Annexure-I of G.O.Ms.No.237, dated 26.09.1996 and he should be extended all consequential service benefits and monetary benefits, whichever eligible.

12. At this juncture, an argument was putforth by the learned counsel appearing for the second respondent - Corporation that the appellant was initially appointed as Electrician Motor Attendor. This submission is incorrect, because, it would amount to misleading the order of appointment to the post of Electrician Motor Attendor, which is undoubtedly a skilled post.

13. Thus, for all the above reasons, we are of the view that the appellant is entitled to succeed.



14. In the result, the writ appeal is allowed and the order, dated 04.01.2017, passed in W.P.(MD) No.2718 of 2011, is set aside. Consequently, the writ petition is allowed as prayed for. The respondents are directed to extend all consequential service benefits and monetary benefits, whichever eligible, to the appellant, within a period of three months from the date of receipt of a copy of this Judgment. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Government of Tamil Nadu,
Secretariat,
Chennai.

2.The Commissioner
Madurai Corporation
Madurai.

+1 CC to M/s.R.MURALI, Advocate SR-94204.

+1 CC to M/s.SAKUNTALA DEVI, Advocate SR-94742.

W.A. (MD) No.568 of 2017

23.10.2019

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