

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25276 of 2008

V.N.Kamalanathan

...Petitioner

-vs-

- 1.State of Tamil Nadu,
Rep. by Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.
- 2.State of Tamil Nadu,
Rep. by Secretary to Government,
Municipal Administration and Water Supply Dept.,
Fort St.George, Chennai-600 009.
- 3.District Family Welfare Medical Office,
District Family Welfare Board,
Corporation of Chennai,
Chennai-600 003.
- 4.The Commissioner,
Corporation of Chennai,
Part Town, Chennai-600 003.
- 5.S.Navaneetha Krishnan
- 6.M.S.Renuka
- 7.R.Ramakrishnan
- 8.S.Padmanabhan

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating in reference FWMCH(F4) 2622/2007 dated 28.08.2007 on the file of the third respondent and quash the same and direct the respondents 1 to 4 to consider the promotion of the petitioner for the post of Deputy Communication Officer, Corporation of Chennai.

For Petitioner	: Mr.J.R.K.Bhavanantham
For R1 & R2	: Mr.A.Zakir Hussain Govt. Advocate
For R3 & R4	: M/s.Dhivya For M/s.Karthicka Ashok

For R5 & R6 : M/s.Parvin Banu
For Mr.P.Seshadri
For R7 & R8 : No Appearance

O R D E R

The Writ Petition has been filed, seeking to quash the impugned order dated 28.08.2007 passed by the third respondent in FWMCH(F4) 2622/2007, by which the request of the petitioner for promotion to the post of Deputy Communication Officer was rejected, on the ground that the post of Computer-cum-Clerk was not the feeder category for promotion to the post of Deputy Communication Officer. The petitioner also sought a direction to the respondents 1 to 4 to consider the promotion of the petitioner for the post of Deputy Communication Officer, Corporation of Chennai.

2. The case of the petitioner is that he was appointed as Male Field Worker through Employment Exchange in the Family Welfare Department, Corporation of Chennai and after crossing several cadres, he was finally promoted as Computer-cum-Clerk on 13.06.1986 and he was also sent to Delhi for participation in training conducted by National Health and Family Welfare from 10th to 19th March, 1993. It is further case of the petitioner that though he is in the top seniority, he was not considered for promotion to the post of Deputy Communication Officer. The petitioner also drew the attention of this Court to the Writ Petition in W.P.No.18309 of 2001, in which this Court, by an order dated 17.06.2008, held as follows:

"14. In view of the above, the rejection of the request of the petitioners for appointment to the post of Deputy Communication Officer, on the basis of Rule 3 and 4 of the adhoc rules, cannot be sustained. The Rule prescribing a particular category of post as feeder category to another post when no such feeder post was actually in existence, cannot be enforced and is actually otiose.

15. Moreover, it is admitted by the first respondent in para 6 of the counter affidavit that a person by name S.Paramasivam, who was also employed only as a Computer-cum-Clerk and who was actually junior to the petitioners, was appointed as Deputy Communication Officer, under G.O.Ms.No.172 Municipal Administration and Water Supply Department dated 11.8.1995. The only explanation given by the first respondent for the appointment of S.Paramasivam is that he possessed the requisite qualification and that he was appointed before the adhoc rules were approved by the Government. But the said explanation is unacceptable, since it is not disputed by the

respondents that the petitioners also possess the requisite educational qualifications prescribed for appointment to the post of Deputy Communication Officers. The petitioners are also admittedly seniors to the said S.Paramasivam, in the post of Computor-cum-Clerk. Therefore, even when S.Paramasivam was appointed in 1995, the seniority of the petitioners ought not to have been overlooked, especially when the petitioners also possessed the same qualification.

16. Since the posts of District Extension Educators and Extension Educators were abolished in 1976 itself, the Rule prescribing theses posts as feeder categories, is virtually a dead letter. Therefore as per Rule 3 of the adhoc rules, the post of Deputy Communication Officer can be filled up only by direct recruitment or by deputation from any department or institution. Rule 4 prescribes 35 years as the upper age limit for direct recruitment to the post. Obviously, the petitioners have crossed the upper age limit. The post of Computor-cum-Clerk is not covered by the adhoc rules, indicating thereby that the said posts does not fall within the same service in which the post of Deputy Communication Officer falls. Therefore, it may be open to the Government to send the petitioners on deputation to the post of Deputy Communication Officer, since "deputation from any department" is prescribed as one of the methods of recruitment under Rule 3. Alternatively, the Government can always exercise the power of relaxation in respect of the rule relating to upper age limit and consider the cases of the petitioners for direct recruitment, since they are fully qualified for the post. The petitioners have been serving in the same post admittedly for more than 20 years. It is not known if they have any avenue of promotion at all. The Apex Court has held that an employee should have at least one avenue of promotion in his career. Therefore, the respondents are obliged to consider the case of the petitioners at least for direct recruitment to the post of Deputy Communication Officer, by exercising the power of relaxation of the upper age limit alone.

17. Accordingly, the Writ Petition is disposed of, directing the respondents to consider the case of the petitioners for appointment to the post of Deputy Communication Officer either by the method of deputation or by the method of direct recruitment, in

relaxation of the rule relating to upper age limit and pass appropriate orders, within a period of two months. No costs."

3. It is also the case of the petitioner that he had submitted a written representation to the Mayor on 14.06.1997, followed by another representation dated 23.08.2007 to the 4th respondent, pursuant to which, the impugned order came to be passed, rejecting his request. Aggrieved by the said order, the petitioner is before this Court.

4. Learned counsel for the petitioner submitted that though the petitioner had voluntarily retired from service, he is entitled to notional benefits and when there is no avenue of promotion to the petitioner, his case has got to be considered in the light of Paragraph Nos.16 and 17 of the judgment (extracted surpa).

5. It is seen that inspite of several opportunities, the 4th respondent has not filed any counter. The other contesting respondents have stated that when similarly placed persons, who were seniors to the petitioner approached this Court, their request was not considered on the ground that they do not fall within the zone of consideration, apart from the fact that they would not be entitled to be considered for direct recruitment or appointment on deputation.

6. A reading of the judgment dated 17.06.2008 reveals that the Court directed the Government to consider the case of the petitioners therein and not directed to grant any promotion. If the petitioner is granted the relief, the same will have to be extended to the immediate senior of the petitioner. Therefore, this Court is not inclined to grant any relief to the petitioner and the Writ Petition is liable to be dismissed.

7. Accordingly, the Writ Petition is dismissed. No costs.

सत्यमेव जयते Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To:

1.The Secretary to Government
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.

2.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration and Water Supply Dept.,
Fort St.George, Chennai-600 009.

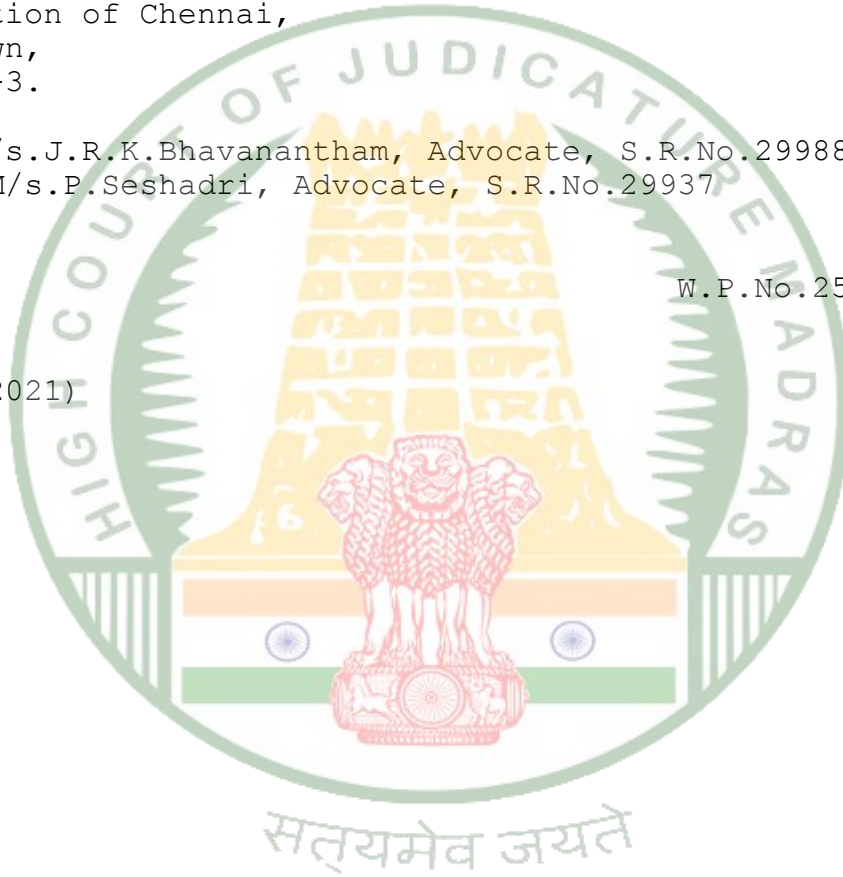
3.District Family Welfare Medical Office,
District Family Welfare Board,
Corporation of Chennai,
Chennai-3.

4.The Commissioner,
Corporation of Chennai,
Park Town,
Chennai-3.

+1cc to M/s.J.R.K.Bhavanantham, Advocate, S.R.No.29988
+2ccs to M/s.P.Seshadri, Advocate, S.R.No.29937

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