

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2020

CORAM :

The Hon'ble Mr.JUSTICE S.VAIDYANATHAN

W.P.No.3113 & 3114 of 2005

and

W.M.P.No.3497 of 2005

Mr.Natarajan

S/o. V.G. Arumugam

No.7/301, Dr.Anne Besant Road,

Royapettah, Chennai - 14.

...Petitioner in both WPs

-vs-

- 1.The State of Tamil Nadu,
Rep by its Secretary to Govt.
Dept. of Municipal Admin & Water Supply,
City - V, Fort St.George,
Chennai.
- 2.The Commissioner of Municipal Administration,
Chepauk,
Chennai.
- 3.The Commissioner,
Corporation of Salem,
Salem.
- 4.The Municipal Commissioner,
Kathivakkam.
- 5.Kamaraj
Executive Engineer,
Corporation of Salem,
Salem.

...Respondents in both WPs

Prayer in WP.No.3113 of 2005 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records in connection with the impugned order of the first respondent made in G.O. (20 years) No.-73 Municipal Administration and Water Supply (Ma.Na.5) Department dated 26.11.2004 and quash the said G.O. dated 26.11.2004 and consequently issue suitable directions to the respondents 1 to 4 to issue orders of promotion to the petitioner as Executive Engineer retrospectively with all attendant service benefits such as seniority, promotion, pay and

allowances and perquisites attached to the said post of Executive Engineer.

Prayer in WP.No.3114 of 2005 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records in connection with the impugned letter of the first respondent made in Letter No.25537/MaNa5/2004-5 dated 26.11.2004, quash the same and consequently issue suitable directions to the respondents 1 to 4 to issue orders of promotion to the petitioner as Executive Engineer retrospectively with all attendant service benefits such as seniority, promotion, pay and allowances and perquisites attached to the said post of Executive Engineer.

For Petitioner : Mr.Ramesh Venkatachalapathy
For Respondents : Mr.K.Magesh [RR1 & 2]
Special Government Pleader
Mr.G.Sankaran [R3]
No Appearance [R4]
Mr.R.Neppoliyan [R5]

ORDER
(Heard through Video Conferencing)

- 1.These writ petitions have been filed to call for the entire records in connection with the impugned order of the first respondent made in G.O. (20 years) No.-73 Municipal Administration and Water Supply (Ma.Na.5) Department dated 26.11.2004 and impugned letter of the first respondent made in Letter No.25537/MaNa5/2004-5 dated 26.11.2004 and consequently issue suitable directions to the respondents 1 to 4 to issue orders of promotion to the petitioner as Executive Engineer retrospectively with all attendant service benefits such as seniority, promotion, pay and allowances and perquisites attached to the said post of Executive Engineer.
- 2.Heard the learned counsel for the petitioner and learned counsel appearing for the respondents.
- 3.During the pendency of the writ petition, the contesting Respondent and the Petitioner have attained the age of superannuation. The Writ Petitions are of the year 2005 and 15 years have gone by. Serious charges have been made and the Petitioner was placed under suspension and thereafter, services of the Petitioner have been transferred to Municipal Administration wherein the Petitioner had suffered another suspension. On account of attaining age of superannuation, by proceedings dated 07.01.2015, Tirupathur Municipal Administration had permitted the Petitioner to retire from

service with effect from 31.10.2008 without reserving any right to proceed departmentally even though the charges were said to be serious in nature.

4. It is the contention of Mr.G.Sankaran, the learned counsel appearing for the 3rd Respondent Corporation that once the Petitioner has been transferred to the Municipal Administration and the Petitioner being a Pensioner, started to receive the pension, at this distant point of time, the Petitioner cannot contend that he will be entitled to promotion, more particularly, the question of setting aside promotion granted to the 5th Respondent does not arise, that too when both the petitioner and the 5th respondent have retired from service.
5. Mr.K.Magesh, the learned Special Government Pleader for the Respondents 1 and 2 would also submit that the Petitioner was suspended, but he was allowed to retire from service from 31.10.2008, by proceedings dated 07.01.2015, but they will be liable to pay any monetary benefits due to the petitioner. A reading of the order dated, 17.11.2004 would make it very clear that the petitioner has been transferred on deputation and posted the Petitioner to Kathiwakkam Municipality as Municipal Engineer Grade - II on deputation on a leave vacancy and he had been relieved from services of the Corporation on 18.11.2004 and the petitioner had subsequently joined services. Though the order appears to be a transfer order, it is only on deputation however, the proceedings would make it very clear that he was absorbed by the Municipal Administration Corporation and he was allowed to retire. When the issue is very narrow and once the charges against the the Petitioner had been dropped and he had been allowed to retire without reserving any right to proceed under the Pension Rules, the Petitioner would be entitled for promotion as if he was not placed under suspension of facing any charges. If the petitioner was eligible for promotion, the petitioner would be entitled to notional promotion as prayed for by him and subsequent to the deputation and absorption in the Municipal Administration, the monetary benefits need to be settled by the Municipal Administration as there was no charges pending against the petitioner in view of the order dated 07.01.2015 as the suspension order has been withdrawn and he has been allowed to retire.
6. It is no doubt true that the petitioner has been receiving pensionary benefits apart from terminal benefits as it is clear from the page no.3 of the proceedings dated 19.10.2016. Hence, this Court finds that the plea of the petitioner is sound and is entitled to the relief as sought for by him in these Writ Petitions and accordingly, the entire monetary benefits due to the petitioner shall be paid by the municipal administration

within three months from the date of receipt of a copy of this order, as they have absorbed the petitioner and allowed him to retire from service. However, till the date of petitioner's service in the Corporation, the liability to pay the monetary benefits vests with the Corporation and therefore, the Municipal Administration, after payment of the amount to the petitioner, is entitled to demand the difference in amount from the Corporation. On such demand, the difference in amount shall have to be reimbursed by the Corporation to the Municipal Administration, within a period of one month from the date of demand.

7. With the above observations, WP.No.3113 of 2005 is allowed. In view of the order made in WP.No.3113 of 2005, W.P.No.3114 of 2005 is closed, as the Petitioner had already retired from service. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sni/srcm/ar

To

1. Secretary to Government,
The State of Tamil Nadu,
Dept. of Municipal Admin & Water Supply,
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2. The Commissioner of Municipal Administration,
Chepauk, Chennai.
3. The Commissioner,
Corporation of Salem,
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5. Kamaraj
Executive Engineer,
Corporation of Salem,
Salem.

W.P.No.3113 & 3114 of 2005

VSNII (CO)
RN (23/10/2020)