

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.29015 OF 2012

&

M.P.No.2 of 2012

S.Vijayakumar
Licence Inspector
Corporation of Chennai
Ambattur, Chennai-600 053

...Petitioner

Vs.

1.The State Government rep. By
Principal Secretary to Government
Municipal Administration and
Water Supply and Sewerage Department
Fort.St.George, Chennai-9

2. The Commissioner
Corporation of Chennai
Chennai-600 003

3.Assistant Commissioner (G& AP)
Corporation of Chennai
Chennai-600 003

4.M.P.Thirupal

5.P.V.Natarajan

6.K.Justeena

7.M.Santhanam

8.S.Manjula Devi

9.M.S.Balaji

10.V.Raman

11.J.V.Ranagarajan

12.A.Ravichandra

13.P.V.Suresh
14.S.Sarojini
15.K.Mohanrao
16.A.Aruldos
17.V.Murugesan
18.A.KAdharbeig
19.A.S.Suresh
20.M.Arjunan
21.L.G.Loganathan
22.R.Deenadhayalan
23.S.Bakkiya Selvaraj
24.K.Lakshmi Narayanan
25.M.Mohamed Iqbal
26.S.Prakash
27.S.Thangavelu
28.P.A.Neethipathi
29.K.Annadurai
30.K.Balachandar

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the entire records relating to the proceedings PO-Thu-na.ka.No.E5/31060/12 dated 18.09.2012 passed by the 2nd respondent and quash the same and consequently to grant adequate promotion to the petitioner.

For Petitioner	:	Mr.P.Seshadri and M.Kempraj
For Respondents	:	Mr.P.Chinnadurai for R1 Ms.Karthika Ashok for R2

O R D E R

The above writ petition seeks to quash the panel for promotion to post of Assessor for the year 2012-13, in so far as it did not include the name of the petitioner therein and a direction to promote him. According to the petitioner as per Resolution No.45/2010 dated 28.01.2010 the Second respondent integrated the posts of Assistant, Assistant Store Keeper, License Inspector, Clerk and Sanitary Inspector in to one common category under Subordinate Service Draft Rules, 2009, for Class 3 & 4 employees of the Corporation. The second respondent also prepared a common seniority list vide G.D.Na.Ka.No.E5/12787/2010 dated 15.06.2010 for further promotions to the post of Superintendent and in fact promotions were ordered from the common list. As per which a irrespective of the department and irrespective of their substantive posting all eligible persons were promoted to higher posts. The petitioner, even though substantively appointed to General Department, he was posted in Revenue department and pursuing his career prospects in that line of hierarchy. While so the second respondent on untenable grounds omitted to include the petitioner 's for promotion to the post of Assessor. The petitioner having served for 32 years as Tax Collector and License Inspector is eligible to be promoted. The reason that the petitioner's degree is invalid is incorrect. In fact the second respondent has given promotions to many persons who have acquired direct Post graduate degrees from Open Universities. Even though the petitioner has valid B.A., degree from Madras University and a B.L., degree from Government Law College, Madras refused to consider the petitioner, which is nothing but arbitrary exercise of power tainted with bias and malafides. On these grounds prays for setting aside the impugned order.

2. The Second respondent filed a detailed counter which is adopted by the first respondent. According to the respondents, the petitioner was appointed as Record Clerk and promoted as Junior Assistant and was posted as Tax Collector w.e.f.10.02.1998. He was promoted as Assistant w.e.f. 30.08.2010. In the interest of administration was posted as License Inspector only on working arrangement vide proceedings dated 30.08.2010 with a condition that his salary would be continued in post of Assistant itself and special allowances will not be given. But the petitioner misleads this court. The office circular dated 18.09.2012 , the tentative panel for the post of Assessors for the year 2012-2013 consists of 27 License Inspectors eligible for promotion. The writ petitioner holding the post of Assistant is not eligible for promotion as the post of Assistant is not the feeder category for promotion to the post of Assessor.

3. Further for promotion to the post of License Inspector, a candidate shall put in 12 years of service as Tax Collector. When the panel was prepared for the year 2008, the writ petitioner did not complete 12 years of service as he had joined as a Tax collector only on 10.02.1998. Hence his name was included in the panel for promotion as License Inspector as per Council Resolution No.459/99 dated 08.06.1999 and none of his juniors were also promoted. Apart from this the educational qualification for the post of License Inspector is a degree after completing 11th & 12th standards. But the petitioner without passing 12th standard directly obtained a B.A. Degree from Madras University and got B.L., degree from Dr.Ambedkar Government Law College under evening College course. As per G.O.Ms.No.107 P&AR(M) Dept dated 18.08.2009 Diploma/Degree/Post Graduate Degree after passing SSLC and Higher Secondary alone can be considered for promotion. Since the petitioner has not passed 11th & 12 standard he is not eligible for promotion. The said G.O is prospective and after the receipt of the same persons with direct degree and post graduate degree through open universities were not promoted.

4. During the preparation of the tentative panel for the year 2012-2013, Council Resolution No.188/2011 dated 29.06.2011 came to be passed as per which the posts were disintegrated and Bye Laws 2010 was introduced, by which the feeder category for the post of Assessor is License Inspector and not Assistant. Therefore the individuals from License Inspector category only empanelled. As per G.O.Ms.No.107, no one with direct degree was promoted; hence the statement that juniors to the petitioner were promoted is not sustainable. On these grounds the counsel for the second respondent prays for the dismissal of the writ petition.

5. I have heard the submissions of both sides.

6. Corporation of Chennai inter alia has several categories of employees governed by respective service rules and bye laws. In so far as the present writ petition is concerned the service rules and bye laws with respect to Class III employees of General Department and Revenue Department are relevant.

7. The hierarchy and promotion of the respective departments for the purpose of the present writ petition is as under:

General Department	Revenue Department
Administrative Officer	Revenue Officer
Superintendant	Additional Revenue Officer
Manager	Assessor

General Department
Assistant (UDC)
Jr.Assistant(LDC)
Record Clerk

Revenue Department
License Inspector
Tax Collector

8. The petitioner was appointed as Record Clerk on 16.12.1987 and was promoted as Junior Assistant on 23.08.1996 and posted as Tax Collector w.e.f.10.12.1998. He was promoted as Assistant on 28.08.2010 and posted as License Inspector on 30.08.2010 in which capacity he is working till date.

9. The main objections taken against the petitioner are that
a) he belongs to General Department and he has to pursue his promotion only there and not in Revenue Department;

b) Feeder category to the post of Assessor is License Inspector and since the petitioner is an Assistant he is not eligible for inclusion in the panel;

c) The petitioner does not possess a valid degree in view of G.O.Ms.No.107 P & A R Department Dated 18.08.2009 and therefore he is ineligible to be promoted even to the post of License Inspector and consequently to the post of Assessor;

d) For promotion to the post of License Inspector, one should have put in 12 years of service as Tax Collector. On the date of consideration during 2007-08, the petitioner was not eligible for want of 12 years of service and after 2011 the interchangeability of the posts were done away with by Resolution No 188/2011 dated 23.06.2011 and hence he was not eligible for promotion as License Inspector.

10. According to the Second respondent Chennai Corporation Class III Sub ordinate Service Bye Laws 2009 framed vide Resolution No.333/2009 dated 17.11.2009 and published in Government Gazette No.51 dated 30.12.2009 was governing the service of Class III employees till amendments were proposed and draft Bye Laws were framed on 29.06.2011. But on perusal of materials placed before this court, it is noted that the amendments are still at draft stage and has not come in to force at all.

11. The Government Letter 7543/MC-III/2010-4 Municipal Administration and Water Supplies Department dated 04.11.2011 returned the draft bye laws. Para 2 of the above letter reads as follows:

" 2.) In this connection, I am directed to state that:

Section 349 of the Chennai City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919) empowers the Council of the Chennai Corporation to make by-laws for the matters to make by-laws for the matters specified therein.

Section 352 of the said Act, provides that no by-law made by the Council under the said Act shall have any validity unless and until it is sanctioned by the State Government.

The above provision contemplates the sanction of the Government for the by-laws already made by the council and not previous sanction of the Government for the draft by-laws.

Further, section 353 also does not provide for such previous sanction of the Government as a condition precedent for making of by laws. The by-laws which has been sent to Government have not yet been approved by the Council and are still in draft stage."

12. From this it can be inferred that sanction of the government has not been accorded and the interchangeability of common category post which includes Assistants and License Inspector still continues. In effect segregation of posts between the departments has not come into force. No materials were placed to show that the amendments to Bye Laws were validly approved and got sanction of the government till the date of preparation of panel for the post of Assessor. It is further reinforced by proceedings Z.O.Na.Ka.No.R1/0368/2018 dated 09.03.2018 and Z.O.Na.Ka.No.R.101/9/2020 dated 04.02.2020 of the Zonal Officer, Zone- 9 of Corporation of Chennai, whereby it is seen that the petitioner is still working as License Inspector and he was not repatriated to General Department. If that be so, the Resolution No.188 dated 23.11.2011 segregating the post department wise has not come into operation as claimed by the respondents. In that event the objection that the petitioner is not entitled to seek promotion in Revenue Department falls to ground and it is not sustainable.

13. Secondly, the order of posting of the petitioner vide proceedings G.D.C.No.E5/33599/09 dated 30.08.2010 reveals that the petitioner was posted as License Inspector as per Subordinate Service rules 2009 framed in accordance with the sanction given by Resolution No.45/2010 for integrating the posts in to a common category. In that view of the matter the post of Junior Assistant is equal to Tax collector and Assistant to License Inspector. Therefore the petitioner was posted as License Inspector. Once a person is promoted to the category of License Inspector, the educational qualifications for promotion

to the post of License Inspector become irrelevant. In fact the petitioner was posted as License Inspector from the date of his promotion as Assistant in the year 2010 and is continuing as such till date. In that event he cannot be non-suited on the basis of educational qualifications.

14. That apart G.O.Ms.No.107 dated 18.08.2009 disqualifies those secured degree from Open University without passing X th standard and Higher Secondary (+2) Course. But the petitioner had obtained his degree from Madras University, which not a Open University, but a University run under the control of Tamil Nadu Government itself. Further, the degrees awarded by Madras university are recognized by State of Tamil Nadu in the matters of employment. After obtaining B.A., degree, the petitioner joined evening course in Dr.Ambedkar Government Law College and obtained a B.L., degree. Admission into a government college is impossible without a valid degree. If viewed from that angle, the petitioner possesses a valid B.L., degree for considering him for promotion. The objection as to educational qualification is raised only with an ulterior motive to deny promotion to the petitioner without application of mind.

15. In similar circumstances, when an approval for appointment of teacher was rejected, this Court in W.P.No.23234 of 2004 by its order dated 27.01.2011 referring to para 65 of the Annamalai University case, wherein the Hon'ble Supreme Court has held that the Government orders are prospective in nature and they cannot deprive the appointees and cause hardship by its retrospective application. Therefore, the appointments already made as per the extent rules cannot be undone.

16. Now that the second respondent non considered the petitioner to promotion in view of G.O.Ms.No.116 P&AR department dated 18.08.2010. As mentioned above as per the judgment the Government order is prospective. It applies only to appointment to public service.

17. The Petitioner was promoted as Assistant in the year 1996 and posted as Tax Collector in the year 1998. Since both these posts are interchangeable, the experience shall be computed from the date of appointment to that category. As such the applicant has completed 12 years of service in the year 2008 itself. As per G.D.C.No.E2/11942/88 Resolution No.469/89 dated 08.06.1989 , promotion to the post of License Inspector is from the post of Non Graduate Assistants, Tax Collector and Graduate Assistants in the ratio of 1:1:3 i.e., One Non Graduate Assistant with 12 years of service; One Graduate Tax-Collector with 12 years of service and Three Graduate Assistants for appointment as License Inspector. Therefore, the second respondent all along promoted the Assistants and Tax Collectors

as License Inspectors. The petitioner having worked as Tax Collector for 12 years, which is one of the feeder categories on promotion to the post of Assistant would have been posted as License Inspector in the year 2010 and continuing as License Inspector for the past 10 years. The second respondent's Council Resolution No.188 dated 29.06.2011 provides for option to employees to choose the post/service of their choice. Had option was directed to be exercised there was a chance for the petitioner to get absorbed in the post of License Inspector due to his continuous working knowledge in the post. The council in its resolution No.45/2010 dated 28.01.2010 has integrated the posts of Assistant , Assistant Store Keeper, License Inspector, Clerk and Sanitary Inspector as common category under Subordinate Service Draft Rules, 2009, for Class 3 & 4 employees of the Corporation. The second respondent also prepared a common seniority list vide G.D.Na.Ka.No.E5/12787/2010 dated 15.06.2010 for further promotions to the post of Superintendent and in fact promotions were ordered from the common list. Since the unamended Corporation of Chennai Class III Subordinate Service Rules 2009, is still in force, by which post are interchangeable, the petitioner shall be considered as a License Inspector eligible to be considered for promotion to the post of Assessor.

18. Eligibility for promotion to the post of Assessor from the post of License Inspector is a Pass in Accounts Test 1 & 2 and a pass in District Office Manual. It is stated that the petitioner has passed all the above tests, he is eligible to be included in the panel. However it is submitted that during the pendency of the Writ Petition many of his juniors were promoted as Assessors and further. Therefore, a direction is issued to the second respondent to promote the writ petitioner on par with his immediate junior from the date on which he was so promoted with all service and monetary benefits within a period of 2 months from the date of receipt of the order.

The Writ Petition is ordered with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Kpr

To

1.The Principal Secretary to Government
Municipal Administration and
Water Supply and Sewerage Department
Fort.St.George, Chennai-9

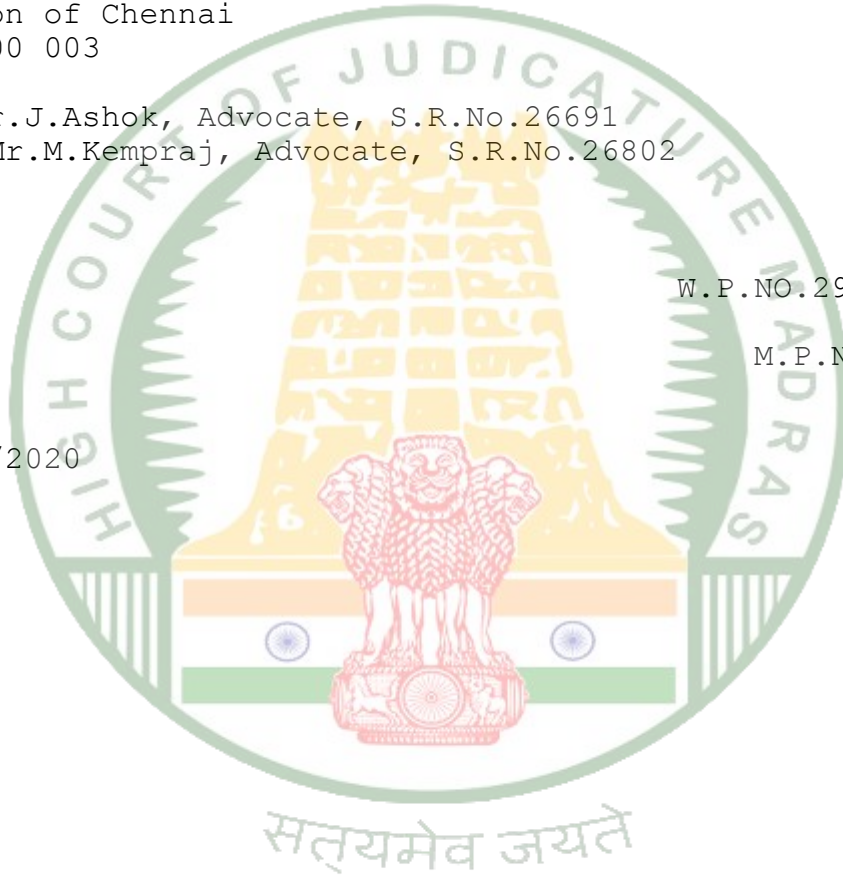
2. The Commissioner
Corporation of Chennai
Chennai-600 003

3.Assistant Commissioner (G& AP)
Corporation of Chennai
Chennai-600 003

+1cc to Mr.J.Ashok, Advocate, S.R.No.26691
+2ccs to Mr.M.Kempuraj, Advocate, S.R.No.26802

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&
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