

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.11.2020

Delivered on 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.8664 of 2020

and

WM.P.Nos.10494, 10495 & 13919 of 2020

N.Natarajan

Chief Engineer,

Commissionerate of Municipal Administration,

MRC Nagar, Santhome High Road,

Chennai - 600 028.

..Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary
to Government, Municipal Administration and Water
Supply Department (MA & WS)
Fort St.George, Chennai - 600 009.
2. The Commissioner of Municipal
Administration,
11th Floor, Urban Administrative Building,
(Opp. to Ciba Building), No.75, Santhome High Road,
MRC Nagar, Raja Annamalaipuram,
Chennai - 600 028.
3. The Greater Chennai Corporation,
Rep. by its Commissioner,
Chennai.
4. Mr.Pugazhendi,
Principal Chief Engineer,
Commissionerate of Municipal
Administration,
Santhome High Road,
Chennai - 600 028.

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 1st respondent in G.O.(D) No.503, Municipal Administration and Water Supply (ME.3) Department, dated 20.12.2019 and the imugned order passed by the Ist respondent in G.O(D) No.227 municipal

Administration and water supply (M.E3) Department, dated 30.06.2020 quash the same and consequently direct the 1st respondent to restore the petitioners original position in the legitimate post of Chief Engineer in the Office of the Commissionerate of Municipal Administration forthwith. (Prayer amended vide order dated 28.10.2020 made in W.M.P.No.13918/2020 in W.P.No.8664/2020 by VPNJ)

For Petitioner : Mr.P.Wilson,
Senior Counsel
for M/s. Wilson Associates

For Respondents : Mr.Vijay Narayan
Advocate General
assisted by
Mr.P.S.Sivashanmugasundaram,
Special Government Pleader
for R1 & R2
Mr.R.Gopinath,
standing counsel for R3
Mr.L.Chandrakumar for
Mr.Dwarkesh Prabhakaran for R4

O R D E R

The matter is taken up through web hearing.

2. This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 1st respondent in G.O.(D) No.503, Municipal Administration and Water Supply (ME.3) Department, dated 30.06.2020 quash the same and consequently direct the 1st respondent to restore the petitioners original position in the legitimate post of Chief Engineer in the Office of the Commissionerate of Municipal Administration forthwith

3. The facts and circumstances which gave raise to the filing of the writ petition are stated herein.

4. The petitioner joined the Tamil Nadu Municipal Engineering Service on 16.05.1983 as Draughtsman and was promoted as Junior Engineer on 25.12.1983. Subsequently, the post was re-designated as Assistant Engineer in November 1988. The petitioner has also completed his B.E. Degree, when he was working as Assistant Engineer and was promoted as Assistant Executive Engineer on 28.08.1995. He was further promoted to the post of Executive Engineer on 02.02.2005. On 01.12.2016 vide G.O(D) No.464 Municipal Administration and Water Supply (ME-3) Department, the petitioner came to be promoted as Superintendent Engineer. Finally, the petitioner was appointed as the Chief Engineer on 25.07.2018 vide G.O(D) No.307 Municipal Administration and Water Supply (ME-3) Department. According to the petitioner, he has been working in the Municipal Administration since 1983 and has rendered 35 years of unblemished service.

5. The 4th respondent, who was working as a Chief Engineer in the Greater Chennai Corporation attained the age of superannuation on completion of 58 years of age and was due to retire on 30.06.2016. On the eve of retirement of the 4th respondent, the Commissioner, the 3rd respondent herein addressed a communication to the 1st respondent on 21.06.2016 requesting him to grant extension of service of two years from 30.06.2016. The said request was made by the 3rd respondent for the reason that there were several ongoing projects and work pending with the Corporation to be carried out and executed and that the service of the 4th respondent was required for effective monitoring and completion of the pending projects and work. In fact, the communication of the 3rd respondent also refers to the request made by the 4th respondent on the same day i.e., 21.06.2016 seeking extension of service for himself.

6. In response to the communication of the 3rd respondent seeking extension of service of the 4th respondent, the 1st respondent issued G.O.(Pa) No.278 dated 30.06.2016 extending the service of the 4th respondent for two years and while granting extension of service, the post of Chief Engineer (General) which was available in the 3rd respondent Corporation was upgraded as Principal Chief Engineer and the 4th respondent was accommodated in that position for the extended period.

7. Subsequently, after completion of the two years extension, once again, a request was made by the 3rd respondent Corporation for the same reason and accepting the same, the 1st respondent extended the service of the 4th respondent for two more years vide G.O(Pa) No.271 Municipal Administration and Water Supply (ME) Department, dated 29.06.2018. In fact, in the extension order, it was stated that under the leadership of the 4th respondent, the Civil Engineering works have been executed without any delay to the benefit of the public at large.

8. As stated above, the petitioner herein, who was working as a Superintendent Engineer, Coimbatore Corporation, was promoted to the post of Chief Engineer in the office of the Commissioner of Municipal Administration vide order dated 25.07.2018 and he assumed charge as Chief Engineer on 27.07.2018 and had been working in that capacity. A dispute arose when the Government issued G.O.(D)No.503, Municipal Administration and Water Supply (ME-3) Department dated 20.12.2019, by which, the petitioner was transferred from the post of Chief Engineer, Office of the Commissioner of Municipal Administration to the post of Chief Engineer in the Office of the Commissioner, Greater Chennai Corporation on deputation basis. In the same order, the 4th respondent who was working as Principal Chief Engineer, Greater Chennai Corporation, on his second extension, was transferred and posted in the place of the petitioner. The petitioner, being aggrieved by his transfer to 3rd respondent Corporation and corresponding accommodation of the 4th respondent in his place in the office of the Commissioner of

Municipal Administration, has filed the present Writ Petition challenging the said G.O.

9. This Court has ordered notice in the writ petition and the writ petition was listed for hearing on a few occasions. When the writ petition was taken up for hearing on 16.07.2020, it was represented by the learned Senior counsel, Mrs.Hema Sampath on behalf of the petitioner that the second extension granted to the 4th respondent had expired on 30.06.2020 and the post of Chief Engineer, Office of the Commissioner of Municipal Administration remained unfilled and the fact that the 4th respondent term had come to an end on 30.06.2020 was also acknowledged by him.

10. Mr.L.Chandrakumar, learned counsel who appeared for the 4th respondent did not dispute the said fact. This Court, on consideration of the facts and circumstances of the case, granted order of status quo and directed the parties to file their counter affidavits and posted the case for hearing on 07.08.2020.

11. After the above interim order of status quo was passed by this Court, on behalf of the 1st respondent, learned Advocate General appeared on the same day in the afternoon and submitted that after the term was over on 30.06.2020, the 4th respondent had been issued with a fresh appointment order on a contract basis by the Government retaining him as Chief Engineer in the Office of the Commissioner of Municipal Administration for a period of one year from 01.07.2020 to 30.06.2021. The learned Advocate General, in fact, referred to G.O.(D).No.227, Municipal Administration and Water Supply Department dated 30.06.2020 appointing the 4th respondent on a contract basis. On his representation, this Court has clarified on 24.08.2020 stating that the status quo order passed on 16.07.2020 would stand clarified by the subsequent developments. Thereafter, on behalf of the petitioner W.M.P.No.13918/2020 was filed for amending the prayer in the writ petition by including the latest G.O.(D).No.227 dated 30.06.2020 appointing the 4th respondent on a contract basis for a period of one year from 01.07.2020. The amendment petition was ordered on 28.10.2020. By the above development as narrated, the petitioner herein who was originally aggrieved by G.O.(D) 503 dated 20.12.2019 transferring him from the post of Chief Engineer, Office of the Commission of Municipal Administration to the post of Chief Engineer, Greater Chennai Corporation and in his place, posting the 4th respondent, the petitioner is stated to have been aggrieved by the subsequent fresh appointment granted to the 4th respondent vide G.O.(D) No.227 dated 30.06.2020 and retaining him in the same position in the Municipal Administration, while shunting the petitioner to a lower rank in the 3rd respondent Corporation service.

12. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner would submit that the 4th respondent who originally attained the age of superannuation was given extraordinary

extension and while extending the service of the 4th respondent twice for a period of two years each, the Government did not follow any of the norms for such extensions contemplated in the Rules. According to the learned Senior Counsel what was shocking was that the 4th respondent who was not qualified to be appointed as a Chief Engineer in the office of the Commissioner of Municipal Administration in terms of the relevant rules and regulations, had been posted by the impugned G.O.(D.) No.503 dated 20.12.2019 by displacing the eligible and qualified petitioner from functioning as Chief Engineer in the Office of the Commission of Municipal Administration. Learned counsel would refer to the Tamil Nadu Municipal Engineering Service Rules, 1997.

13. As per the Tamil Nadu Municipal Engineering Service Rules, 1997, the Chief Engineer is classified as Category- I Post and appointment to the said post is provided under Rule 3.

3. Appointment- Appointment to the posts specified in column (1) of the Table below shall be made by the methods specified in the corresponding entries in column (2) thereof:

(1)	(2)
Chief Engineer	By promotion from Category I-A, Superintendent Engineer or by deputation from the holders of the post of Superintending Engineer in the Municipal Corporation other than in the Municipal Corporation of Chennai.

Rule 5 specifies the qualification for the promotion as under:

5. Qualification- No person shall be eligible for appointment to any of the posts specified in Column (1) of the Table below by the method specified in the corresponding entries in Column (2) unless he possesses the qualification specified in the corresponding entries in Column (3) thereof:

(1)	(2)	(3)
1. Chief Engineer	By promotion or deputation	(i) Degree in Civil or Mechanical or Electrical Engineering; and (ii) Must have worked as Superintending Engineer either in the Tamil Nadu Municipal Engineering Service or in any other Municipal Corporation other than in the Municipal Corporation of Chennai.

14. According to the learned Senior Counsel, the above Rule is very clear that for appointment to the post of Chief Engineer, Municipal Administration, the Superintendent Engineer, Municipal Engineering Service or Superintendent Engineer in the Municipal Corporations other than the Superintendent Engineer working in the Municipal Corporation, Chennai alone are eligible. A specific exclusion has been made in the Rule for the reason that the post of Chief Engineer in the Municipal Corporation, Chennai was not akin to the post of Superintendent Engineer in Municipal Engineering Service or Superintendent Engineer in other Municipal Corporations. Therefore, in the normal course, the 4th respondent could not have been posted as Chief Engineer in the place of the petitioner as he was admittedly ineligible for such transfer or posting.

15. The learned Senior Counsel would submit that the 4th respondent could not be said to have acquired eligibility in terms of the rules after the extension of service granted to him. On this ground alone, the appointment of the 4th respondent and displacing the petitioner is to be interfered with. He would further submit that even the extension granted to him by G.O.(D) No.227 Municipal Administration and Water Supply Department dated 30.06.2020, the appointment on contract basis was referable to G.O.Ms.No.170 Personnel and Administration Reforms Department dated 18.12.2009. He would refer to G.O.Ms.No.170 dated 18.12.2009 and would draw the attention of the Court to the contents of the G.O. According to the said G.O, the contract appointment should not be made on a routine basis and before making such appointment, there should be reason to believe that work will get affected due to dearth of employees in the Department. However, the G.O. provides appointment of retired persons to the same or lower position and not to higher position. In this case, the post of Chief Engineer has been upgraded in the 3rd respondent Corporation service and the 4th respondent was appointed as Principal Chief Engineer, Greater Chennai Corporation by upgrading the post, contrary to the G.O.

16. He would further submit that factually when extension was given twice to the 4th respondent for 4 years in toto, the reasons which were assigned for such extraordinary extensions was to oversee and execute the ongoing civil projects undertaken by the Chennai Corporation. Very strangely, during the period of extension, the 4th respondent has been shifted and posted in the petitioner's place as Chief Engineer Municipal Administration, during the middle of his extended appointment. Therefore, the action of the 1st respondent again extending the service of the 4th respondent either under the rules or the present extension on contract basis under G.O.(D).No.227 dated 30.06.2020, was not on the basis of a bonafide consideration of public interest as it was intended to illegitimately continue the service of the 4th respondent under one form or the other for extraneous reason.

17. The learned Senior Counsel has also questioned the legality of the present appointment contending that G.O.(D) No.170 dated 18.12.2009 could have application only for re-employment of retired Government servants or retired servants from quasi Government Organisation and the benefit of the G.O. does not cover engagement of the services of Officers on contract basis of the Corporation Service. In any case on merits, the learned Senior Counsel would submit, nothing is disclosed in the impugned order as to the fact of dearth of competent Engineers either in the Corporation Service or in the Municipal Service in order to establish that the service of the 4th respondent was indispensable till the execution of various ongoing civil works. On the other hand, the petitioner herein has more than 35 years of experience as Engineer, belonging to Municipal Engineering Service and to displace him abruptly and to utilise the services of the 4th respondent, engaged on a contract basis, the Government has obligation to disclose the compelling and extraordinary reasons for their action which is impugned in the writ petition. Except stating that the 4th respondent was being retained and again being appointed on contract basis to oversee and carry out the ongoing works which works are routine in nature, the justification for the appointment of the 4th respondent has been hardly explained either from the materials disclosed or in the counter affidavit filed by the Government. Therefore, he would submit that the impugned orders are liable to be set aside as being illegal and lacking in bonafides.

18. Per contra, learned Advocate General would resist the challenge by the petitioner contending that there was nothing amiss in granting extension of service to the 4th respondent, as the Government was well within its power to grant such extensions. According to the learned Advocate General, it was a normal practice for the Government to extend the service of its officers in public interest, particularly, when an Officer-in-charge was in the midst of overseeing large projects and its execution, such works should not allowed to be affected by the retirement of Officer-in-charge. He would refer to Fundamental Rule 56(1) which reads as under:

Retirement on Superannuation - (a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances.

19. According to the learned Advocate General, the power

exercised by the Government under the above Rule cannot be questioned unless any malafides is attributed to the Government. In this case, the affidavit filed in support of the writ petition, nothing has been whispered attributing any malafides in the extension granted to the 4th respondent. In fact, the learned Advocate General would submit that the petitioner herein cannot have any grievance in the extension of service granted to the 4th respondent as he has no stakes in the extension nor can be said being aggrieved by such extension. The only objection he has in this writ petition is posting of the 4th respondent in his place vide G.O.Ms.No.503 dated 20.12.2019 and transferring the petitioner to Greater Chennai Corporation. In this connection, the learned Advocate General would submit that the petitioner himself was earlier working in Coimbatore Corporation as Superintendent Engineer and he was promoted and posted as Chief Engineer vide G.O.(D).No.307 dated 25.07.2018 in the Office of the Commissioner of Municipal Administration on deputation basis only. He would therefore, submit that the petitioner can be transferred and posted on deputation to any Corporation and therefore, he cannot be heard to complain that his transfer to Greater Chennai Corporation was invalid. If his transfer cannot be termed as invalid in terms of the Rules, the petitioner has no locus standi to question the posting of the 4th respondent as Chief Engineer in the Office of the Commissioner of Municipal Administration.

20. The learned Advocate General would also refer to the relevant Rules of the Chennai City Municipal Corporation Act, 1919. Section 97 gives power to the State Government to transfer Officers and servants of the Corporation or Municipalities from Corporation to Municipalities and vice versa. He would refer to the entire section of Section 97 which is extracted hereunder.

97. Power of State Government to transfer officers and servants of the corporations or municipalities- (1) Notwithstanding anything contained in this Act, or in any other law for the time being in force, the State Government shall have power-

(a) to transfer any officer or servant of the corporation to the service of the Municipal Corporation of Madurai constituted under the Madurai City Municipal Corporation, 1971 (Tamil Nadu Act 15 of 1971) or the Municipal Corporation of Coimbatore constituted under the Coimbatore City Municipal Corporation act, 1981 (Tamil Nadu Act 25 of 1981) or any other municipal corporation constituted under any law for the time being in force; or

(b) to transfer any officer of service

of the Municipal Corporation of Madurai constituted under the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971) or the Municipal Corporation of Coimbatore constituted under the Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981) or any other municipal corporation constituted under any law for the time being in force, to the service of the corporation ; or

(c) to transfer any officer or servant of the corporation to the service of any municipality constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920); or

(d) to transfer any officer or servant of any municipality constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) to the service of the corporations

(2) The State Government shall have power to issue such general or special directions, as they may deem necessary, for the purpose of giving due effect to any transfer made under sub-section 91).

21. As per the above provision, the power of transfer is vested with the Government to transfer servants of different Corporations, Municipalities within the State, as between Corporation, Municipalities and also to Government services.

22. In consideration of the above provision, the petitioner was transferred to Greater Chennai Corporation. Such transfer is also referable to Section 48(1) and (2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. By transfer of the petitioner to Greater Chennai Corporation which is permissible as stated above, the petitioner cannot have any legitimate grievance, more particularly, when the petitioner has been posted in the same rank and status without loss of any emoluments.

23. Learned Advocate General would submit that the present appointment of the 4th respondent vide G.O.(D) No.227 dated 30.06.2020, is supported by G.O.No.170 dated 18.12.2009, which was referred to in the impugned G.O. itself. Moreover, such contractual appointment is common and permissible in terms of the Constitutional provisions. He would particularly rely on the "doctrine of pleasure" as provided under Article 310 of the Constitution of India. The concept of "doctrine of pleasure" had come under critical consideration in almost similar circumstances before a Division Bench of this Court and its decision reported in 2014(3) CTC 446 (B.Rajendran v. State). Learned Advocate General would extensively rely on various

observations of the Division Bench made in the following paragraphs.

24. On merits, the re-employment of the second respondent is challenged by the petitioners, basically on the following grounds:-

(i) that the re-employment is contrary to the methods of recruitment prescribed by Section 9(2)(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

(ii) that the post of Commissioner of the Hindu Religious and Charitable Endowments Department, stands on a separate, unique and different pedestal and hence, the Government is not entitled to fall back upon Rule 45 of the general rules for the Tamil Nadu State and Subordinate Services, when the issue is already covered by statutory provisions.

(iii) Even if Rule 45 can be invoked, two essential conditions should be satisfied as per Fundamental Rule 56(1)(a) namely, (A) extra-ordinary ability and (B) dearth of qualified hands, both of which are not present in this case and

(iv) that when the statute prescribes something to be done in a particular manner it shall be done only in that manner and not otherwise.

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27. A careful look at sub-section (2) of Section 9 show that--

(1) clause (a) thereof, prescribes three methods of recruitment to the post of Commissioner,

(2) clause (aa) prescribes only one method of recruitment to the post of Additional Commissioner,

(3) clause (aaa) provides only one method of recruitment to the post of Joint Commissioner and

(4) clause (b) provides four methods of recruitment for the post of Deputy Commissioner.

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31. Article 309 empowers appropriate Legislature of States to regulate through acts, the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. But

interestingly, Article 309 begins with a regulatory rider namely, "Subject to the provisions of this Constitution". Therefore, even while conferring power upon the State Legislatures, to enact laws to regulate the recruitment and conditions of service of persons to public services and posts, Article 309, makes it clear that the stream of exercise of such power should flow within the two banks of the Constitution.

32. By virtue of the proviso to Article 309, the President as well as the Governor of States, or their delegates are empowered to make rules regulating the recruitment and conditions of service of persons appointed to such services and posts, until provision in that behalf is made by or under an Act of appropriate Legislature. In other words, the proviso is actually a transitory provision conferring rule making power upon the President and the Governors of the States, until the Parliament or the appropriate Legislature passes an Act to regulate the recruitment and conditions of service of persons appointed to services and posts in the Union or the State.

33. After having conferred the power to enact a law upon the Parliament and the State Legislature, and a power to make rules upon the President and the Governors under Article 309, the Constitution itself deals with the tenure of office of persons serving the Union or the State under Article 310. The doctrine of pleasure is what is incorporated in clause (1) of Article 310 which stipulates that every member of a civil service of the Union holds office during the pleasure of the President and every member of the civil service of the State holds office during the pleasure of the Governor of the State. Interestingly, the doctrine of pleasure found in Article 310 the Constitution has two facets. The first facet is under clause (1) of 310 which relates to the holding of the office or the tenure. The second facet of this Article, found in clause (2) of Article 310 relates to contractual appointments. For the purpose of easy appreciation Article 310 of the Constitution is extracted as follows:-

"310. (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member

of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor 1*** of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post".

34. A careful look at Article 310(2) would show that notwithstanding the Doctrine of Pleasure that enables the holder of a civil post to continue in office, it is possible for the President or the Governor also to provide for payment of compensation to a person appointed on contract, although, he may not be a member of the defence service or all-India Service or a civil service of the Union or the State. The only condition to be satisfied for invoking the power under Article 310(2) is that the President or the Governor should deem it necessary to secure the services of such a person on account of his special qualifications.

35. The scope of Article 309 vis-a-vis Article 310 (1) was explained in Ramanatha Pillai Vs. State of Kerala, AIR 1973 SC 2641 is as follows:

"Article 309 provides that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Therefore, Acts in respect of terms and conditions of service of persons are contemplated. Such Acts of Legislature must, however, be subject to the provisions of the Constitution. This attracts Article 310(1). The

proviso Article 309 makes it competent for the President or such persons as he may direct in the case of services and posts in connection with the affairs of the Union and for the Governor of a State or such persons as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts under the Union and the State. These Rules and the exercise of power conferred on the delegate must be subject to Article 310. The result is that Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. Article 309 is, therefore, to be read subject to Article 310."

36. The decision in Ramanatha Pillai was referred to with approval in several subsequent decisions including the one in Union of India Vs. Tulsiram Patel, AIR 1985 SC 1416 and Union of India Vs. K.S. Subramanian, AIR 1989 SC 662. Therefore, it is clear that rules framed in terms of the proviso to Article 309 and even the Acts passed by the Parliament or the State Legislatures in terms of the main part of Article 309, are subject to the provisions of the Constitution which include Article 310. The Supreme Court indicated in Tulsiram Patel that the Doctrine of Pleasure is neither a relic of the feudal age nor was based upon any special prerogative of the British Crown but was based upon public policy. Hence, the source of the power to make appointments to public services, civil posts, or civil services of the State has to be traced, to the Constitution. Any Act of Parliament or the State Legislature regulating the recruitment and terms and conditions of service of persons appointed to the civil posts, has also to be traced only to Article 309. Article 309 in this regard can be treated as a fountain head from out of which the stream of the power to enact a law regulating the terms and conditions of service of public servants flows. But Article 309 makes it clear that any such law would actually be subject to the provisions of the Constitution. Consequently, it is subject to the Doctrine of Pleasure under Article 310 (1).

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42. Therefore, we hold on the first contention that Section 9(2) (a) of the Act, is not a complete code

with reference to Article 309 of the Constitution regulating the recruitment as well as the terms and conditions of service of persons appointed to the posts in the Hindu Religious and Charitable Endowments Administration Department. Consequently, the absence of a clause for appointment by agreement or contract in Section 9(2)(a) in relation to the post of Commissioner, similar to the one found in Section 9(2)(b)(iv), would not mean that the Governor is divested of the power to make appointment by contract, that flows out of Constitutional provisions. The origin of the source of the power is the Constitution. Even if the power is regulated by a specific enactment in terms of Article 309, the same is subject to Article 310. Hence, Section 9(2)(a).

(b) would also be subject to original source of power.

Contention II

43. The second contention of the petitioner is that the post of Commissioner in the Hindu Religious and Charitable Endowments Department is a very unique post, expected to discharge special statutory provisions. It is not like any other civil post or a post in the services of the State. The Commissioner also discharges judicial functions in respect of certain matters. Section 11, which was deleted by Act 46 of 1991 and again reintroduced by Act 39 of 1996, declares the Commissioner to be a Corporation sole, having a common seal and perpetual succession with a right to sue and be sued in his Corporate name. Though the Commissioner is a Government servant by virtue of Section 12(1) of the Act and is paid salary out of the Consolidated Fund of the State in the first instance, he is liable under Section 12(2) to repay the same to the Government, out of the Tamilnadu Hindu Religious and Charitable Endowments Administration Fund. Therefore, it is contended by the writ petitioners that in the absence of a provision in Section 9(2)(a) for the recruitment of a Commissioner by contract or agreement, it is not possible for the Government to fall back upon Rule 45 of the general rules for Tamil Nadu State and Subordinate Services.

44. But the above contention of the petitioners loses sight of an important aspect. All the authorities constituted under the Act, are fundamentally Government servants, as declared by

section 12(1). Therefore, all the terms and conditions of service of all of them are governed only by the General and Special Rules framed under the Proviso to Article 309 of the Constitution. The Commissioner, despite being a "Corporation Sole", has to look only to the Tamilnadu Government Servants Conduct Rules to know how to regulate his conduct, he has to look to the Tamilnadu Civil Services (Discipline and Appeal) Rules whenever an action is initiated for an alleged misconduct, he has to look only to the Tamilnadu Pension Rules, for his retirement benefits, he has to look only into the Tamilnadu Government Servants Leave Rules for availing any leave and he has to look only into the General Rules for State and Subordinate Services and the Fundamental Rules for all other conditions of his service. There is nothing in the Tamilnadu Act 22 of 1959 to deal with any of the matters for which provisions are made in these rules. His normal age of retirement itself is fixed only under Fundamental Rule 56. In case we accept the contention of the petitioners that this post is a special post and that the General Rules cannot be invoked for the grant of re-employment, then we will be creating the danger of an incumbent, claiming that he is not liable even to retire as per FR 56. Therefore, the contention that it is a special post and that the General rules cannot be invoked, is flawed. The correct way of understanding the status of the post is that it is a nevertheless a civil post or a post in the civil services of the State, which is also conferred with special powers. In other words, it is not a special post transcending the general rules, but a civil post having special powers.

45. Interestingly, Mr.G.R.Swaminathan, learned counsel for the petitioners, concedes the fact that this post is also one of status, as held by the Supreme court in Roshan Lal Tandon vs. Union of India {AIR 1967 SC 1889}. Therefore, the origin of appointment to the post, by the very same logic, is only contractual, but the moment an appointment is made, the appointee acquires a status and his rights and obligations are determined not by the consent of parties but only by statute and statutory rules, which can be framed and even altered by the Government. This is the ratio in Roshan Lal Tandon. Therefore, the Government is competent to invoke even the power that it has de hors the rules, for what is contained in the rules, is only a recognition of such power and not a conferment of the power.

46. Therefore, to think that the post of Commissioner, was created by a Special enactment as a special post and that therefore, a general rule cannot be applied, is actually a misconception. Though the Government have quoted General Rule 45 in the order of re-employment, the re-employment is not actually under the said rule. This can be well understood if we have a look at the rule. Rule 45 of the State and Subordinate Services reads as follows:-

"45. Re-employment of pensioners-Nothing in these rules or the Special Rules shall be construed to limit or abridge the powers of the State Government and of subordinate authorities to re-employ persons who have retired on a civil pension or gratuity or who while in service were subscribers to a Contributory Provident Fund, in any service in accordance with the provisions contained in the Tamil Nadu Pension Rules, 1978. The re-employment of such a person in any service shall not be service regarded as a first appointment to that".

47. A reading the Rule extracted above shows that nothing contained in the General rules or the Special rules shall be construed to limit or abridge the powers of the State Government to re-employ persons who have retired on a civil pension or gratuity, in any service, in accordance with the provisions contained in the Tamil Nadu Pension Rules 1978. What is important to note is that General Rule 45, by itself does not confer the power upon the Government to re-employ a person who is already retired. It actually recognises a power that the Government already possess for the re-employment. That is why, the rule begins with a rider that nothing contained in the General or Special rules shall be construed to limit or abridge the power of the State Government.

48. As we have pointed out earlier, Section 9(2) (a) of the Act is not the source of power for the Governor to make appointments. On the contrary, the power exists dehors the Act and the Act does not limit the exercise of such power. The fact that such a power already exists, is what is recognised by Rule

45.

49. As a matter of fact, Rule 45 deals only with re-employment of pensioners. But the power of the Government to make an appointment by agreement also flows out of Rule 11 of the General Rules for Tamil

State and Subordinate Services. A person appointed in terms of Rule 11 by agreement will not even be regarded as a member of the service, in which the post to which he is appointed is included. Therefore, Section 9(2)(a) of the Act cannot be taken to have made inroads into the original source of the power of the Government to make appointment by Agreement or Contract.

50. In any case, even if we take General Rule 45 to be a subordinate legislation, it can still fill up what is left out by a superior legislation. It would not amount to repugnancy. Repugnancy would arise only when there is a starking conflict between the two provisions and only when both cannot stand together. Therefore, the second contention is also liable to be rejected.

24. Learned Advocate General would submit that the above ruling of the Division Bench would squarely be the answer to the challenge made in the writ petition in regard to the present re-employment of the 4th respondent on contract basis. According to him, the Government does not require any specific regulation to trace its source of exercising its power of appointment, as such power is inherent in the Government as held by the learned Division Bench of this Court. The ultimate source of power for the Government to exercise in the matter of appointment to civil posts or also posts connected with the affairs of the State is traceable to Articles 309 and 310 of the Constitution as held by the Hon'ble Supreme Court of India followed by the learned Division Bench. In fact, the Division Bench has also held that in the face of the Constitutional provisions, the powers of the State cannot be abridged or limited in matter of re-employing persons of its choice, no matter whether there is any specific Rule in existence or not. Any availability of statutory provisions is only in recognition of such power and not conferment of power as such.

25. Therefore, the learned Advocate General would submit that G.O.(D).227 dated 30.06.2020 is a valid exercise of power by the Government which is traceable to Article 310 of the Constitution and the only consideration is that the person whose services are sought to be secured must have special qualification. In this case, in the orders of extension and also the order of contractual appointment under G.O.No.227 dated 30.06.2020, the experience and qualification of the 4th respondent is stated to be the basis for the extension of service, followed by re-employment. Therefore, the appointment of the 4th respondent cannot be questioned successfully by the petitioner.

26. Learned Advocate General would also refer to the

decision of the Hon'ble Supreme court reported in 2006(11) SCC 731 (B.Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association). He would draw reference to paragraph Nos. 44, 75, 81, 82 & 97, which reads as follows:

44. In the instant case, the power to appoint the Managing Director of the Board is vested in the Board under 4(2) of the Act. Neither the Act nor the Rule prescribed any mode of appointment or tenure of appointment. When the mode of appointment, tenure of appointment have been left to the discretion of the Government by the Act and the Rules and the Act makes it clear that the Managing Director shall hold office at the pleasure of the Government the High Court could not have fettered the discretion of the Government by holding that Section 4(2) of the Act does not expressly give the power to the State Government to make ad hoc or contract appointment when the Act and the statutory rules have not prescribed any definite term and any particular mode, the High Court could not have read into the statute a restriction or prohibition that is not expressly prohibited by the Act and the Rules. It is well settled that when the statute does not lay down the method of appointment or term of appointment and when the Act specifies that the appointment is one of sure tenure, the Appointing Authority who has power to appoint has absolute discretion in the matter and it cannot be said that discretion to appoint does not include power to appoint on contract basis. An appointment which is temporary remains temporary and does not become a permanent with passage of time. The finding records by the learned Single Judge that the appointment is bad for the reason that the appointment which was made on temporary basis has continued for nearly 2 years is wholly contrary to law particularly when the Act and the Rule do not stipulate maximum period of appointment. The High Court, in our view, gravely erred in issuing a Writ of Quo Warranto when there is no clear violation of law in the appointment of the appellant.

...

Contractual appointment/powers of the Government

75. Mr. Raju Ramachandran, learned senior counsel appearing for the Trade Union, fairly conceded that the Government has unrestricted power to make contractual appointment. Even otherwise, the Government, in our opinion, has the undoubted power to make a contractual appointment until further orders. The finding to the contrary is ex facie erroneous.

...
...

81. In *Satish Chandra Anand vs. Union of India*, (1953) SCR 655, a Constitution Bench of this Court while dealing with a case of a contract appointment which was being terminated by notice under one of its clauses, this Court held that Articles 14 & 16 had no application as the petitioner therein was not denied equal opportunity in a matter relating to appointment or employment who had been treated just like any other person to whom an offer of temporary employment under these conditions was made. This Court further held as under:

"The State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who choose to accept those terms and enter into the contract are bound by them, even as the State is bound."

82. On *P.K.Sandhu (Mrs.) vs. Shiv Raj V. Patil*, (1997) 4 SCC 348, it was held by this Court as under:

"The power to make an appointment includes the power to make an appointment on substantive basis, temporary or officiating basis, ad hoc basis, on daily wages or contractual basis."

....
....

97. In the result, we hold :

(a) that the appellant was not disqualified for appointment as Managing Director w.e.f. 1.2.2004.

(b) There is no bar for appointment to the post in question on contract basis. The Government has absolute right to appoint persons on contract basis.

(c) Writ of Quo warranto does not lie if the alleged violation is not of a statutory provision.

(d) There is no violation of Section 4(2) of the Act and Rule 3 of the Rules because the appellant had experience in administration and capacity in commercial matters before he was appointed as Managing Director on contract basis by the Government.

(e) The Government has no doubt power to make contractual appointment until further orders. The power included the power to make appointment on substantive basis temporary, officiating basis, ad hoc basis, daily wages or contractual basis.

(f) Writ filed by respondents 1 & 2 is motivated.

(g) The petitioners in the writ petition, respondent No.1 herein which is an unregistered Association under the Trade Unions Act cannot maintain the writ petition.

(h) The findings of legal mala fides is unsustainable and has no basis.

27. In the above decision, ultimately, the Hon'ble Supreme Court held that the Government has absolute right to appoint persons on contract basis by invoking "doctrine of pleasure" as provided in the Constitution of India.

28. Learned Advocate General would also refer to another reported decision of the Hon'ble Supreme Court in 2011(5) SCC 484 (P.Seshadri vs. S.Mangati Gopal Reddy). This Court's attention was drawn to paragraph Nos.11 and 17 which are extracted hereunder.

11. Mr. Narasimha submits that the writ petition ought to have been dismissed at the threshold by the High Court and controversy pertaining to a service matter which could not be filed in a writ petition styled as a public interest litigation. In support of the submission, the learned counsel relied on the following judgments of this Court: Dr .Duryodhan Sahu and Ors. Vs. Jitendra Kumar Mishra¹, Gurpal Singh Vs. State of Punjab and Ors.², Neetu Vs. State of Punjab & Ors.³ and Divine Retreat Centre Vs. State of Kerala & Ors.⁴ He further submitted that in any event, the petition was not filed by respondent No.1 bonafide. It has been filed at the behest of some persons, who are the hidden forces pursuing the writ petition. Last but not the least, it is the submission of Mr. Narsimha that the High Court judgment deserves to be set aside on the short ground that it is based on a complete misinterpretation of the Tirumala Tirupathi Devasthanams Employees Service Rules, 1989. According to the learned senior counsel, the aforesaid rules would not be applicable to the petitioner as his service has been extended only on contractual basis. Mr. Guntur Prabhakar, counsel for the Temple, respondent No.4 has supported the submissions made by Mr. Narsimha. He has also relied on the judgment of Neetu's case.

...

17. A perusal of the aforesaid Rule leaves no manner of doubt that the aforesaid Rules apply to every employee "except to the officers or staff taken on contract basis and officers or staff taken on deputation from the Government or other

organizations". In other words, officers or staff who are appointed on contract basis or are taken on deputation from the Government or other organizations form a separate class and are not covered by the aforesaid Rules. The High Court, in our opinion, was in error, in relying on Rule 13 to nullify the appointment of the appellant.

29. According to the learned Advocate General, the above ruling also would fortify the legal position that persons who are appointed on contract basis by the Government form a class by themselves and their appointments cannot be questioned on the application of normal rules.

30. Lastly, the learned Advocate General would refer to a decision of the Hon'ble Supreme Court reported in 1973 (1) SCC 461 (State of Assam v. Basanta Kumar Das) and he refers to paragraph Nos. 6 and 7 which are extracted hereunder.

6. In the case of Shri Bansi Ram Das and Shri Kanak Lal Das, who was the petitioner in Civil Rule No. 350 of 1966 (he is now dead and his widow is the first respondent) the Board constituted to consider their cases, after scrutinising their character roll and after consideration of facts decided to recommend them for retention in service beyond 55 years. But the Minister incharge of Education made a note as follows :

"I' cannot agree to giving extension to Prof. Kanak Lal Das and Prof. Bansi Ram Das. I consider them to be outmoded in their intellectual development."

So it can be said these cases are alike. In their cases the contention in the Government's counter affidavit was that they were not found fit to continue in service after attaining fifty five years. The Minister's remark was also given as another reason.

7. These two officers in particular, therefore, contended that the Board constituted to consider their fitness for further continuance in service having recommended them for such continuance and there being no material on record on the basis of which the Minister could pass the order above extracted. the order retiring them was invalid. It is true that the Screening Board had recommended the continuance of these two officers in service after their attaining the age of 55. There is also no material to show that exactly was responsible for the impression which the Minister formed about the capacity of these two officers. But once it is held that the memorandum of 21-3-63 is merely an executive instruction which confers no right on any body, the judgment of the

Minister cannot be questioned unless it could be shown that there' were any mala fides. There was no allegation even of any malafides. This Court would not go into the reasons which weighed with the Minister in coming to the decision, unless it could be said that he was guided by ulterior motives or the decision contravenes some law. The decision of the Minister cannot, therefore, be questioned.

31. According to the learned Advocate General, in this case, no malafide is pleaded by the petitioner against the Government and therefore, this Court may not go into the correctness of the appointment, particularly, the extension of the services of the 4th respondent on contractual basis, as this is not a quo warranto petition.

32. Learned Senior Counsel Mr.P.Wilson, by way of reply would submit that the Division Bench judgement of this Court reported in 2014(3) CTC 446 (B.Rajendran v. State) which was heavily relied on by the learned Advocate General would not apply to the present case as the issue herein is with reference to the Corporation Services which is governed by its own Rules and Regulations and not by the Rules applicable to Government servants. In fact, he would refer to Section 2(m) of the Tamil Nadu Government Servants (Conditions and Services) Act, 2016 which defines 'members of service'. According to him that members of service as defined in the Act is that the person who is in service and not retired. According to the learned Senior Counsel, Article 309 begins with non-obstante clause that every recruitment and condition of service of persons appointed, the State may frame its own rules of recruitment if such conditions of service are in place, it has to be followed and adhered to strictly.

33. Learned Senior Counsel would also refer to Chennai Corporation (Superior) Service Pension Rules, 1970, wherein he would refer to Rule 9 which provides for re-employment of pensioners on public grounds. The said rule appears to have been not referred to all by the Government in the re-employment orders. At this, the learned Advocate General would submit that these provisions would not apply in the present situation, since the 4th respondent is sought to be employed not in Corporation Service but in Government Service as Chief Engineer in the office of Commissioner, Municipal Administration.

34. Mr.Noordeen, learned counsel appeared for the 3rd respondent. Mr.Dwarkesh Prabhakaran, learned counsel appearing for the 4th respondent would reiterate the contents as contained in the counter affidavit filed on behalf of the 4th respondent. He would particularly lay emphasise the averments contained in paragraph 4 of the affidavit. The averment in the 4th paragraph are the factual narrative of the service details of the 4th respondent, which of course are not in dispute at all. The

counsel has drawn the attention of this Court to para 4 specifically to highlight the meritorious service and experience of the 4th respondent justifying the extensions.

35. Heard the learned Senior Counsel Mr.P.Wilson for the petitioner, the learned Advocate General for the respondents 1 and 2, Mr.Noordeen, learned counsel for the 3rd respondent and Mr.Dwarkesh Prabhakaran, learned counsel for the 4th respondent. Perused the pleadings and the materials placed on record.

36. The challenge in this writ petition, though appears to be a simple order of transfer of the petitioner as Chief Engineer from the Office of the Commissioner of Municipal Administration to the Office of the Commissioner of Greater Chennai Corporation on deputation basis and in his place, posting of the 4th respondent as Principal Chief Engineer, yet effecting the impugned transfer and posting vide G.O.(D) No.503 Municipal Administration and Water Supply (ME-3) Department dated 20.12.2019, in the circumstances of the case, need to be tested with reference to two phases of action by the Government. This is because when initially, the above G.O. dated 20.12.2019 was issued, the 4th respondent was in the midst of his extended period of service as Principal Chief Engineer, Greater Chennai Corporation and therefore, the judicial scrutiny of the impugned G.O. is to be confined with reference to the relevant statutory rules governing extension of service of the 4th respondent on one hand and the transfer of the 4th respondent, during the period of his 2nd extension, on the other, displacing the petitioner as Chief Engineer, Office of the Commissioner of Municipal Administration.

37. The second limb of consideration of this Court is G.O.Ms.No.227 dated 30.06.2020, the second impugned order, by which, the 4th respondent came to be re-employed on contract basis for one year from 01.07.2020 and the said appointment was stated to be in terms of G.O.Ms.No.170 Personnel and Administration Reforms (S) Department dated 18.12.2009. The validity of the 2nd impugned action of the Government is required to be independently examined on different principles of consideration, as the re-employment issue is concerned, constitutional dimension is given, supporting the appointment, as contended by the learned Advocate General. To put it simplistically, the former is with reference to the Rule position and the latter is with reference to Article 310 of the Constitution, the "Doctrine of Pleasure" theory.

38. The principal submission of the learned Senior Counsel for the petitioner in regard to the first impugned order dated 20.12.2019 (G.O.(D).No.503) is that the 4th respondent is not eligible to be appointed as Chief Engineer in the office of the Commissioner of Municipal Administration in terms of the Tamil Nadu Municipal Engineering Service Rules, 1997. The relevant Rules for appointment to the post of Chief Engineer in the Municipal Commissionerate has been extracted supra. As per the

Rule which provides for appointment to the post of Chief Engineer, Officers who are eligible to be promoted are from the Category 1A Superintendent Engineer on deputation from the holders of the post of Superintending Engineer in the Municipal Corporation other than in the Municipal Corporation of Chennai. By this Rule, there is a clear exclusion of the post of Superintendent Engineer of the Municipal Corporation of Chennai from being considered for appointment to the post of Chief Engineer, Commissionerate of Municipal Administration.

39. When there is a clear bar for appointing the Superintendent Engineer from Municipal Corporation of Chennai, posting the 4th respondent who was earlier working as Principal Chief Engineer in the upgraded post in Greater Chennai Corporation, in the office of the Commissioner of Municipal Administration on deputation basis, displacing the petitioner appears to be not in order. However, the learned Advocate General, in this regard, submitted that Chennai City Municipal Corporation Act, 1919, particularly, Section 97 confers power with the Government for transferring of Officers from one Municipal Corporation to the other and also transfer of Officers from Corporation Service to Municipal Service etc. The Rule 97 of the Chennai City Municipal Corporation Act, 1919, has been extracted supra in the order. The Government, in the exercise of the power so vested under the Act issued G.O.(D) No.503 dated 20.12.2019, and transferred and posted the petitioner as Chief Engineer in the office of the Commissioner, Greater Chennai Corporation. Therefore, in terms of existence of power to transfer, no legal infirmity can be attributed to the said G.O. But on the other hand, the learned Senior Counsel for the petitioner, submitted that when Municipal Engineering Service Rules 1997 clearly prohibited appointment of Superintendent Engineer from Chennai Municipal Corporation for being considered for promotion to the post of Chief Engineer in the Municipal Administration, the question of transferring and posting the 4th respondent as Chief Engineer in the office of the Commissioner of Municipal Administration is ex facie illegal and contrary to the Rules. The learned Senior Counsel referred to Rules 3 and 5 of the Rules providing the prohibitions.

40. This Court in consideration of the rival submissions as above, has to principally examine as to whether what is not directly permissible under the relevant rule, could be indirectly surmounted by the Government by taking refuge under Section 97 of the Chennai City Municipal Corporation Act 1919 and as to whether it is open to the Government to legally justify its action on that basis or not?

41. In the considered view of this Court, Section 97 of the Chennai City Municipal Corporation Act does confer the power of transfer on the Government from Corporation Service to Municipal Service and vice versa etc. But inter alia the power

certainly may not include promotion and appointment of ineligible officers from one service to another. The power which is traceable to any statutory rules, has to be exercised within the permissible limit. In the case on hand, when the feeder category viz., post of Superintending Engineer of Greater Chennai Corporation is singularly excluded for promotion, under the circumstances, the Government could not sneak in the promotion by means of a seemingly innocuous transfer order and pitchfork the 4th respondent, in the service of the Municipal Administration, resulting in the displacement of the petitioner brusquely. This Court, from the manner in which the G.O.(D) 503 was issued, is forced to conclude that it was probably a case of attempt to outsmart the statutory prohibition. Whether the Government in its wisdom had taken into consideration the legal implication of its action as it was a routine blind exercise of power sans application of mind is not for the Court to venture into a guess work. Be that as it may, when testing the challenge, this Court is not concerned with intention of ignorance, but the action of the Government per se, as it manifested inviting judicial review. In that view of the matter, the impugned G.O.(D) No.503 dated 20.12.2019 has to be necessarily held as illegal and void.

42. Even on factual consideration in the opinion of this Court, the appointment of the 4th respondent in Municipal Administration lacks in bonafides. When two extensions were granted to the 4th respondent, in the post of Principal Chief Engineer, Greater Chennai Corporation, it was stated to be on consideration that the services of 4th respondent were required and that his expertise and experience was essential, for the continuance of the ongoing various projects and execution of the same undertaken by Greater Chennai Corporation. When that was the disclosed consideration for the extensions, what made the Government to change its course of consideration, while posting the 4th respondent to the Municipal Administration as Chief Engineer, remained unexplained. Though, in the subsequent G.O.No.227 dated 30.06.2020, it was stated that the 4th respondent has vast experience in the Municipal Administration Department for more than 35 years and hence, his service were required, what was the extraordinary necessity which impelled the Government to transfer the 4th respondent from Greater Chennai Corporation Service to the Municipal Administration Service is not reflected in the impugned order dated 20.12.2019. Therefore, it leaves the Court to conclude that the impugned G.O.(D)No.503 dated 20.12.2019 is passed not for bonafide consideration and in that view of the matter also, the Government Order has to be set aside.

43. But the controversy is not resolved by the above conclusion, as the grievance of the petitioner continued further by grant of extension of service of the 4th respondent on contract basis for a period of one year from 01.07.2020. When

the writ petition was initially heard, the 4th respondent appointment in Municipal Administration as Chief Engineer, on an extension of service was in force but by efflux of time, the extension worked itself out. During the pendency of the writ petition, G.O.227 Municipal Administration and Water Supply Department dated 30.06.2020 was issued. The 4th respondent came to be re-employed on contract basis and allowed to continue as Chief Engineer in the office of the Commissioner of Municipal Administration for one year from 01.07.2020, which G.O., granting re-employment to the petitioner is also challenged on different grounds, as stated above. It is relevant to mention here that though the learned Senior Counsel argued elaborately in regard to the original extension granted to the 4th respondent in 2016 for a period of two years with effect from 01.07.2016, and further extension by two more years from 01.07.2018, this Court is not inclined to go into those controversies for the reason that the petitioner herein in the opinion of this Court, has no locus standi to question the extensions of service granted to the 4th respondent, as he cannot claim any stakes vis-a-vis the benefits extended to the 4th respondent.

44. In fact, the learned Senior counsel advanced arguments as to how the services of the 4th respondent were extended on a malafide consideration, i.e., for a period of 4 years under the pretext of executing important ongoing civil works of the Corporation of Chennai, but the challenge in the writ petition may have to be confined only from the point of view of the petitioner's right being affected as to his continuance in the post of Chief Engineer Municipal Administration, as consequence of the first impugned order dated 20.12.2019 (G.O.(D)No.503). This Court is of the clear view that the petitioner's legitimate grievance arise only from the date of posting of the 4th respondent in his place and the petitioner could not have any cause of action to question the extension of service granted to the 4th respondent earlier. Therefore, at his instance, this Court is not inclined to go into the correctness and validity of the extensions of service granted to the 4th respondent. Moreover, this writ petition being not a Quo Warranto petition, this Court has to confine its consideration only on the petitioner being shunted out to Greater Chennai Corporation Service as consequence of the 4th respondent being accommodated in his place in December 2019, in Municipal Administration.

45. While holding as above, the individual right of the petitioner questioning his transfer as Chief Engineer to Greater Chennai Corporation is a different matter of consideration. As the learned Advocate General submitted that in terms of Chennai City Municipal Corporation Act, 1919 particularly, Section 97 which vests Government with the power of transfer, the transfer of the petitioner is to be considered in isolation, his submission on this aspect may be a valid

piece of contention. But in this case, the transfer and posting of the petitioner was the fall out of the accommodation of the 4th respondent whose appointment to services of the Municipal Administration in the guise of transfer is held as illegal and to that extent, this Court has to necessarily hold that the petitioner has stakes in the comprehensive adjudication of the matter.

46. Be that as it may, as on date, the issue which is alive for adjudication is the second impugned order dated 30.06.2020 (G.O.No.227) Municipal Administration and Water Supply Department. The re-employment on contract basis is traceable to G.O.Ms.No.170 Personnel and Administration Reforms Department dated 18.12.2019 as disclosed in the order itself. According to the said G.O, the contract appointment can be made at all levels and however, restriction was placed that the retired employee from lower position cannot be appointed to higher position but vice versa was permissible. The Government Order further cautioned that such re-employment should not be made on routine basis as there should be a reason to believe that work will get affected due to dearth of employees in the Department. In fact, the learned Senior Counsel Mr.P.Wilson laid emphasis on this G.O. stating that there is no indication in the second impugned order as to whether there was any proper consideration of the contents of the G.O.

47. According to the learned counsel, Municipal Administration cannot said to be suffering from dearth of employees and further, when a regular Chief Engineer namely, the petitioner was appointed and working, what was the special compelling circumstances to continue the 4th respondent on a contract basis is not forthcoming from the Government. In fact, it was also contended by the learned Senior Counsel that when originally, the 4th respondent was not eligible to be appointed to the post, the question of continuing him on contract basis did not arise at all as the ineligibility and disqualification of the 4th respondent would continue to work against him in his present posting.

48. On behalf of the official respondent, it was stoutly resisted on the ground that under similar circumstances, the Division Bench of this Court by its decision reported in 2014(3) CTC 446 (B.Rajendran v. State) upheld the appointment of the Commissioner in HR & CE Department, by relying on doctrine of pleasure enshrined under Article 310 of the Constitution of India. Apart from the concept of Doctrine of Pleasure, it was contended by the learned Advocate General that the Government has inherent right to engage the service of any person on a contractual basis in public interest. Besides, it was also contended that in the absence of any plea of malafide, the petitioner has no locus standi to question the appointment of the 4th respondent.

49. Learned Advocate General has laid much emphasis on the

ruling of the Division Bench of this Court and the observation of the Division Bench found in various paragraphs which have been extracted supra. The said contentions appear to be having some substance on a precipitous understanding of the doctrine of pleasure. However, when the pleasure doctrine is to be examined with reference to the present appointment, this Court is unable to persuade itself that the ruling of the Division Bench could be applied on the factual matrix of this case. In that case, the appointment was relating to the post of Commissioner, HR & CE and the earlier incumbent of the Commissioner of HR & CE, who, after retirement was sought to be re-employed by the department and when the re-employment was questioned on the principle of "Pleasure Doctrine", the Division Bench upheld the appointment and negated the challenge.

50. In that case, the re-employed appointee was indeed the Commissioner of HR & CE earlier and his re-employment was after the retirement. Therefore, the question of he being not eligible or qualified was not the issue. In fact, the Division Bench in the last paragraphs of the judgment in 2014(3) CTC 446 i.e., paragraph Nos. 66 and 67 extracted hereunder has observed that eligibility issue was not the consideration before the Division Bench.

66. In *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others*, 2014(1) SCC 161, the Hon'ble Supreme Court referred to the development of law on the power of the Court to issue a prerogative Writ of Quo Warranto, right from the decision in *University of Mysore v. C.D. Govinda Rao*, AIR 1965 SC 491 up to the decision in *Centre for PIL v Union of India*, 2011 (1) LLN 654 (SC): 2011 (4) SCC 1, and held in Paragraph 21 that a Writ of Quo Warranto can be issued only when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the Statutory Rules. But the Court made it clear that the Concept of locus standi which is strictly applicable to service jurisprudence should not be allowed to have any entry, in Writs of Quo Warranto. It was pointed out by the Hon'ble Supreme Court that the basis purpose of a Writ of Quo Warranto is to ensure that a public office is not held by usurper without any legal Authority.

67. Therefore, applying the principles laid down therein, it could be seen that the re-employment of the Second Respondent is not assailed on the ground that he is ineligible to hold the post. The only ground of attack is that the appointment is in violation of statutory

provisions. But we have already found that the appointment is not in violation of the statutory prescription. Therefore, no case is made out by the Appellants to upset the Order of the learned Judge dismissing the Writ Petitions. Hence, the Writ Appeals are dismissed. No costs. consequently, connected Miscellaneous Petitions are closed.

51. The Division Bench's entire focus in that case was the inherent power exercised by the State in making such appointment (re-employment). In that context, "Doctrine of Pleasure" incorporated in Article 310 of the Constitution of India was invoked to uphold the re-appointment therein. The 'Doctrine of Pleasure', a vestigial British Crown's prerogative, has been adopted in the Constitution with certain fetters in relation to the tenure of appointment of Civil Servants. In addition, in our Constitution, "Pleasure Doctrine" takes within its fold, right to secure a person's service on contract basis with special qualification. Therefore, even assuming that the present appointment arising from the exercise of power referable to Article 310 (2), the pleasure doctrine may not be an Indian variety of absolutism. "Doctrine Pleasure" has been imported into our Constitution based on public policy and the doctrine may not be used to shield the appointment of persons who is admittedly ineligible to the post. In fact, Article 310(2) provides appointment of persons with special qualification and not with disqualification. Therefore, the Court is not inclined to uphold the contentions of the learned Advocate General and thereby, save the appointment of the 4th respondent.

52. As regards the other decisions cited by the learned Additional Advocate General 2006(11) SCC 731 (B.Srinivas Reddy v. Karnataka Urban water Supply Drainage Board Employees' Association) and referred to several paragraphs of the judgment extracted supra, this Court is of the view that the Hon'ble Supreme Court was considering the power exercisable under the "Doctrine of Pleasure". In fact, even in that case, the Hon'ble Supreme Court has observed that the beneficiary of the appointment was not disqualified. There was also a finding that the appointee was qualified with reference to the relevant rules. In fact, the three decisions which relied on by the learned Advocate General were Quo Warranto writ petitions and in the above decision the Hon'ble Supreme Court has held that the Quo Warranto petition does not lie in the alleged violation is not a statutory provision. Therefore, this Court is unable to persuade itself in following the judgments relied on by the learned Advocate General on the principle of "Doctrine of Pleasure". One other decision relied on by the learned Advocate General, 2011(5) SCC 484 (P.Seshadri vs. S.Mangati Gopal Reddy) was relating to the appointment of an employee of Tirupathi Devasthanam and the Hon'ble Supreme Court rendered a decision

only with reference to the provision of the Service Rules applicable to the employees of the Devasthanam. the learned Advocate General, in fact, referred to a decision of the Hon'ble Supreme Court in 1973 (1) SCC 461 (State of Assam v. Basanta Kumar Das) that no plea of malafide is taken by the petitioner herein against the appointment of the 4th respondent. This Court, in any event, is not considering the said issue in the absence of any plea as contended by the learned Advocate General.

53. As far as the case on hand is concerned, the power exercisable by the Government under Article 310 (2) is not questioned. What is the lis before this Court is whether the professed power exercised behind the smoke screen of "Pleasure Doctrine" is valid in terms of the Recruitment Rules. As stated above, it is not open to the Government to use the "Pleasure Doctrine" by making illegal appointments, which is opposed to public policy. Needless to mention at the risk of repetition that the 'Doctrine of Pleasure' has been adopted in our Constitution on the bedrock of public policy referable to 310 (2), an Indian version. But behind the "Cloak of Pleasure", arbitrariness cannot be allowed to creep in, into a public employment.

54. Therefore, the appointment of the 4th respondent as Chief Engineer in the Commissioner of Municipal Administration cannot be allowed to survive on the premise that the appointment being in furtherance of the power vest in the Government under Article 310 of the Constitution. No doubt, Article 310 provides a latitude for the Government to engage the services of any person on a contractual basis with special qualification. However, in this case, the 4th respondent, admittedly, is not eligible and qualified for appointment as Chief Engineer in the office of the Commissioner of Municipal Administration in terms of the Rule position. Therefore, the appointment of the 4th respondent on re-employment basis vide impugned G.O.Ms.227 dated 30.06.2020, cannot said to be within the bonafide frame work of Article 310 of the Constitution of India.

55. Even on factual scenario, to satisfy the requirement of Article 310, one must have special qualification and in this case, the Government cannot say that the 4th respondent has any special qualification for him to be appointment as Chief Engineer in the office of the Municipal Administration, except saying that he has vast experience in the Municipal Administration, as nothing is spelt out with regard to his special qualification. Further, the appointment which is referable to G.O.No.170 dated 18.12.2009 provides for indication of dearth of hand in the department for reappointing the retired persons and there is no such indication anywhere as to the factum of any shortage of expert staff in carrying out the ongoing projects of the Municipal Administration. When equally or more experienced, the petitioner was promoted and appointed

in the post, to displace and then post the 4th respondent in that post, warrants valid explanation from the Government, which this Court is unable to discover anything from the files produced or from the counter affidavit.

56. Moreover, the 4th respondent has been granted extension twice each for a period of two years and this is the third extension extending the period of service continuously for the 5th year. What is so special about the 4th respondent to keep him at the helm for more than 4 years under the guise of execution of civil works raise more questions than answers. Nevertheless, as stated above, this is not a Quo Warranto petition. This Court has to refrain from passing judgement on the legality of engaging the services of the 4th respondent by the Government, but the consideration of the present case is that by engaging the services of the 4th respondent as the Chief Engineer in the office of the Municipal Administration, clashing with the right of the petitioner herein to continue in his position as being appointed as Chief Engineer vide G.O.Ms.No.307 dated 25.07.2018. In consideration of the challenge from the said perspective of the petitioner, the impugned appointment of the 4th respondent has to be necessarily set aside.

57. In fact, the learned Advocate General has contended that there was no plea of malafides by the petitioner against the Government. However, this Court can always examine whether any action of the Government is otherwise vitiated by resorting to malice in law. As far as the circumstances of the facts of this case, this Court is constrained to hold that the extraordinary favour shown to the 4th respondent appears to be on a extraneous consideration and this observation of this Court is to be construed and confined only with reference to the displacement of the petitioner as Chief Engineer Municipal Administration vide earlier G.O.503 dated 20.12.2019.

58. Therefore, the transfer of the petitioner and posting him to Greater Chennai Corporation as Chief Engineer is to be held invalid to the extent that inasmuch as the transfer and posting of the 4th respondent as Chief Engineer, Commissioner of Municipal Administration was invalid..

59. Finally, this Court has to imperatively clarify that the Government is well within its constitutional power to engage the services of any person as it thinks suitable and fit including the 4th respondent herein with special qualification and expertise in the larger public interest and such power is normally not to be interfered unless the same is found to have been exercised arbitrarily for malafide consideration against the very interest for which the such power was invoked.

60. In the above circumstances, the impugned orders of the 1st respondent in G.O.(D).No.503, Municipal Administration and Water Supply (ME.3) Department dated 20.12.2019 and G.O.(D).No.227, Municipal Administration and Water Supply (ME.3) Department dated 30.06.2020 are set aside insofar as the

transfer and posting of the 4th respondent as Chief Engineer Office of the Municipal Administration and the consequential effect of transfer and posting the petitioner as Chief Engineer, Greater Chennai Corporation.

61. The Writ Petition is allowed as above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Chief Secretary,
Government of Tamil Nadu,
Municipal Administration and Water
Supply Department (MA & WS)
Fort St.George, Chennai - 600 009.
2. The Commissioner of Municipal
Administration, 11th Floor, Urban Administrative Building,
(Opp. to Ciba Building), No.75, Santhome High Road,
MRC Nagar, Raja Annamalaipuram, Chennai - 600 028.
3. The Commissioner,
Greater Chennai Corporation,
Chennai.

+1cc to M/s.Dwarakesh Prabakaran, Advocate, S.R.No.42793

+1cc to the Government Pleader, S.R.No.43020

Pre-delivery order made in
W.P.No.8664 of 2020

AK(CO)
CS(29/12/2020)

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