

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.13471 of 2020
and
W.M.P.No.16641 of 2020

R.Jayakumar

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

3.The Assistant Commissioner (General Department),
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the respondents from effecting promotion to the post of Assistant Executive Engineer (Civil) from the cadre of Junior Engineer (Civil) without considering the petitioner's objection dated 15.09.2020 on merits for the 2nd respondent Tentative Seniority List dated 25.07.2020.

For Petitioner : Mr.J.Saravana vel

For Respondents : Mr.Manimegalai
Standing Counsel

O R D E R

The matter is taken up through web hearing.

2.The petitioner is a Diploma holder in Civil Engineering and joined the Second respondent Corporation originally as Technical Assistant NMR in 1994. Subsequently, by Council Resolution No.165 of 2004 dated 26.04.2004, regularization was granted to such employees who were appointed as NMR. Based on

the resolution, by G.O.No.46 (Municipal Administration and Water Supply Department) dated 24.03.2008, the petitioner along with other similarly placed employees were regularised in service.

3.On being regularised, the petitioner was also appointed as a Junior Engineer in charge on 14.05.2008 and subsequently regularised as Junior Engineer (Civil) in the sanctioned post with effect from 02.12.2010. According to the petitioner, that the Corporation has maintained a separate seniority list for degree holders and diploma holders in the cadre of Junior Engineers.

4.The second respondent circulated a seniority list dated 25.07.2020 which was termed as Tentative Seniority List, calling for objections from the employees to the Tentative Seniority list, in regard to the assignment of the respective seniority. According to the petitioner that was the first time a seniority list was drawn up and issued, since their appointment as Junior Engineers in 2008.

5.On learning about the seniority list, the petitioner found that six Junior Engineers, who were juniors to the petitioner, who were original by appointment as NMR Technical Assistant in 1996 and 1997 have been shown as seniors to the petitioner in the seniority list. Whereas the petitioner's year of NMR appointment was 1994. In response to the seniority list, the petitioner submitted his objections on 15.09.2020 stating that, how could persons who joined as NMR after the petitioner have been shown seniors to him. According to the petitioner that six persons have been shown seniors to him who ought to have been shown juniors to the petitioner by the length of service put in by those individuals vis-a-vis the petitioner herein.

6.While matters stood thus, according to the petitioner that without finalizing the seniority list, the Corporation is proposing to grant further promotion to the post of Assistant Executive Engineer (Civil), on the basis of the Tentative Seniority list published. Therefore, the petitioner is before this Court.

7.Mr.J.Saravanel, learned counsel for the petitioner would submit that the right of the petitioner would be grossly affected if the tentative seniority list is allowed to be operated for the purpose of promotion to the next higher post of Assistant Executive Engineer. According to the learned counsel atleast six persons who are juniors to the petitioner would supersede the petitioner, if such exercise is allowed to take place by the Corporation.

8.Notice was ordered and Mr.Manimegalai, learned Standing Counsel entered appearance.

9. When the matter is taken up for hearing, the learned Standing Counsel appearing for the Corporation would seek sometime for filing counter. However, the learned counsel for the petitioner would submit that the Corporation is under obligation to finalize seniority list before they resort to any promotion on the basis of the tentative seniority list. He would insist on granting of any interim orders protecting the interest of the petitioner.

10. This Court considered the issue as projected in the writ petition, but the only grievance as it seems, of the petitioner in this writ petition is that the second respondent/Corporation may proceed with the promotion to the post of Assistant Executive Engineer from the tentative seniority list without finalizing the same. In which case, the objections raised against the tentative list would not be considered at all. When objections had been called for in response to the tentative list, unless the objections are addressed and a decision taken and final seniority is drawn, in all fairness, the second respondent ought not to go ahead with the present promotion exercise on the basis of the tentative seniority list.

11. In the above circumstances, in the fitness of things, the second respondent is directed to finalise the seniority list, also taking into account the objections of the petitioner herein and others and release the same. On finalizing the seniority list, the second respondent is at liberty to proceed further on such basis. However, till then it is not open to the second respondent to proceed further with the promotion exercise only on the basis of the tentative seniority list.

12. In the said circumstances, the second respondent is directed to consider the representation of the petitioner and pass a reasoned order within a period of 10 days from the date of receipt of a copy of this order and communicate the same to the petitioner.

13. The writ petition is disposed of as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

pns/mrm

To

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai - 600 009.

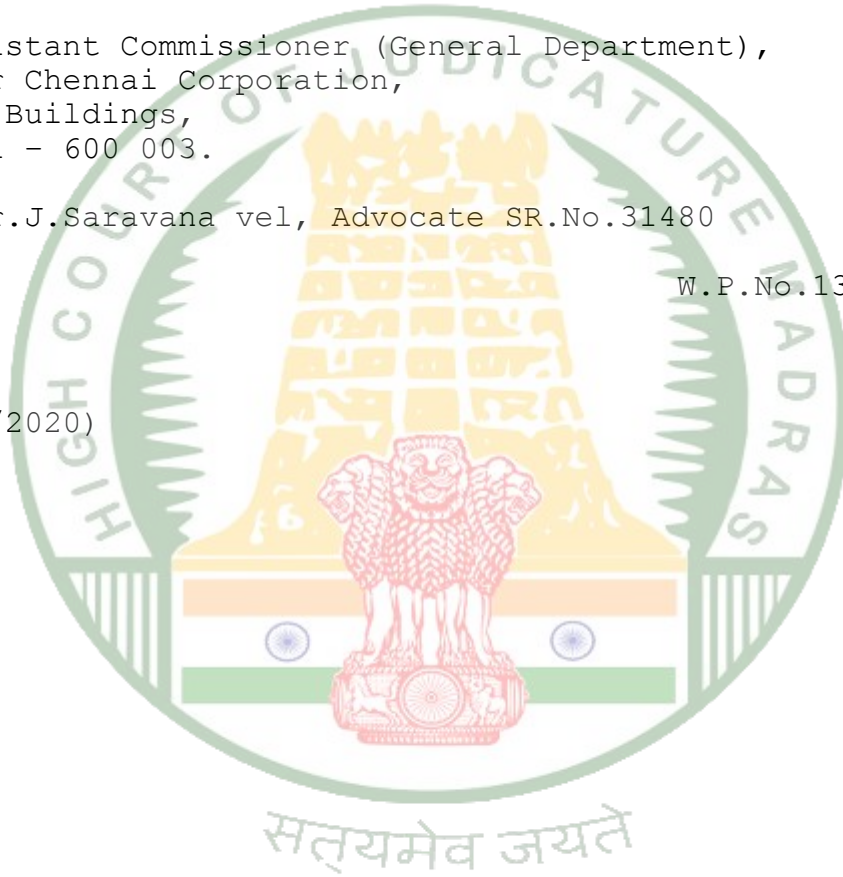
2.The Commissioner,
Greater Chennai Corporation,
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Chennai - 600 003.

3.The Assistant Commissioner (General Department),
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

+lcc to Mr.J.Saravana vel, Advocate SR.No.31480

W.P.No.13471 of 2020

MG(CO)
GMY(01/10/2020)



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