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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.03.2020
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A. (MD) .Nos.267 & 268 of 2020
and
C.M.P. (MD) .Nos.1962 and 1965 of 2020

The Commissioner,
Tiruchirappalli Corporation,
Tiruchirappalli - 625 001 .. Appellant/Respondent in both appeals

/Vs./

M.Lakshmanan ..Respondent/Petitioner in W.A. (MD) .No.267 of 2020
R.Baskar ..Respondent/Petitioner in W.A. (MD) .No.268 of 2020

Common Prayer: Writ Appeals are filed under Clause 15 of Letters Patent against the orders of this Court in W.P.(MD).Nos.23128 and 23141 of 2019, dated 11.11.2019.

Prayer in WP(MD) . 23128/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Directing the Respondent herein by taking into consideration of the Government Order issued in G.O.Ms.No.277/ Municipal Administration and Water Supply (MC.5) Department dated 29-06-2018 to issue necessary orders for promoting the petitioner to the Post of Conservancy Supervisor in the Respondent Corporation within a stipulated time as that may be fixed by this Honourable Court.

Prayer in WP(MD) . 23141/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the respondent herein by taking into consideration of the Govt Order issued in G.O.(Ms) no.277/Municipal Administration and Water Supply (MC.5) Dept dt 29.6.2018 to issue necessary ordres for promoting the petitioner to the post of Conservancy Supervisor in the respondent Corporation within a stipulated time

For Appellants : Mr.S.Saji Bino
Standing Counsel

For Respondent : Mr.A.Saravanan



C O M M O N J U D G M E N T

(Judgment of this court was delivered by **S.S.SUNDAR, J.**)

These writ appeals are preferred as against the orders passed by the learned single Judge allowing the writ petitions filed by the respondents in the respective appeals for issuing writ of Mandamus directing the appellant herein to issue necessary orders for promoting the petitioners therein to the post of Conservancy Supervisor in the appellant Corporation on the basis of Government order vide G.O.(D).No.277 Municipal Administration and Water Supply Department (MC.5), dated 29.06.2018.

2.The respondents in both writ appeal were temporarily appointed as Sanitary Workers in the appellant Corporation and their appointment were made permanent during 1999. The respondents in the respective appeals were temporarily promoted as Sanitary Supervisor which is also called as Conservancy Supervisor. It is also not in dispute that the Government sanctioned adequate posts of Conservancy Supervisor in the appellant Corporation and that there was a proposal sent by the appellant Corporation in 2016 for promoting the respondents and others as Conservancy Supervisor. As a matter of fact, the Commissioner of Municipal Administration also forwarded the proposal sent by the appellant to the Government. The Government vide G.O.(D).No.277 Municipal Administration and Water Supply Department (MC.5), dated 29.06.2018, accepted the proposal of appellant Corporation to promote the list of candidates as Conservancy Supervisor. It is also true that in the said list, the name of respondents in both writ appeals were included. However, they were not given promotion, even though others included in the list were given promotion.

3.The respondents in the writ appeals have completed pre-foundation course offered by Manonmanium Sundaranar University, Tirunelveli and Madurai Kamarajar University, Madurai. It is stated by the respondents that the pre-foundation course is equivalent to 10th standard. Therefore, they have the prescribed Educational qualification for the post of Conservancy Supervisor.

4.It is admitted that the Government issued G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, declaring the recommendation of Equivalence Committee, which has confirmed the position that pre-foundation course and foundation course offered by various universities in the State are not equivalent to S.S.L.C and Higher Secondary course or +2 respectively. The Government also emphasised to follow the clarification scrupulously. Based on the earlier recommendation, to promote the respondents in both the appeals to the post of Conservancy Supervisor as per G.O.(D).No.277, dated 29.06.2018, the respondents filed the writ petitions.



5.Though the names of respondents are found in the list prepared by Government and the Government has accepted the recommendation of the Commissioner of Municipal Administration relaxing Rule 3 of Tamil Nadu Municipal Corporation General Subordinate Service Rules 1996, in favour of the basic service employees of Tiruchirappalli Corporation as per the list, it is to be noted that even in the Government order, dated 29.06.2018, the Government's recommendation was to promote the employees who had passed 10th standard and complete five years in the basic service and fully qualified as mentioned in para 4 of the order. In view of the specific clarification issued by the Government vide G.O.Ms.No.144, dated 20.11.2017, the respondents could not be given promotion by the Corporation. However writ petitions filed by the respondents were allowed relying upon the clarification of the Government.

6.The Principal Secretary to Government in his communication, dated 14.06.2019 has stated as follows:

"3.You have therefore sought for clarification from the Government for promoting Thiru Baskar and Thiru Lakshmanan, Sanitary Workers as Conservancy Supervisors, since they are having Bridge Course and pre-foundation for whom, along with others, orders have been issued in G.O.(D).No.277, Municipal Administration and Water Supply Department, dated 29.06.2018.

4.In this connection, it is stated that the proposal of Commissioner, Tiruchirappalli Corporation for promoting the Sanitary Workers as Conservancy Supervisors dated 29.11.2016 was received in Government through Commissioner of Municipal Administration on 21.03.2017 i.e., prior to the issuance of the P&AR Department, G.O.(D).144, P&AR Department, dated 20.11.2017 and orders were issued at that time i.e., on 29.06.2018."

7.Based on the above clarification, the learned single Judge has held that the respondents ought to have been promoted as Conservancy Supervisor as per the proposal sent by the Corporation and accepted by Government.

8.We heard learned counsel appearing for the appellant as well as respondent.

9.The learned counsel appearing for the respondent relied upon the clarification letter sent by the Principal Secretary to Government to sustain his argument that the Government order vide G.O.Ms.No.144, dated 20.11.2017 has no application to the case on hand as the proposal recommending the promotion of respondents was



sent long prior to the Government order. This Court is unable to accept the logic behind the submissions of the learned counsel appearing for the respondents as well as the reasons assigned by the learned single Judge. The Government never relaxed the basic Educational Qualification even as per the order of Government vide G.O.(D).No.277, dated 29.06.2018. However, the Government issued G.O.Ms.No.144, declaring that the pre-foundation course is not equivalent to 10th standard before actual promotion was given to the respondents. The question is whether the Clarification letter would solve the issue. First of all it is well settled that there is no estoppel against the statute. The Qualification or eligibility of a person to hold the post cannot be compromised on the basis of Executive orders. The Government is the only authority to declare equivalence. Admittedly, the Government has declared that the pre-foundation course is not equivalent to 10th standard long before the promotion could be given to the respondents. Therefore, this Court is unable to sustain the order on the basis of the Clarification letter issued by the Principal Secretary to Government.

10.The learned counsel appearing for the respondents submitted that no qualification of 10th standard is prescribed by the rules for the post. This Court is unable to accept the contention. It is also evident from the Government order itself that the respondents belonged to other category who are not eligible under normal circumstances to be considered for the promotion to the post of Conservancy Supervisor. As a special case persons like respondents who were in other category of service were given promotion after creating several posts. This concession was subject to a specific condition that the persons like respondents should have acquired 10th standard qualification apart from five years of experience as Sanitary Worker. In such circumstances, the respondents can not be heard to say that no qualification was prescribed for the promotional post.

11.Having regard to the admitted facts and the position that the respondents had no Educational Qualification prescribed when he was considered for promotion, this Court is of the view that the respondents are not entitled to get promotion. However, it is open to the respondents to seek relaxation of rules to accommodate the respondents after getting approval from the Government.

12.These appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

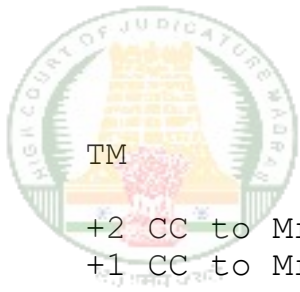
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Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)



+2 CC to Mr.A.SARAVANAN, Advocate (SR-9960[F] dated 04/03/2020)
+1 CC to Mr.S.SAJIBINO, Advocate (SR-9986[F] dated 04/03/2020)

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