



WEB COPY

W.A.(MD)No.503 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD)No.503 of 2020

and

C.M.P. (MD)No.3561 of 2020

The Commissioner,
Madurai Municipal Corporation,
Madurai.

... Appellant/2nd Respondent

Vs.

1.N.Arumugam

... 1st Respondent/ Writ Petitioner

2.The Director of Municipal Administration,
Ezhiagam,
Chepauk,
Chennai - 600 009.

... 2nd Respondent/
1st Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent Appeal against the interim order passed by this Court in W.P.(MD)No.13102 of 2017, dated 16.09.2019.

Prayer in WP(MD). 13102 of 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus directing the respondents to pay the salary to the post of Bill Collector to the petitioner from date of his promotion i.e. 07.11.2006 with increments by considering petitioners representation dated 26.05.2017 within the time frame that may be stipulated by this Court.

For Appellant : Mr.K.Govindarajan

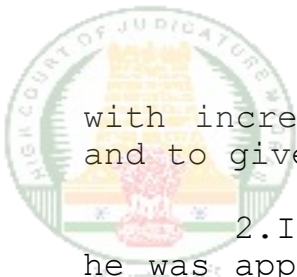
For Respondents : Mr.R.Pon Karthikeyan for R.1

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J U D G M E N T

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J)

The second respondent in W.P.(MD) No.13102 of 2017 is the appellant. The first respondent/writ petitioner filed the said writ petition praying for issuance of a direction to the official respondents therein to pay salary for the post of Bill Collector to the writ petitioner from the date of his promotion i.e., 07.11.2006



with increments by considering his representation dated 26.05.2017 and to give a direction to disburse the same within a time frame.

2.It is the case of the first respondent/writ petitioner that he was appointed as an Office Assistant on compassionate grounds in the appellant Corporation on 13.07.1990 and he successfully completed the probation on 12.07.1991 and his services were regularized from 13.07.1990.

3.The Petitioner would further state that he has completed SSLC in the year 1994 and got promotion as Sanitary Supervisor on 31.10.2006 and got his promotion to the post of Bill Collector vide proceedings of the second respondent dated 07.11.2006 with a condition that the salary for the post of Bill Collector will be paid only after getting relaxation from the second respondent herein, namely, the Government.

4.The first respondent/writ petitioner would further aver that consequent upon his promotion to the post of Bill Collector, he has discharged his duty diligently, honestly and sincerely to the satisfaction of the superior officers and also without receiving salary for the said post. It is also the claim of the first respondent that he is entitled to receive the salary to the post of Bill Collector as per Rule 22-B of the Fundamental Rules. Since the claim of the first respondent has not been considered, he was going on submitting representations and the last of such representation was submitted on 26.05.2007 and since it revealed in-action on the part of the appellant and the second respondent, the first respondent was constrained to approach this Court with W.P.(MD) No.13102 of 2017.

5.The Writ Petition was entertained and the appellant/second respondent has filed a counter affidavit and took a stand that the first respondent was granted promotion to the post of Bill Collector subject to relaxation to be given by the Government and accordingly, the second respondent herein/Government was addressed and via communication dated 09.12.2013 bearing letter No.5057/MD/54/2012-6 the approval sought for was rejected on the following two grounds:

"a) As per Rule 3 of General Subordinate Service Rule, 1996, the post of Sanitary Supervisor must be filled through transfer promotion from the post of record Assistant (Clerk).

b) The Writ Petitioner was Office Assistant who comes within the cadre of Basic Servant."

The appellant also took a stand that the first respondent/writ petitioner should have passed Higher Secondary School Examination, but he has passed only S.S.L.C. and he has not passed Type Writing and Departmental Test and in the absence of Educational and Service records and in the absence of qualification he has no right to claim the post of Bill



Collector and prayed for dismissal of the Writ Petition.

6.The learned Single Judge after taking note of the materials placed and rival submissions made and having found that admittedly the first respondent had worked as Bill Collector, directed the appellant to pay the salary from the date of his promotion i.e., on 07.11.2006 within a period of 8 weeks and challenging the legality of the same, the appellant has filed this Writ Appeal.

7.The learned counsel for the appellant/second respondent in the Writ Petition would submit that the first respondent lacks educational as well as technical qualification for the promotion to the post of Bill Collector and due to existence of vacancies, he was given promotion on 06.11.2006 subject to the relaxation to be given by the Government and though a recommendation was made to the second respondent/Government, it was rejected by letter No.5057/MPT/4/2012-6 dated 09.12.2013 and as such he is not entitled to receive any salary despite performance of duty as Bill Collector.

8.Per contra, the learned counsel appearing for the first respondent/writ petitioner would submit that the order of reversion came to be passed, despite extracting the work of Bill Collector and Sanitary Supervisor, vide order dated 12.02.2018 and admittedly he has performed his duty as Bill Collector from the date of promotion on 06.11.2006 till date of reversion on 12.02.2018 and as such, the impugned order passed by the learned Single Judge is perfectly correct and prays for dismissal of the Writ Appeal.

9.This Court considered the rival submissions and perused the materials placed on record.

10.During the course of arguments, this Court put a query to the learned counsel for the appellant Corporation as to the power of the Corporation to give temporary promotion despite the concerned individual lacks necessary qualification and the learned Standing Counsel appearing for the appellant is unable to show the specific provision that enables the appellant/Corporation to do so. Admittedly, the second respondent/Government has rejected the proposal for the relaxation of the qualification vide communication dated 09.12.2013 and atleast few days thereafter, the appellant should have passed necessary orders to revert the first respondent and despite order of rejection, the appellant Corporation continues to extract the work of Bill Collector from the first respondent and reverted him only on 12.02.2018. It is normally expected that the subordinate official or authority is expected to obey the orders of the superior officials and in the case on hand, though the Government has rejected the proposal as early as on 09.12.2013, consequent proceedings for reversion were issued by the Corporation only on 12.02.2018 and in the intragum continues to extract the work from the first respondent as Bill Collector between 06.11.2006 and 12.02.2018. In the considered opinion of the Court, the first



respondent/writ petitioner having performed the work of Bill Collector is entitled to receive the salary and the consequential benefits.

11.It is also open to the appellant Corporation to cause enquiry as of to the officials responsible for such lapses and initiate appropriate departmental proceedings in accordance with law and of course, by adhering to the principles of natural justice.

12.In the result, the Writ Appeal is dismissed subject to the above observations. Consequently, connected Miscellaneous Petition is also dismissed. However, in the circumstances of the case, there shall be no orders as to the costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Director of Municipal Administration,
Ezhiagam,
Chepauk,
Chennai - 600 009.

+1 CC to M/s.R. PON KARTHIKEYAN, Advocate (SR-13406[F] dated 31/07/2020)

+1 CC to M/s.GP (SR-13517[F] dated 03/08/2020)

W.A. (MD)No.503 of 2020

and

C.M.P. (MD)No.3561 of 2020

31.07.2020

KK(13.08.2020) 4P 4C