



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.08.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.9275 of 2020

and

W.M.P(MD).No.8446 of 2020

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S.Vivekanandan

... Petitioner

-Vs-

- 1.The State of Tamil Nadu,
Rep., by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai.
- 2.The Commissioner of Municipal Administration,
O/o., the Commissioner of Municipal Administration,
Chennai-5.
- 3.The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli District.
- 4.M.Ravi
Junior Engineer,
Coimbatore Corporation,
Coimbatore.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondent to consider the petitioner for promotion to the post of Assistant Executive Engineer in the third respondent Corporation in pursuant to the seniority list issued by the third respondent vide his proceedings Na.Ka.Cl/306/2020 dated 19.05.2020 within the period that may be stipulated by this Court.

For Petitioner	:	Mr.H.Mohammed Imran for M/s Ajmal Associates
For Respondents	:	Mr.M.Jeyakumar Additional Government Pleader for R1 & R2 Mr.Aayiram K.Selvakumar Standing Counsel for R3

ORDER

The prayer sought for herein is for a Writ of Mandamus, to direct the respondents to consider the petitioner for promotion to

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the post of Assistant Executive Engineer in the third respondent Corporation, pursuant to the seniority list issued by the third respondent vide his proceedings Na.Ka.Cl/306/2020, dated 19.05.2020, within a period that may be stipulated by this Court.

2. Heard Mr.H.Mohammed Imran, learned counsel appearing for the petitioner, Mr.M.Jeyakumar, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1 and 2 and Mr.Aayiram K.Selvakumar, learned Standing Counsel, who accepts notice on behalf of the third respondent.

3. By consent of both sides, this writ petition is taken up for final disposal at the admission stage itself. Since no adverse order is going to be passed against the fourth respondent, notice to him is dispensed with.

4. The petitioner has been working as Junior Engineer at the third respondent Corporation and his next promotional avenue is Assistant Executive Engineer. In order to give promotion to the said higher category of post i.e., Assistant Executive Engineer, a seniority list among the Junior Engineers has been prepared and released on 19.05.2020, where the petitioner's name finds seventh place.

5. It seems that, there are five vacancies in the promotion categories, where, five eligible persons among the seniority list, dated 19.05.2020 could be considered by the Corporation for giving such promotion.

6. In this context, the claim of the petitioner is that, though the petitioner is in the seventh position in the seniority ranking and only five vacancies are there, he can be considered for the post of Assistant Executive Engineer in Solid Waste Management Branch, where Assistant Executive Engineer to be appointed must have the qualification in Diploma in Mechanical Engineering. Therefore, in this context, it is the case of the petitioner that, the petitioner is the only available candidate in the seniority list, who has such a qualification to hold the post of Assistant Executive Engineer in the Solid Management Branch of the third respondent Corporation.

7. In this context, it is the grievance of the petitioner that, the fourth respondent, who was also working as Junior Engineer at the third respondent Corporation, has already been transferred by way of deputation to Coimbatore Corporation, where he is now working. Suppose, if the fourth respondent also by making use of his lieu over the third respondent Corporation, seeks for the promotion to the post of Assistant Executive Engineer, he may also be considered for the said post, especially, the one vacancy available in the Solid Management Branch, because the fourth respondent is also equally competent to compete with the petitioner.



9. Therefore, now it is the competition between the petitioner and the fourth respondent to get promotion to the post of Assistant Executive Engineer in the Solid Waste Management Branch of the third respondent Corporation.

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10. In this context, it is the further grievance of the petitioner that, since the fourth respondent has already been deputed to a foreign service to some other Corporation, unless he returns back and works for one year in the present Corporation, he would not be eligible to be considered for promotion and in this regard, Mr.H.Mohammed Imran, learned counsel appearing for the petitioner relies upon Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016, hereinafter referred to as 'Act', where the following proviso has been provided:

'.....

Provided that a member of a service who is appointed to another service outside his regular line and is continuing in that service beyond five years shall not be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line eventhough he is otherwise qualified for such promotion or appointment, unless he returns to the former service and puts in a fresh service for a period of not less than one year in the former service.'

11. By heavily relying upon the said proviso to Section 12 of the Act, the learned counsel appearing for the petitioner would contend that, in view of the said proviso, the fourth respondent shall not be eligible to claim promotion, unless he returns back to the parental department i.e., the third respondent Corporation, where, after he returns from foreign service, he should have worked for at least one year, then only, he would become eligible to be considered for promotion.

12. In this context, the petitioner has also given a representation on 26.05.2020 raising the aforesaid objection. Therefore, all that the learned counsel appearing for the petitioner wants is that, let the representation of the petitioner dated 26.05.2020 be considered by the respondents, especially, the third respondent Corporation and taking note of the objection raised therein and the legal bar quoted therein, decision can be taken by the third respondent Corporation, while making promotions, pursuant to the seniority list already prepared in this regard.

13. The learned Standing Counsel appearing for the third respondent Corporation would submit that, only seniority list has been released on 19.05.2020, pursuant to which, the process of selecting the persons to be promoted among the seniority list, is underway and in this regard, after getting the objections from



various incumbents, including the petitioner as well as the fourth respondent, then only, on considering the Rule position and the eligibility of every candidate, actual decision would be taken to give promotion to fill up the said vacancy in the cadre of Assistant Executive Engineer at the third respondent Corporation.

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14. Considering the submissions made by the learned Standing Counsel appearing for the respondent Corporation, the petitioner's apprehension that, his candidature may not be considered by overlooking his candidature, if the candidature of the fourth respondent is considered, without looking into the Rule position, may not be available as of now.

15. In that view of the matter, by taking into account, the said submissions made by both sides and having considered the factual matrix of this case, this Court is inclined to dispose of this writ petition with the following order;

'that the respondents, especially, the third respondent Corporation shall consider the representation of the petitioner, dated 26.05.2020 and treat it as an objection for the inclusion of the fourth respondent's name in the panel fit for promotion to the post of Assistant Executive Engineer, especially, in the Branch of Solid Waste Management at third respondent Corporation and in this regard, the third respondent Corporation shall also hear the fourth respondent and after hearing his view and any other objection raised by any other incumbent on the over all process of promotion to the post of Assistant Executive Engineer, to fill up the five vacancies in that cadre, at the third respondent Corporation, a final decision shall be taken by them.

16. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar (CS)

rmk

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.

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To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai.

2.The Commissioner of Municipal Administration,
O/o., the Commissioner of Municipal Administration,
Chennai-5.

Copy to:-M.Ravi
Junior Engineer,
Coimbatore Corporation,
Coimbatore.

+1 CC to M/s.GP (SR-14182[F] dated 17/08/2020)

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AP(10/09/2020) 5P 5C