



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2020

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD)No.10849 of 2017

and

WMP(MD)Nos.8265 and 8266 of 2017

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D.Elango

... Petitioner

Vs.

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

2.The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.

3.The Regional Director of Municipal Administration,
Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the second respondent in Roc.No.6487/2016/OP1, dated 09.05.2017, quash the same and consequently direct the respondents 1 and 2 herein to frame consolidated service rules for the posts sanctioned by the first respondent in G.O.Ms.No.2 MA and WS Department, dated 04.01.1999 and appoint the petitioner as Junior Engineer / Assistant Engineer with re-designation from the present post of Draughting Officer Grade - II with all consequential monetary and attendant benefits including promotion, etc.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
for
Mr.J.Lawrance

For Respondents : Mr.R.Murugaraj
Government Advocate

ORDER

This writ petition has been filed to quash the impugned order of the second respondent, dated 09.05.2017 and consequently direct the respondents 1 and 2 to frame consolidated service rules for the posts sanctioned by the first respondent in G.O.Ms.No.2, MA and WS Department, dated 04.01.1999 and appoint the petitioner as Junior Engineer / Assistant Engineer with re-designation from the present



post of Draughting Officer Grade - II with all consequential monetary and attendant benefits including promotion, etc.

2.The petitioner joined in the service as an Overseer in Thirumangalam Municipality on 15.12.1997. When he was working as Overseer in Thirumangalam Municipality, he was deputed to foreign service by Commissioner of Municipal Administration, Chennai by proceedings dated 20.09.2000. Subsequently, there was an amendment in G.O.Ms.No.391, Municipal Administration and Water Supply Department, dated 23.04.2001 ratifying his appointment as Draughtsman Grade-III. Accordingly his appointment as Draughtsman Grade-III is duly ratified by the first respondent and hence, the post of Draughtsman Grade-III is a Government post and therefore, the petitioner's contention was that he is entitled for salary as per the Government norms. The petitioner's post was created by the first respondent in G.O.Ms.No.980, Rural Development and Local Administration Department, dated 28.05.1981 on term basis. The petitioner was given promotion as Draughtsman Grade-II by the Commissioner of Municipal Administration, Chennai vide communication dated 23.11.2005. As such, for the past 15 years, the petitioner is working as Draughtsman Grade-II with effect from 15.12.2005.

3. Even though the petitioner was promoted in the year 2005 as Draughtsman Grade-II, he was not given a chance to have a right of consideration for the promotional posts as Junior Engineer / Assistant Engineer with the respondents department. The promotional posts of Junior Engineer and Assistant Engineer are created and the same are available. However, the respondents refused to give promotion to the petitioner stating that there is no rule for giving promotion to the Draughtsman Grade-II. In this regard, the petitioner has also given a representation and the said representation was disposed of vide impugned order, dated 09.05.2017 stating that there was no rule to give promotion to the petitioner. Hence, the petitioner has filed the present writ petition.

4. The learned Senior Counsel Mr.Isaac Mohanlal, appearing for the petitioner would contend that initially the petitioner was appointed as Overseer with the Thirumangalam Municipality. The persons, who are all appointed along with the petitioner as Overseer with the Thirumangalam Municipality, have been given promotion and working as Assistant Engineers, whereas the petitioner was transferred to the respondent department from Overseer to Draughtsman Grade-III and subsequently he was given promotion as Draughtsman Grade-II by the Commissioner of Municipal Administration, Chennai by proceedings dated 23.11.2005. Subsequently, for the past 15 years, the petitioner has been working in the same position as Draughtsman Grade-II whereas the persons who were all appointed along with the petitioner with the Thirumangalam Municipality were granted promotion and they are all working as Assistant Engineer. Therefore, the rights of the petitioner is being denied by the respondents by not providing promotions. The learned Senior Counsel



further contended that in fact, the promotional posts of Junior Engineer and Assistant Engineer were sanctioned through G.O.Ms.No.2, MA & WS Department, dated 04.01.1999. Therefore, the promotional posts are available with the respondents department. However, the respondents have refused to give promotion by stating that there was no adhoc rules available to give promotion to the Draughtsman Grade-II as Junior Engineers and Assistant Engineers. In fact, the first respondent has sent a letter dated 01.03.2007 to the second respondent requesting him for framing adhoc rules for the purpose of providing promotion to Draughtsman Grade-II. However, till date they have not taken any action for the purpose of framing any adhoc rules. Thus, the petitioner has given a representation dated 23.03.2017 and while disposing of the said representation, the impugned order dated 09.05.2017 was passed wherein the second respondent has rejected the request of the petitioner for granting promotion from Draughtsman Grade-II to Junior Engineer/Assistant Engineer stating that there was no rules available and as and when the Government is framing rules for providing promotion to the Draughtsman Grade-II, the case of the petitioner will be considered for the promotional post.

5. The learned Senior Counsel further contended that not framing rules by the Government, is not the fault of the petitioner, as the same was due to the inaction on the part of the first and second respondents to frame appropriate rules. Further he contended that there was a Government Order in G.O.Ms.No.517, Municipal Administration and Water Supply Department, dated 20.05.1988 and the said Government Order was applicable to the Draughtsman Grade-III for providing any promotions. However, the post of Draughtsman Grade-II was not included in the said Government Order. The respondent can include the post of Draughtsman Grade-II for the purpose of giving promotion. Therefore, he would submit that this Court may issue appropriate directions to the respondents either to include the post of Draughtsman Grade-II in the said Government Order dated 20.05.1988 or to frame appropriate rules to provide promotions for the Draughtsman Grade-II and to provide promotions, which are all due to the petitioner with consequential monetary and attendant benefits.

6. Per contra, Mr.R.Murugaraj, learned Government Advocate appearing for the respondents would submit that due to administrative contingency only, the petitioner has been temporarily promoted as Draughtsman Grade-II and as there is no service rules, it is not possible to promote him to the higher posts. He would further submit that the posts created by G.O.Ms.No.2, dated 04.01.1999 were filled by deputation from the holders of the Municipal Engineering service. He further contended that the Tamil Nadu Engineering and Subordinate Service Rules shall apply to the holders of the temporary Draughtsman Grade-III only in the Municipal Administration Department and therefore, it is not possible to promote the petitioner to the higher posts as per the said rules. He



also submitted that as and when the Government amend the Adhoc Rules, the respondents will consider the case of the petitioner for promotion to the posts of Junior Engineer / Assistant Engineer.

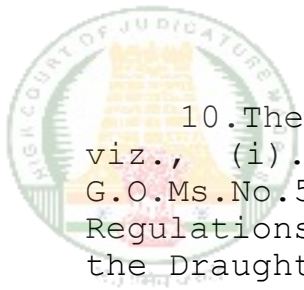
7. Heard Mr. Isaac Mohanlal, learned Senior Counsel appearing for the petitioner and Mr. R. Murugaraj, learned Government Advocate appearing for the respondents and perused the materials available on record.

8. The petitioner was originally appointed as Overseer at Thirumangalam Municipality on 18.12.1996 by proceedings dated 15.12.1997. Subsequently, he was transferred to the office of Regional Director of Municipal Administration, Chengalpattu and posted as Draughtsman Grade-III. The respondent / Municipal Administration absorbed the petitioner based on the provisions made in the Adhoc Rules framed under the Tamil Nadu Engineering and Subordinate Service Rules with effect from 04.10.2000 and he was promoted as Draughtsman Grade-II by the Commissioner of Municipal Administration, Chennai, vide communication, dated 23.11.2005. As such, for the past 15 years, the petitioner has not been given any promotion by the respondents, inspite of several representations made by him. In fact, the Under Secretary to the Government has written a letter to the second respondent vide letter dated 01.03.2007 stating as follows:-

"2. In the reference 1st cited, you have sent proposal for framing of ad-hoc rule for the post of Draughtsman Grade I and II. In the reference 2nd cited, you have been requested to send a consolidated proposal for framing of ad-hoc rules for the posts sanctioned in G.O.Ms.No.2, MA & WS, dated 04.01.1999. Your report is still awaited.

3. In the reference third cited, you have sought for clarification as to whether Tvl. G. Ravichandran and D. Elangovan, Draughtsman Grade II may be considered for appointment as Junior Engineer on conversion. In this connection, I am directed to request you to send a consolidated proposal for framing ad-hoc rules for the posts sanctioned in G.O.Ms.No.2, MA & Ws Department, dated 04.01.1999 and also incorporating the provision of appointing draughtsman Grade II as Junior Engineer/Assistant Engineer."

9. A perusal of the said letter would show that he has requested the second respondent to send a proposal for framing Adhoc Rules for the posts sanctioned in G.O.Ms.No.2, dated 04.01.1999 and also incorporating the provisions of appointing Draughtsman Grade-II as Junior Engineer / Assistant Engineer. There are sanctioned promotional posts available with the respondent department to promote the petitioner as Junior / Assistant Engineer.

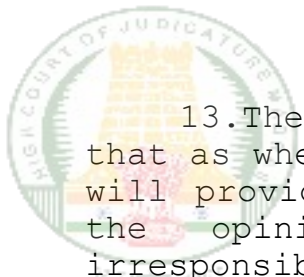


10.The promotion of the petitioner was refused on two grounds viz., (i).The post of Draughtsman Grade-II is not available in G.O.Ms.No.517, dated 20.05.1988; and (ii).No other Rules and Regulations or Adhoc Rules are available for providing promotion for the Draughtsman Grade-II.

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11.Due to the non-availability of relevant Rules and Regulations and non-availability of Draughtsman Grade-II in G.O.Ms.No.517, dated 20.05.1988, the Under Secretary has sent a communication to the second respondent on 01.03.2007 to send a proposal for framing Adhoc Rules for the purpose of providing promotions to the Draughtsman Grade-II as Junior Engineer / Assistant Engineer. However, no proposal for framing Adhoc Rules has been sent by the second respondent to the first respondent till date. Though the first respondent has requested the second respondent to send proposals as early as in the year 2007, for the past 15 years, nothing was sent by the second respondent to the first respondent.

12.When G.O.Ms.No.517, dated 20.05.1988 was issued, there was only the post of Draughtsman Grade-III alone available and no post was created as Draughtsman Grade-II and therefore, in the said Government Order, Draughtsman Grade-III alone included and as there was no post available for Draughtsman Grade-II, that was not included. The post of Draughtsman Grade-II was created only in the year 1999. Therefore, this Court is of the view that there is no chance for the respondents to include the post of Draughtsman Grade-II in G.O.Ms.No.517, dated 20.05.1988 at that point of time, so as to give promotion to the petitioner. However, when the promotion was given by the second respondent to the petitioner from Draughtsman Grade-III to Draughtsman Grade-II by way of Government Order, there is no prohibition for the respondents to make an amendment in G.O.Ms.No.517, dated 20.05.1988 by virtue of fresh Government Order to provide promotion to Draughtsman Grade-II or to issue fresh Government Order to provide promotion to the Draughtsman Grade II and it is the duty of the first respondent to take appropriate steps to give promotion to the petitioner as Draughtsman Grade-II by incorporating appropriate adhoc rules for the purpose of providing promotion either by way of amending the G.O.Ms.No.517, dated 20.05.1988 or by way of framing separate adhoc rules, but without doing the same by the respondents, for the past fifteen years, the petitioner has been suffering without any promotions. The persons who appointed as Overseer along with the petitioner in the year 1997 at Thirumangalam Municipality, have been now working as Assistant Engineers, whereas the petitioner is working even till date as Draughtsman Grade-II only, due to the non-availability of relevant Rules and Regulations and non-availability of Draughtsman Grade-II in G.O.Ms.No.517, dated 20.05.1988, he is not in a position to get promotion.



13.The respondents have filed their counter affidavit stating that as when the adhoc rules are framed by the Government, then they will provide promotion to the petitioner. In this regard, I am of the opinion, such a counter affidavit would show the irresponsibility of the respondents. It is the duty of the respondents to frame the adhoc rules. Though the first respondent requested the second respondent to frame adhoc rules for the purpose of providing promotion to the petitioner in the year 2007, till date, they have not taken any steps. This would clearly show the irresponsibility of the second respondent to frame consolidated adhoc rules and send it to the first respondent.

14.The petitioner has given a representation dated 23.03.2017 for providing promotion, but however, the second respondent passed the impugned order dated 09.05.2017 stating that there is no rules available for giving promotion to the petitioner to the post of Junior Engineer / Assistant Engineer from Draughtsman Grade-II and therefore, the request of the petitioner for his promotion as junior Engineer / Assistant Engineer cannot be considered.

15.The impugned order passed by the second respondent dated 09.05.2017 would show the irresponsibility of the second respondent to frame any rules, when the first respondent requested the second respondent as early as in the year 2007 to send the draft adhoc rules for the purpose of providing promotions to the Draughtsman Grade-II, the same was not acted upon by the second respondent. The second respondent, without sending any draft adhoc rules, to the first respondent in an irresponsible manner, has disposed of the petitioner's representation, on 09.05.2017, which is an unfortunate order passed by the second respondent without knowing the duties cast on him to frame the adhoc rules.

16.In the light of the above, I am of the opinion that the impugned order was passed without application of mind and hence, the same is liable to be quashed. Accordingly, the impugned order, dated 09.05.2017, is quashed. While quashing the impugned order, dated 09.05.2017, this Court directs the first and second respondents either to amend the Tamil Nadu Engineering and Subordinate Service Rules, to include Draughtsman Grade-II so as to enable the petitioner to get promotion as Junior Engineer / Assistant Engineer or to frame consolidated service rules for the posts sanctioned by the first respondent in G.O.Ms.No.2 MA and WS Department, dated 04.01.1999 and to promote the petitioner as Junior Engineer / Assistant Engineer with re-designation from the present post of Draughting Officer Grade - II and to provide all the promotions along with monetary and attendant benefits with retrospective effect. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.



17.The Writ Petition is allowed as prayed for. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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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:

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

2.The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.

3.The Regional Director of Municipal Administration,
Madurai.

+1 CC to M/s.J. LAWRANCE, Advocate (SR-23745[F] dated 02/12/2020)

+1 CC to M/s.GP (SR-23679[F] dated 02/12/2020)

W.P. (MD)No.10849 of 2017
01.12.2020

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