

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.48 and 181 of 2021
and C.M.P.Nos.846 and 510 of 2021

W.A.No.48 of 2021

- 1.The Government of Tamil Nadu,
rep. by its Additional Chief Secretary
to Government, Municipal Administration
and Water Supply Department (MA & WS)
Secretariat, Chennai 600 009.
 - 2.The Commissioner of Municipal Administration,
11th Floor Urban Administrative Building
(Opp. To Cciba Building), No.75,
Santhome High Road, Raja Annamalaipuram,
Chennai 600 028.
- .. Appellants

-vs-

1.N.Natarajan

- 2.The Greater Chennai Corporation,
Rep. by its Commissioner,
Chennai.

3.Pugazhendi

.. Respondents

W.A.No.181 of 2021

Pugazhendhi

.. Appellant

-vs-

1.N.Natarajan

2.The State of Tamil Nadu,
rep. by its Additional Chief Secretary to Govt.,
Municipal Administration & Water Supply Dept.,
Secretariat, Chennai 600 009.

3.The Commissioner of Municipal Administration,
11th Floor, Urban Administrative Building,
No.75, Santhome High Road, MRC Nagar,
Raja Annamalaipuram, Chennai 600 028.

4.The Greater Chennai Corporation,
Rep. by its Commissioner, Chennai. .. Respondents

Prayer in W.A.Nos.48 and 181 of 2021:

Appeals filed under Clause 15 of the Letters Patent against
the order dated 23.12.2020 passed in W.P.No.8664 of 2020 on the
file of this Court.

Prayer in W.P.No.8664 of 2020 :

Writ Petition filed under Article 226 of the
Constitution of India praying Writ of Certiorarified Mandamus
to call for the records pertaining to the impugned order passed
by the 1st respondent in G.O.(D) No.503, Municipal
Administration and Water Supply (ME.3) Department, dated
20.12.2019 and the imugned order passed by the 1st respondent in
G.O(D) No.227 municipal Administration and water supply (M.E3)
Department, dated 30.06.2020 quash the same and consequently
direct the 1st respondent to restore the petitioners original
position in the legitimate post of Chief Engineer in the Office
of the Commissionerate of Municipal Administration forthwith.
(Prayer amended vide order dated 28.10.2020 made in
W.M.P.No.13918/2020 in W.P.No.8664/2020 by VPNJ).

For Appellants in : Mr.Vijay Narayan
WA.48 of 2021 Advocate General,
and for Respondents assisted by
2 and 3 in WA.181 of Mr.V.Jayaprakash Narayanan
2021 State Government Pleader

For Respondents

For R-1 in both WAs. : Mr.P.Wilson, Sr. Counsel
for M/s.P.Wilson Associates
for R-1

For R-3 in WA.48 of Mr.AR.L.Sundaresan
2021 and Appellant in Sr. Counsel, for
WA.181 of 2021 Mr.Dwarakesh Prabhakaran
for R-3

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The State and an aggrieved contractual employee are in appeal against a judgment and order of December 23, 2020, by which the writ petition instituted by a transferred Corporation employee was substantially allowed.

2.The story really begins with a notification of December 20, 2019, but the history can be traced to 2016 by which the private appellant herein, who was arrayed as the fourth respondent to the writ petition, obtained an extension in service as the Chief Engineer of the Greater Chennai Corporation. The initial extension was for a period of two years on the ground that certain projects undertaken by the Corporation could be completed smoothly if the fourth respondent to the writ petition continued in service. A similar extension for a further period of two years followed in 2018, almost parroting the same lines. Thus, it must not be lost sight of that the fourth respondent to the writ petition was found to be indispensable for the completion of certain continuing projects in the Corporation in the City.

3.Against this backdrop, followed the notification of December 20, 2019, which was the subject-matter of the challenge in the proceedings under Article 226 of the Constitution. It was recorded in such notification that the State Government was pleased to issue two orders of postings and transfers as follows:

- i. Thiru N.Natarajan, Chief Engineer, Office of the Commissioner of Municipal Administration is transferred and posted as Chief Engineer in the office of the Commissioner of Greater Chennai Corporation, on deputation basis.
- ii. Thiru. Pugazhendhi, Principal Chief Engineer, Greater Chennai Corporation is transferred and posted in the Office of the Commissioner of Municipal Administration on deputation basis.

4.As noticed above, the extended services of the fourth respondent to the writ petition could be availed of till or about June 30, 2020. On June 29, 2020, the writ petition came to be instituted, well into the seventh month after the impugned notification of December 20, 2019 had been issued. The only saving grace was that the writ petitioner had not joined his transferred post as Chief Engineer in the Greater Chennai Corporation. The fourth respondent to the writ petition had, however, assumed his charge at the office of the Commissioner of Municipal Administration. It may also be noticed that a further notification followed on June 30, 2020, by which the tenure of the fourth respondent to the writ petition was extended, albeit only on contractual basis and not as a continuing employee, for a period of one year from July 1, 2020.

5.According to the writ petitioner, his transfer from the post of Chief Engineer in the office of the Commissioner of Municipal Administration to the similar sounding post in Greater Chennai Corporation could not be seen in isolation of the corresponding posting and transfer. Indeed, the case made out by the writ petitioner was that it was because the fourth respondent to the writ petition was sought to be brought to the office of Commissioner of Municipal Administration that the writ petitioner had to make way.

6.By the judgment and order impugned, the writ Court, inter alia, held that there were no special circumstances for continually extending the services of the fourth respondent to the writ petition in some manner or the other; that the entire process of appointing the fourth respondent to the writ petition in the office of the Commissioner of Municipal Administration was arbitrary and amounted to malice in law; and, the fourth respondent to the writ petition was not qualified to occupy the post to which he was sought to be transferred nor was there any authority to effect a transfer from a Corporation to a Government body, though an employee could be transferred from one Corporation to another.

7.The principal grounds canvassed by the official appellants herein are that the writ petitioner's transfer was in accordance with law and the matter ought to have ended at that; it was not the writ petitioner's concern as to how the fourth respondent was transferred, particularly it was not a public interest litigation. The appellants also assert that since the Court found that no case of malafides had really been made out, the Court ought not to have interfered with an administrative order that was necessarily made on administrative grounds. The appellants also referred to paragraph 59 of the impugned judgment to suggest that if the Court found that there was sufficient latitude for the Government to engage anyone on a

contractual basis, including the fourth respondent, the Court should not have passed the impugned order since it is still open to the Government to reengage the fourth respondent on contractual basis.

8.To begin with, there appears to be little doubt that the fourth respondent to the writ petition was not qualified to be appointed as the Chief Engineer in the Commissioner of Municipal Administration. Under the Tamil Nadu Municipal Engineering Service Rules, 1997, the Chief Engineer in Corporation of Municipal Administration had to be selected by promotion from Superintending Engineer in Municipal Corporations other than the Greater Chennai Corporation. There is no dispute that the fourth respondent did not hold the post of Superintending Engineer in a Municipal Corporation other than the Greater Chennai Corporation and also that such person was not in the Tamil Nadu Municipal Engineering Service and his only qualification was that he had been employed by the Greater Chennai Corporation.

9.It is also evident, as has been appropriately noticed in the judgment and order impugned that there was no express provision permitting the transfer of a Corporation employee to a Government service and the provisions relied upon on behalf of the fourth respondent to the writ petition could not have permitted his transfer from Greater Chennai Corporation to Corporation of Municipal Administration.

10.Much reliance was placed by the appellants on a Division Bench judgment of the Madurai Bench of this Court which has been copiously referred to in the impugned judgment. After setting out the portions of the judgment at 2014 (3) CTC 446 (B.Rajendran vs. State), the writ Court held that such judgment would not, *stricto sensu*, apply to the present case since that involved a Government employee covered by the applicable provisions and there was no corresponding provision permitting the transfer of the fourth respondent to the present writ petition from the Greater Chennai Corporation to Corporation of Municipal Administration.

11.The writ Court observed that notwithstanding the latitude available to a Government to extend the services of an employee or to obtain the services of any person on contractual basis, such extraordinary provisions cannot be used to do violence with the general scheme of things as envisaged in the Constitution. There is little scope to disagree with the writ Court on this count, particularly since the indispensability of the fourth respondent to the writ petition was not brought out in either letter of extension issued in 2016 and 2018. The further extraordinary step to, in effect, reengage the fourth respondent

to the writ petition on contractual basis by the further notification of June 30, 2020, also does not disclose any or adequate reasons why another employee could not have discharged the duties or what special qualities or qualifications were possessed by the fourth respondent to the writ petition for him to continue in service for more than five years after he attained the age of superannuation.

12. There is no doubt that the scope of judicial review in administrative matters is limited and the administration must be given the degree of latitude necessary to function smoothly and to take care of exigencies and extraordinary situations. There are extraordinary provisions even in the Constitution which recognised certain situations being thrown up before the executive which require an exceptional course of action. However, merely because provisions had been made to the exception does not imply that such exceptional provisions have to be resorted to without any justification or that such exceptional provisions are used as an executive to favour a special person.

13. What appears to have weighed considerably with the writ Court was the fact that there was little or no rationality in the fourth respondent to the writ petition being transferred to Corporation of Municipal Administration when the very reason for his extension was to ensure continuity and the smooth completion of certain on-going projects pertaining to the Greater Chennai Corporation. If the concerned person's indispensability was on such ground, he could not have been rationally alienated from the Greater Chennai Corporation and sent to some other body; never mind the fact that the transferring authority possessed no power to transfer Corporation employee to a Government service. If the contentions as put forth on behalf of the appellants were to be given credence, the writ Court would have been asked to put on blinkers to ignore the colossal irregularity perpetrated by the State to protect and favour the fourth respondent to the writ petition without there being any reasonable administrative grounds in support thereof. There is no doubt that the writ petitioner had to suffer the transfer from Corporation of Municipal Administration to the Greater Chennai Corporation only for the fourth respondent to the writ petition to be part in the Corporation of Municipal Administration. The two parts to the order in the impugned notification of December 20, 2019, could not be seen in isolation. It was part of the same package and the basis for the writ petitioner's transfer was tinged by the fourth respondent to the writ petition being accommodated in the Corporation of Municipal Administration.

14. There is a further issue which has been raised that the writ petition was filed several months after the notification was issued. There was adequate explanation for the delay, particularly in the Covid times, which was furnished by the writ petitioner. Much emphasis is also laid on the Doctrine of Pleasure which is included in Article 310 (2) of the Constitution. It has already been noticed here in above that the Doctrine amounts to the conferment of a form of extraordinary authority on the executive to deal with extraordinary situations and exigencies and must be seen to be an exception and not the rule.

15. For the reasons aforesaid, the judgment and order impugned do not call for any interference. It is recognised that the State has the authority of appointing anyone by way of contract and, equally, it will be open to the State to engage the fourth respondent to the writ petition on contractual basis. However, in the light of the observations contained in the judgment and order impugned as endorsed hereby, any reasonable authority would think several times before resorting to such a future course of action. Similarly, there is no impediment to the writ petitioner being transferred to the Greater Chennai Corporation tomorrow notwithstanding this judgment upholding the findings by the writ Court. Again, the executive is required to act reasonably and rationally and it is scarcely expected of a responsible administration to act on its whims or demonstrates its ego particularly as an affront to a judicial order.

W.A.Nos.48 and 181 of 2021 are disposed of. There will be no order as to costs. Consequently, C.M.P.Nos.846 and 510 of 2021 are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Government of Tamil Nadu,
rep. by its Additional Chief Secretary
to Government, Municipal Administration
and Water Supply Department (MA & WS)
Secretariat, Chennai 600 009.

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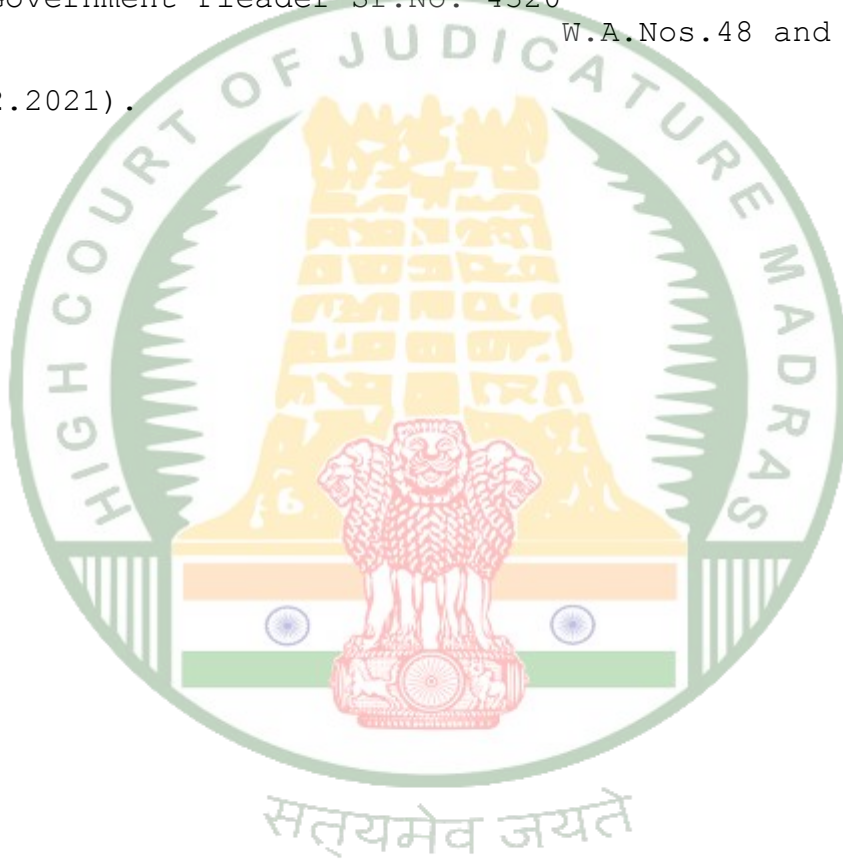
2.The Commissioner of Municipal Administration,
11th Floor Urban Administrative Building
(Opp. To Cciba Building), No.75,
Santhome High Road, Raja Annamalaipuram,
Chennai 600 028.

3.The Commissioner,
Greater Chennai Corporation,
Chennai.

+1cc to M/s.P.Wilson Associates, Advocate SR.No. 4314
+1cc to Mr.Dwarakesh Prabhakaran , Advocate SR.No. 4124
+1 cc to Government Pleader Sr.No. 4320

W.A.Nos.48 and 181 of 2021

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A.SK(16.02.2021).



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