IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12.11.2021
Pronounced on	24.11.2021

Coram:

The Honourable Mr.Justice M.DURAISWAMY
and
The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

W.A.Nos.844 & 1947 of 2013
and M.P.Nos.1 & 1 of 2013

1.E.Murali
...Ist Appellant in both W.As
2.G.Muniratnam
3.A.Mohan
4.A.Pughazhendi
...Appellants 2 to 4 in W.A.No.844 of 2013

Versus

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai - 600 003.

2. The Assistant Commissioner (GAP),
Corporation of Chennai,
Ripon Buildings, Chennai - 600 003.
...Respondents 1 & 2 in both W.As

3.K.Magesh

4.B.Muruga Balaji

5.E.Nirmala

6.G.Pradeepe Kumar

7.R.Rajasekaran

8.S.Padhmanabhan

9.K.Santhakumari

10.C.Vasantha

11.G.Balasubramaniam

12.B.Thirunavukarasu

13.S.Vallavan

...Respondents in W.A.No.844 of 2013

(R3 to R12 impleaded as per order dated : 18.02.2008 in MP.No.3/2008 in WP.No.726/2008)

Common Prayer:

Writ Appeals filed under Clause 15 of Letters Patent, praying to set aside the orders dated 02.01.2012 and 06.08.2012 respectively, passed by the respective learned Judges in W.P.Nos.726 of 2008 & 16450 of 2012 respectively.

Prayer in W.P.No.726 of 2008:

Writ Petition filed under Article 226 of Constitution of India calling for the records of the 1st Respondent in Po.Thu.Na.Ka.No. E4/44951/2007 dated 19.12.2007 and quash the same and consequently direct the 1st Respondent to regularize the promotion given to the Petitioners in the post of License Inspector.

Prayer in W.P.No.16450 of 2012:

Writ Petition filed under Article 226 of Constitution of India directing the respondents herein to dispose of the petitioners representation dt 29.2.2012 within a time frame to be stipulated by this Honourable Court.

For Appellants in W.A.No.844 of 2013	:	Mrs.Nalini Chidambaram, Senior Counsel for Ms.C.Uma
For Appellant in W.A.No.1947 of 2013	:	Mr.M.Kempraj
For Respondent - 2 in W.A.No.844 of 2013 and Respondents - 1 & 2 in W.A.No.1947 of 2013	:	Ms.Karthikaa Ashok, Standing Counsel

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

(Judgement of the Court was delivered by J.Sathya Narayana Prasad, J.)

The Writ Appeal in W.A.No.844 of 2013 is directed against the order passed by the learned Single Judge in W.P.No.726 of 2008 dated 02.01.2012 and the another Writ Appeal in W.A.No.1947 of 2013 is directed against the order passed by the learned Single Judge in W.P.No.16450 of 2012 dated 06.08.2012.

2. Heard the learned counsel on both sides and perused the materials placed before us.

3. The case of the appellants is that they are graduates who entered the Revenue Service in the Corporation of Chennai in the year 1985 as Tax Collectors. They were appointed initially on probation and thereafter, their service was regularized in the time scale of pay. They have put in more than 20 years of service as Tax Collectors and their next promotional post is the post of License Inspector. In the year 1981, draft bye-laws of the Madras Corporation Subordinate Service were framed by the Chennai Corporation. The said draft bye-laws have not received the sanction of the State Government. As per the draft bye-laws, for promotion to the post of License Inspector, the qualification prescribed is pass in Accounts Test Part - I. But, the draft bye-laws were not approved and hence, they have no force of law. The appellants were given temporary promotion as License Inspector on 04.09.2006 by the order of the first respondent on the condition that the appellants should pass the Accounts Test Part - I in two sittings. They wrote the Accounts Test Part - I & Part - II, but, they have passed the Accounts Test Part - II alone. Since they did not pass the Accounts Test Part - I in two sittings, the first respondent by order dated 19.12.2007 reverted them back to the post of Tax Collector the post which they held before promotion, from the post of License Inspector.

3.1. The appellants state that the qualification prescribed that they should pass the Accounts Test Part-I is not found in any rule and the same is stipulated only in the draft bye-laws, which has not in the force of law as it has not been approved by the State Government.

3.2. The appellants wrote the Accounts Test Part - I & II in December 2006, but, they did not pass the Accounts Test Part - I & II and again wrote the same Accounts Test Part - I & II in May 2007. In the meantime, the first respondent vide order dated 17.04.2007 had stated that the panel for filling up of the vacancies for the post of Assessors for the year 2007-2008 has to be prepared taking into account 01.02.2007 as the crucial date. It was further stated by the first respondent for filling up the post of Assessors, the qualification prescribed is that the incumbent should have been appointed as License Inspector as on 31.12.2005 and should have passed the Tamil Nadu Office Procedural Test and Office Subordinate Officer Accounts Test Part - I & Pat - II as on 01.02.2007. The first respondent released the temporary panel by the circular dated 06.06.2007 for 2007-2008 as on 01.02.2007 that all persons eligible for promotion to the post of Assessors. The said panel did not contain the names of the appellants herein who are seniors in the cadre of License Inspectors. But the Panel had included the names of persons who are much juniors to the appellants herein, as they had passed the Accounts Test Part - I & Part - II. The objections were also invited to the panel in writing within three days. The appellants along with others made a representation dated 08.06.2007 to the first respondent objecting to the circular by stating that they had been working in the Revenue Department of the Corporation for more than 20 years in various posts.

3.3. It is also the case of the appellants that when this Court in the earlier writ petitions in the order dated 04.02.2003 made in W.P.Nos.14173 & 14187 of 2000 has clearly held that the pass in Accounts Test Part - I & Part - II was not necessary as the bye-laws have not been approved by the Government, ignoring the appellants to be included in the Panel was totally wrong. Therefore, the appellants along with others requested the first respondent to promote them without insisting upon passing of the Accounts Test Part - I & Part - II. The first respondent vide order dated 19.12.2007, reverted the appellants to the post of Tax Collector. Hence, they filed the Writ Petition in W.P.No.726 of 2008 before this Court.

4. The learned counsel appearing for the first respondent submitted that the Establishment of Corporation has four classes of Officers and the appellants come under Class - III. So far as the appointment to the posts for Class - III & Class - IV employees are concerned under Section 85(3)(C) of Chennai Municipal Corporation Act, 1919 (hereinafter referred to as 'Act') , the appointment committee of the Corporation consisting of the Mayor, Commissioner and two councilors elected by the

council is competent to make appointment. The conditions of Service of Class – III & Class – IV employees are governed by the bye-laws made by the Council of Corporation. In respect of the other two classes, they are governed by the rules made by the State Government under Section 86(1)(2) of the Act and it is only the Council that has the power to make the bye-laws and by virtue of the above power conferred on the Council, the present bye-laws was made by the Council for governing their service conditions. The appellants after initial appointment on compassionate grounds, were also appointed as Tax Collectors based on the above bye-laws and promotions were also given to them only based on the same bye-laws. Therefore, after accepting the appointment and also the promotion and after working in the Corporation for nearly 20 years, now, the appellants cannot say that the bye-laws have not been followed and they are not bound by it. Apart from that, under Section 24 of the Act, the first respondent is bound to give effect to every resolution of the Council, unless such a resolution is cancelled in whole or in part by the State Government. It is only the Council which has the powers to frame the bye-laws for the conditions Classes III & IV employees and based on the bye-laws passed by the Council, only promotions were given to the appellants with the above condition. Hence, the appointing authority in so far as the appellants are concerned is the Appointment Committee headed by the Mayor and two Councilors elected by the Council. On the other hand, the appellants accepted the condition stipulated by the respondent Corporation and joined duty as License Inspectors.

4.1. In fact, sufficient opportunities were given to the appellants to qualify themselves for the promotion, but, the appellants have failed to pass the Accounts Test within the stipulated time. For filling up the post of Assessors, the qualification prescribed is that incumbent should have served as License Inspector as on 31.12.2005 and should have passed the Accounts Test for the Subordinate Officers Part – I & Part – II as on 01.02.2007. As the appellants had not passed the Accounts Test Part – I & Part – II, the temporary panel of the persons eligible for promotion to the post of Assessors did not include the names of the appellants.

4.2. The Government accorded sanction in G.O.Ms.No.701 Rural Development and Local Administration dated 20.04.1970 stating that the Officer should have passed the Accounts Test for Subordinate Officers in order to get their promotion. In fact, the criteria of passing of Accounts Test was prescribed before 35 years in the Corporation of Chennai and the appellants are well aware of the same. Thus, the rules that are being followed for all the employees cannot be made flexible for each person.

5. Admittedly, the appellants herein have not passed the Accounts Test for Subordinate Officers Part - I conducted by Tamil Nadu Public Service Commission (TNPSC) in one of the two examinations held after their promotion. When the promotion was given to the appellants, it was specifically stipulated therein that their promotion is subject to the condition that they should pass the Accounts Test for the Subordinate Officers Part - I. They also accepted the promotion without any objection whatsoever. It is an admitted case that the appellants have failed to pass the said examination. While admitting that position, they only contend that the qualification prescribed that they should pass the Accounts Test Part - I is only as per the bye-laws framed by the Council.

6. As contended by the learned counsel appearing for the respondent Corporation that the appellants do come under Class - III services and as per Section 85(3)(i) of the Act, the Appointment Committee of the Corporation consisting of the Mayor, Commissioner and the two Councilors elected by the Council is competent to make appointments. Their conditions of service shall be regulated by the bye-laws made by the Council of the Corporation. Under Section 24 of the Act, the respondent Corporation is bound to give effect to every resolution of the Council, unless such a resolution is cancelled in whole or in part by the State Government. The promotions are being given only in accordance with the existing resolution of the Corporation Council to all Chennai Corporation employees commonly. The introduction of passing of the Accounts Test for Subordinate Officers to the Corporation officials was introduced in the year 1970 itself.

7. In the absence of approval of the Government for the bye-law framed by the Council, the respondent Corporation has to follow the resolution of the Council. The employees who had passed the Accounts Test alone are permitted to the next level of post in the Corporation of Chennai. Further, the Chennai Corporation Subordinate Service Rules has been framed by the Corporation of Chennai in the year 1981 itself. Since the appellants failed to acquire the requisite qualification, they are not eligible to continue in the post of License Inspector and accordingly, they are reverted to the post of Tax Collector. Having accepted the conditional order of promotion and occupied the promoted post, the appellants should have in all fairness passed the examination as stipulated. But they have not passed

the said examination and qualified themselves for the next promotion. Hence, they cannot take an unjustifiable stand that the bye-laws are not approved by the Government and they do not have the force of law.

8. In view of the above facts and circumstances of the case, we find no ground to interfere with the orders passed by the learned Single Judge in W.P.Nos.726 of 2008 & 16450 of 2013, dated 02.01.2012 & 06.08.2012 respectively. Accordingly, the Writ Appeals are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mrr

To

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai - 600 003.

2.The Assistant Commissioner (GAP),
Corporation of Chennai,
Ripon Buildings, Chennai - 600 003.

+1cc to Ms.Karthikaa Ashok, Advocate SR. No. 60801
+1cc to Mr.M.Kempraj, Advocate SR. No.60846

W.A.Nos.844 & 1947 of 2013

MG (CO)
PR (03/12/2021)