



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.26591 OF 2008

V.Nagarajan

.. Petitioner

Versus

The Commissioner of Municipal Administration
VI Floor, Ezhilagam Annexe,
Chepauk,
Chennai - 5.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in Roc.No.64498/2007/OP3-3 dated 26.07.2008 signed on 28.07.2008, quash the same and consequently direct the respondent to forthwith effect the promotion to the petitioner from Class II to Class IA of the Municipal General Service on par with the petitioner's immediate junior with all consequent service and monetary benefits.

For Petitioner : Mr.P.Srinivas

For Respondent : Mr.C.Selvaraj
Government Advocate (Civil Side)

O R D E R

The petitioner was appointed as Meter Reader on 02.05.1974 and promoted as Junior Assistant on 06.11.1975. Subsequently, he was promoted as Assistant on 23.03.1988 and as Manager on 31.03.2006 and posted at Koothanallur Municipality. Later, he was transferred to Cuddalore Municipality and promoted to the post of Revenue Officer on 24.09.2007. He attained the age of superannuation on 31.07.2008.

2. While the matter stood thus, a charge memo was issued to the petitioner on 26.07.2008 for not making proper property tax assessment while he was serving as Revenue Inspector at Vridachalam Municipality during 1998. Consequently, he was not included in the panel for promotion to the post of



Class-IA Officers under Tamil Nadu Municipal General Service Rules, 1970. However, he was permitted to retire from service with effect from 31.07.2008 subject to certain conditions. The charge memo issued by the respondent dated 26.07.2008 on the eve of his retirement and refusal to promote him is under challenge in this writ petition.

3. Heard the submissions made on either side and perused the materials placed before this Court.

4. At the outset, a charge memo was issued on 26.07.2008 for the lapse said to have been committed by the petitioner in the year 1999. Admittedly, the charge memo was issued with an unexplained delay of ten years. There is no whisper as to why the charge memo was not given in the year 1999 itself. Secondly, the imputation of misconduct vide Annexure - II of the charge memo states that the building was completed on 01.10.1998 instead of 01.10.1999. Therefore, the charge memo was given.

5. But, from the perusal of the materials, I do not find any iota of evidence or materials to show that the said building was completed on 01.10.1998. Nor the building owner was cited as a witness. In the absence of any specific material to show that the building was completed as on 01.10.1998, the charge memo issued on the eve of retirement of the petitioner suffers from delay and vagueness.

6. As contended by the learned counsel for the petitioner that it is the usual procedure that temporary service connection is given even to the buildings under construction. Only because a temporary service connection is given it cannot be construed that the building was completed on 01.10.1998. Therefore, on the ground of lack of materials as well as on the ground of delay of ten years for issuing the charge memo, it is liable to be quashed.

7. But for the charge memo on the eve of the retirement, the petitioner would have been included in the panel of Class - II Officers fit for promotion to the post of Class I-A Officers in the Tamil Nadu Municipal General Service for the year 2008-2009. Admittedly, many of the petitioner's juniors were included in the panel vide Proceedings in ROC No.22098/2008/K1 dated 29.07.2008 of the first respondent. They were promoted on 30.07.2008 and the petitioner was permitted to retire on 31.07.2008. Therefore, the petitioner would have been promoted before his retirement. Therefore, the issuance of charge memo on the eve of his retirement as contended by the learned counsel for the petitioner appears to be malafide in order to stall the promotion of the petitioner. Therefore, this



Court is inclined to set aside the impugned order passed by the respondent.

8. Accordingly, the Proceedings in Roc.No.64498/2007/OP3-3 dated 26.07.2008 signed on 28.07.2008 by the respondent is quashed and the respondent is directed to consider the promotion of the petitioner notionally on par with his juniors, with effect from the date on which his immediate junior was promoted and pay all the consequential monetary benefits within a period of six weeks from the date of receipt of a copy of this order.

9. The Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

TK

To

The Commissioner of Municipal Administration
VI Floor, Ezhilagam Annexe,
Chepauk, Chennai - 5.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.28770
+1cc to the Government Pleader, S.R.No.28730

WP NO.26591 OF 2008

PMK (CO)
CB(20/07/2021)