

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.02.2021
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.22389 of 2014

P.Harikumar

... Petitioner

Vs

1. The Government of Tamil Nadu
Rep. by Secretary to Government
Municipal Administration and
Water Supply Department
Secretariat,
Chennai - 600 009

2. The Commissioner,
Municipal Administration and Water Supply Department,
Chepauk,
Chennai - 600 005.

3. The Commissioner
Erode City Municipal Corporation
Erode

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent 2 and 3 to consider the claim of the Petitioner for appointment by transfer to the post of Technical Assistant in the light of instructions at para 2(iii) of G.O.Ms.No.206, Municipal Administration and Water Supply Department dated 22.10.2008 and the representation dated 29.05.2014 and Appeal dated 15.07.2014.

For Petitioner : M/s.M.Ravi
For R1 & 2 : Mr.J.Ramesh, AGP
For R3 : Mr.P.Srinivas

ORDER

The prayer made in this Writ Petition is to direct the respondent 2 and 3 to consider the claim of the Petitioner for appointment by transfer to the post of Technical Assistant, in the light of instructions at para 2(iii) of G.O.Ms.No.206, Municipal Administration and Water Supply Department dated 22.10.2008 and the representation dated 29.05.2014 and Appeal dated 15.07.2014 submitted by the petitioner.

2.The case of the petitioner is that he joined as Junior Assistant on 24.05.2006 in Erode Municipality, which was upgraded as Municipal Corporation with effect from 01.01.2008. Since he passed the Diploma in Civil Engineering, he submitted a representation dated 22.03.2013 to the 3rd Respondent requesting to appoint him as Technical Assistant by transfer of service, as per clause 2(iii) of G.O.Ms.No.206, Municipal Administration and Water Supply Department, dated 22.10.2008, but the said representation was not considered. Whereas, one S.Navaneethan and two others were appointed as Technical Assistants on compassionate grounds. Thereafter, the petitioner made another representation dated 29.05.2014 and appeal dated 15.07.2014 to the second respondent for the same claim. Since no order was passed on the same, he has come up with the present writ petition for the aforesaid relief.

3.Upon notice, the third respondent filed a detailed counter affidavit, wherein, it is inter alia stated that the petitioner was appointed as against the regular vacancy in the cadre of Junior Assistant under the Tamil Nadu Municipal Corporations General Service Rules, whereas his request for being appointed by transfer to the post of Technical Assistant coming under the Municipal Engineering Service Rules and the said two Rules are mutually exclusive and there cannot be any inter transfer of post or person from one service to another. It is further stated therein that para 2(iii) of G.O.Ms.No.206, MA&WS Department, dated 22.10.2008, stated that for the vacancy that occur due to promotion, if it is found necessary, it can be filled with officers from other departments; and that, there were 22 officers in the cadre of graduate and diploma holders eligible for the posts in the Engineering service and there was no necessity to appoint any one from the General services and hence, the said issue was closed on that note. It is also stated therein that when the Erode City Municipal Corporation was formed by merging Erode Municipality with the adjoining local bodies, the said G.O.206 was issued to meet out the exigencies of the said formation of the new Corporation and to address the difficulties that may arise in accommodating the employees in various cadres and also for the smooth functioning of the Corporation and hence, the said proviso will not operate perpetually and it cannot be invoked by the petitioner to claim transfer from one service to another as a matter of right. With these averments, this respondent sought to dismiss this writ petition.

4.The aforesaid averments made in the counter affidavit filed by the third respondent have been seriously refuted by the learned counsel for the petitioner. According to him, it is not proper to fill up the posts, which are to be filled up by direct recruitment by the persons who are already in service, after

relaxing rules in favour of them. Hence, he sought appropriate direction to the respondent authorities to consider the claim of the petitioner.

5. Heard the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel for the third respondent and also perused the documents enclosed in the typed set of papers.

6. Considering the rival submissions, this Court, without expressing any opinion on the merits of the case, directs the respondent authorities to consider the Petitioner's representation dated 29.05.2014 and appeal dated 15.07.2014, if not already considered, and pass appropriate orders, on merits and in accordance with law and also in the light of clause 2 (iii) of G.O.Ms.No.206, Municipal Administration and Water Supply Department, dated 22.10.2008, within a period of eight weeks (8) weeks from the date of receipt of a copy of this order.

7. Accordingly, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
The Government of Tamil Nadu
Municipal Administration and
Water Supply Department
Secretariat,
Chennai - 600 009

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

3. The Commissioner
Erode City Municipal Corporation
Erode

+1 cc to Government Pleader Sr.No. 6547

W.P.No. 22389 of 2014

A.SK(05.07.2021)