

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.26130 of 2017
and WMP.Nos.27765 to 27767 of 2017

M.Gobinath

Asst.Executive Engineer (Addl. Charge) cum
Assistant Engineer, Zone -1,
Corporation of Erode,
Erode - 638 001.

... Petitioner

Vs.

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.
2. Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.
3. Corporation of Erode,
Rep.by its Commissioner,
Erode - 638 001.
4. P.Anandan,
Asst.Engineer,
Corporation of Erode,
Erode - 638 001.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in G.O.(D) No.342, Municipal Administration and Water Supply (Corp.6) Department, Dated 30.08.2017 on the file of the first respondent and quash the same; Consequentially direct the respondents 1 to 3 to effect promotion to the petitioner the post of Asst. Executive Engineer based on the place of seniority as fixed in provisional combined inter-se-seniority list in the post of Asst/Junior Engineers working in Erode Corporation and among the persons absorbed from the merged Grade III Municipalities fit for

promotion to the post of Asst. Executive Engineer in Na.Ka.No.3303/2017/C1 dated 16.06.2017 without any alteration, deviation or change by any means of relaxation or in any other manner and pass such further or other appropriate and necessary orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

For Petitioner	: Mr.R.Neelakandan
For R1 & R2	: Mr.Mr.J.Ramesh, AGP
For R3	: Mr.M.Rajarathinam
For R4	: Mr.L.Chandrakumar
	for Mr.P.Kannan Kumar

ORDER

The prayer made in this writ petition is to issue a writ of Certiorarified Mandamus calling for the records pertaining to G.O.(D) No.342, Municipal Administration and Water Supply (Corp.6) Department, Dated 30.08.2017 on the file of the first respondent and quash the same and consequentially direct the respondents 1 to 3 to effect promotion to the petitioner to the post of Asst. Executive Engineer, based on the provisional combined inter-se seniority list of the Assistant / Junior Engineers working in Erode Corporation and among the persons absorbed from the merged Grade III Municipalities vide Na.Ka.No.3303/2017/C1 dated 16.06.2017 without any alteration, deviation or change by any means of relaxation.

2. According to the petitioner, while he was working as Assistant Engineer in re-designated post at Kasipalayam Grade III Municipality, the same was merged with Erode Corporation, due to which, he was working in the amalgamated Erode City Municipal Corporation without any break with effect from 25.10.2011. It is the further case of the petitioner that the third respondent by his proceedings in Na.Ka.No.3303/2017/C1 dated 16.06.2017, after referring to various Government orders, published the provisional combined inter-se seniority list in the post of Assistant / Junior Engineers in Erode Corporation and among the persons absorbed from the merged Grade III Municipalities, for promotion to the post of Assistant Executive Engineer, in which, the petitioner was placed under Serial No.1. Since the post of Assistant Executive Engineer fell vacant from 10.04.2017 and the petitioner has been discharging duty as additional charge, based on the proceedings of the third respondent in Na.Ka.No.C1/788/2016, dated 17.04.2017, he filed WP.No.18643 of 2017, seeking a direction to the third respondent to give promotion to him to the post of Assistant Executive Engineer based on his representation dated 20.06.2017. The said writ petition was dismissed on 21.07.2017. Thereafter, he came to know that the first respondent passed G.O.(D)No.342,

Municipal Administration and Water Supply (Corp.6) Department, dated 30.08.2017 thereby relaxing the condition relating to fixation of the fourth respondent's seniority in para 4(a) of G.O.(D)No.475 Municipal Administration and Water Supply Department, dated 22.11.2011. Feeling aggrieved over the same, the petitioner has come up with this writ petition for the aforesaid relief.

3.Upon notice, the third respondent filed a detailed counter affidavit stating that the fourth respondent was given seniority on the basis of the date of his joining with the Erode City Municipal Corporation and the petitioner joined subsequent to the fourth respondent. It is further stated therein that the promotion sought by the petitioner on the basis of the seniority list dated 16.06.2017 is not maintainable and the Government now passed an order dated 30.08.2017 considering the grievance of the fourth respondent. It is also stated that the petitioner on earlier occasions filed two writ petitions viz., WP.Nos.18643/2017 and 20370 of 2016, which were subsequently, dismissed; and he filed the present writ petition for the very same relief; and hence, the same is devoid of merits and liable to be dismissed.

4.Adopting the counter affidavit filed by the third respondent, the first respondent filed a counter affidavit stating that there is no relaxation awarded in favour of the fourth respondent and the petitioner was placed in the top of the seniority list, there is no grievance to the petitioner and he has not been affected by the order impugned herein.

5.The fourth respondent also filed a counter affidavit inter alia stating that he gave his willingness to be absorbed with the third respondent Corporation on 23.11.2011 and the same was approved by the Council vide Resolution No.391 dated 29.03.2012 and thereafter, a letter was addressed by the Commissioner, Erode Corporation to the second respondent, who inturn forwarded the same to the first respondent for orders. It is further stated that contrary to the recommendation of the Director, Municipal Administration, Chennai, the first respondent passed G.O.Ms.No.475 dated 23.11.2011, against the service rules and the same was rectified by the order impugned herein, after observing all the procedures and formalities and hence, the same warrants no interference by this Court.

6.The learned counsel for the petitioner stoutly denied the averments made in the counter affidavits filed by the respective respondents.

7.Irrespective of the submissions made by the learned counsel appearing for the parties, this Court, in the given

facts and circumstances of the case, deems it fit and appropriate to issue appropriate direction to the third respondent. Accordingly, the third respondent is directed to consider the claim of the petitioner seeking promotion to the post of Assistant Executive Engineer and pass appropriate orders, on merits, after affording opportunity of hearing to the petitioner, fourth respondent and any other interested parties, within a period of eight (8) weeks from the date of receipt of a copy of this order.

8.This writ petition stands disposed of, in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.
2. Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Corporation of Erode, Erode - 638 001.

+1 cc to Mr.P.Kannan Kumar, Advocate Sr No.12562

+1 cc to M/s.R.Neelakandan, Advocate Sr No. 11865

W.P.No.26130 of 2017

SKY (CO)

RG.21.04.2021(4P/6C)

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