



WEB COPY

W.A.(MD)Nos.313 and 314 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)Nos.313 and 314 of 2018

W.A. (MD)No.313 of 2018:-

T.Muthukumaravel

... Appellant/Writ Petitioner

Vs.

1.The Secretary to the Government of Tamil Nadu,
Municipal and Water Supply Administration,
St. George Fort,
Chennai.

2.The Commissioner of Municipal Administration
and Water Supply,
Ezhilagam,
Chepauk,
Chennai.

3.The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi.

[Third respondent was impleaded as per the order
of this Court, dated 10.09.2019, made in C.M.P.
(MD)No.2790/2018 in W.A. (MD)No.313/2018]

... Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent Act,
against the order dated 11.01.2018, made in W.P.(MD)No.20268 of
2014.

For Appellant : Mr.J.Ashok

For R1 and R2 : Mrs.J.Padmavathi Devi
Special Government Pleader

For R3 : Mr.R.Murali
Standing Counsel

W.A. (MD)No.314 of 2018:-

D.Gnana Asir

... Appellant

Vs.



1.The Secretary to the Government of Tamil Nadu,
Municipal and Water Supply Administration,
St. George Fort,
Chennai.

2.The Commissioner of Municipal Administration
and Water Supply,
Ezhilagam,
Chepauk,
Chennai.

3.The Commissioner,
Madurai City Municipal Corporation,
Madurai.

4.The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi.

5.The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

... Respondents

[Since the appellant working under the 4th respondent,
respondents 3 and 5 are given up]

Prayer : Writ Appeal filed under Clause 15 of Letters Patent Act,
against the order dated 11.01.2018, made in W.P.(MD)No.21079 of
2014.

For Appellant	: Mr.J.Ashok
For R1 and R2	: Mrs.J.Padmavathi Devi Special Government Pleader
For R3	: Mr.R.Murali Standing Counsel
For R4	: Mr.Shaji Bino Standing Counsel
For R5	: Mr.N.S.Karthikeyan Standing Counsel

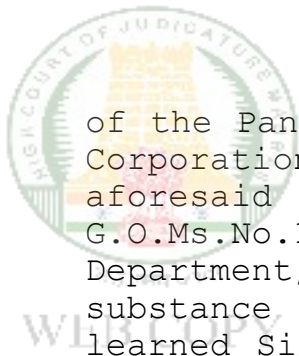
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COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

These Writ Appeals have been filed by the appellants,
challenging the Government Order passed, facilitating the absorption

<https://hcservices.ecourts.gov.in/hcservices/>



of the Panchayat Secretaries of the local bodies with the Municipal Corporations. Resultantly, designation has been fixed for them. The aforesaid Government Order passed imposing certain conditions in G.O.Ms.No.154 Municipal Administration and Water Supply (MC.5) Department, dated 05.12.2014, was put to challenge. The sum and substance of the arguments of the Writ Petitioners before the learned Single Judge was to the effect that they should be allowed to carry forward their posts, they were holding prior to the absorption. Incidentally, it has been argued that in one similar absorption pertaining to Tirunelveli Corporation, the posts held were allowed to be continued even after absorption. The learned Single Judge dealt with the contentions raised by the Writ Petitioners and has given the following findings:

"11. I find merits in the submissions made by the learned Additional Government Pleader for the respondents. Firstly, the post of Panchayat Assistant/Panchayat Secretary is not equivalent to the post of Junior Assistant. Secondly, the recruitment for the post of Junior Assistant is being done by the Tamil Nadu Public Service Commission. Thirdly, the educational qualification for the post of Junior Assistant is quite different from the educational qualification for the post of Panchayat Secretary/Panchayat Assistant. Therefore, when the mode of recruitment and the educational qualification for these two posts are not commensurate with the rules specified in the Tamil Nadu Municipal Corporation Subordinate Service Rules, a policy decision was taken by the Government to absorb them as Record Clerks based on their educational qualification in the impugned G.O.Ms.No.154 dated 5.12.2014 with the following four conditions,

"(a) For absorbing the 35 Panchayat Secretaries, 35 Body Constituted posts may be created in the same scale of pay now they are drawing with pay protection.

(b) The above posts will exist till the existing incumbent continues in this post. Consequent on their retirement, promotion, death and transfer to other posts, this post will lapse automatically.

(c) In order to get training on the establishment related matters of the Madurai, Tiruchirappalli, Tiruppur, Erode, Vellore and Thoothukudi Corporations, they may be given training in the Record Rooms at least for a period of 3 years.

(d) After completion of 3 years training, they may be considered for promotion and appointment as Record Clerks based on their Education Qualifications."

which cannot be found fault with.

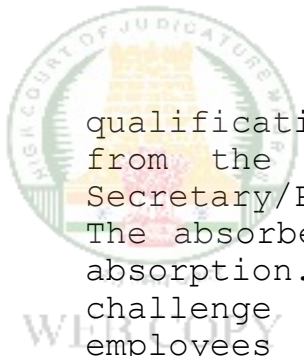
12. Fourthly, the contention made by the petitioners that when the Government had merged the village panchayats into respective Municipal Corporations, the employees serving in the village panchayats should also be absorbed as employees of the respective Municipal Corporations, has not been denied by the respondents, because, while merging the village panchayats into



Municipal Corporations, all the employees working in the village panchayats were also absorbed as the employees of the Municipal Corporations. While doing so, taking note of the factor that the petitioners were not appointed in the time scale of pay at the time of appointment and they were all paid with monthly remuneration, they were brought into the time scale of pay in G.O.Ms.No.175, Rural Development and Panchayat Raj Department dated 5.12.2006 at Rs. 625-10-725-30-925 from 1.9.2006. Again, one another G.O.Ms.No.52, Rural Development and Panchayat Raj Department dated 29.8.2011 was also issued re-designating the Panchayat Assistant post as Panchayat Secretary by revising the time scale of pay at Rs.2500-5000+GP 500, which is also lower to the scale of pay of Junior Assistant, which has not been questioned or disputed by the petitioners at any point of time.

13. Fifthly, when the adjacent village panchayats and municipalities were merged with the Thoothukudi and Tiruchirappalli Corporations, the employees working in the said local bodies were absorbed as Record Clerks. It may be mentioned that the work of Revenue Assistant was allotted temporarily to the petitioners by the administration as a stop-gap arrangement. That cannot be construed that they were absorbed as Revenue Assistants by the Corporation. Moreover, when the Commissioner of Thoothukudi, Tiruchirappalli and Madurai Corporations have ordered the petitioners to act as Revenue Assistants and subsequently passed resolutions to absorb them as such, the same need not be accepted by the Government, because the Government is the competent authority to absorb them from rural local bodies to urban local bodies. When there was an arrangement made by the respective Municipal Corporations, the decision taken by the Government in the impugned G.O., to absorb them as Record Clerks with pay protection and that the posts will exist till they continue in the post and also ordered for their training as Record Clerk atleast for a period of three years, in my considered opinion, the impugned order is unimpeachable. At the last, it may be mentioned that when this Court passed an order in W.P.No. 24513 of 2001 on 25.4.2003 directing the respondents to give them pay on par with Revenue Assistant in Tirunelveli Corporation, the Commissioner of Municipal Corporation, accepting the legal opinion from the legal department, made recommendation to pay their salary in the scale of pay on 3200-85-4900 on par with the Revenue Assistant. Finally, they were all absorbed in the regular post in Tirunelveli Corporation alone. But the Government, having analysed the case that the method of appointment and the educational qualification are different to the post of Junior Assistant, directed the absorption of the petitioners as Record Clerks in supernumerary posts, which will no way affect their service conditions. Therefore, this Court finds no infirmity with the impugned Government Order."

In the above said paragraphs, it has been held that the educational

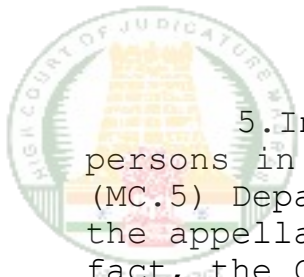


qualification for the post of Junior Assistant is quite different from the educational qualification for the post of Panchayat Secretary/Panchayat Assistant and there must be posts in existence. The absorbed employees are required to do different work after the absorption. That is the reason why the Government Order under challenge imposed certain conditions before making the absorbed employees to become eligible to certain posts and thereafter, to give them promotion.

2.The learned counsel for the appellants contented that it is not correct to deny the posts held by the appellants and there is violation of Article 14 of Constitution of India, since such facility has been granted at the time of merger with the Tirunelveli Corporation. Even the services of similarly placed persons, who were working as Panchayat Secretaries with local bodies, were regularised as Revenue Assistants in Madurai, Tirunelveli and Tiruppur Corporations. Since the similarly placed persons were regularised in the post of Revenue Assistants, the appellants should also be regularised in the similar post, namely, Junior Assistant. Further, the said benefit will have to be extended to the appellants from the date of absorption, though the same has not been given under the Government Order passed in G.O.Ms.No.69, Municipal Administration and Water Supply (MC.5) Department, dated 21.02.2020, to the above said persons.

3.The learned Special Government Pleader and the learned Standing Counsel appearing for the respondents submitted that there is no reduction in Scale of Pay to the appellants and having accepted the absorption, it is not open to them to contend the contrary. The qualifications for the post of Junior Assistant and Panchayat Secretary are also different and there is no substantial posts available in the Tuticorin Corporation as in the case of Tirunelveli Corporation.

4.We do not find any error in the order passed by the learned Single Judge. That apart, even according to the appellants themselves, their rights have not been taken away and they have been receiving the same scale of pay. In fact, posts have been created for the absorbed employees and facilities have been extended to consider them for promotion after acquiring certain qualifications, which cannot be said to be arbitrary or illegal. The appellants have willingly accepted the absorption and got the benefits under it. The qualifications prescribed for the posts with the Corporation is also different. Therefore, there is no question of appellants getting inducted to the posts to which they are not otherwise qualified. There is a difference in the nature of job also. Therefore, training is also contemplated. The position in Tirunelveli Corporation is different with respect to the qualification and availability of substantial posts.



5. Insofar as the benefits given to the similarly placed persons in G.O.Ms.No.69, Municipal Administration and Water Supply (MC.5) Department, dated 21.02.2020 is concerned, it is well open to the appellants to approach the Government for appropriate orders. In fact, the Government has granted the benefits to the persons similar to the appellants, which are applicable to the appellants as well. Suffice it to give liberty to the appellants to approach the Government, if they are so correct that they have not been given the same benefit as that of the persons mentioned in G.O.Ms.No.69, Municipal Administration and Water Supply (MC.5) Department, dated 21.02.2020, provided both posts are similar and one and the same. As and when the appellants make requests for such benefits, the same will have to be considered by the concerned respondents on merits and in accordance with law within a period of eight weeks from the date of receipt of such requests.

6. On the contention that the said benefits will have to be conferred from the date of absorption is concerned, this Court cannot issue such a direction. The Government Order passed in G.O.Ms.No.69, Municipal Administration and Water Supply (MC.5) Department, dated 21.02.2020, is a concession given. While availing the concession, one cannot say that such concession should be extended from the date of absorption. There is no vested right to the appellants, especially, when there is no reduction to the pay scale. Thus, we do not find any error in the order passed by the learned Single Judge.

7. These Writ Appeals are disposed of, confirming the order of the learned Single Judge, with the above said observations. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Secretary to the Government of Tamil Nadu,
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Fort St. George,
Chennai.

2.The Commissioner of Municipal Administration
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Madurai City Municipal Corporation,
Madurai.

5.The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-177[F] dated
06/01/2021)

+1 CC to M/s.R.MURALI, Advocate (SR-358[F] dated 06/01/2021)

+1 CC to M/s.GP (SR-260[F] dated 06/01/2021)

Common Judgment made in
W.A. (MD) Nos. 313 and 314 of 2018
05.01.2021

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