



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No. 15319 of 2014 and

MP(MD) .No.1 of 2014

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M.Senthil Arumugam

: Petitioner

.vs.

The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus to call for the records of the impugned proceeding vide Na.Ka.No.C1/5231/1998, dated 17.07.2014 passed by the respondent and quash the same and consequently, direct the respondent to promote the petitioner as Technical Assistant.

For Petitioner

: Mr. D. Saravanan

For Respondent

: Mr. Ayairam K. Selvakumar

O R D E R

This petition has been filed to quash the impugned proceeding passed by the respondent in Na.Ka.No.C1/5231/1998, dated 17.07.2014 and consequently, direct the respondent to promote the petitioner as Technical Assistant.

2. The petitioner was appointed as Tap Inspector on 12.08.1991 in the erstwhile, Thirunelveli Municipality Corporation and the post is governed under the Tamil Nadu Municipal General Service Rules, 1970. According to the said Rules, Tap Inspectors and Drainage Inspectors were kept in the same cadre vide G.O.Ms.No.1353 Health dated 13.04.1955 and both Tap Inspectors and Drainage Inspectors were kept in the superior service. Thereafter, the Thirunelveli Municipality was upgraded into Municipal Corporation and the same came into existence from 1998. The Government issued G.O.Ms.No.237, Municipal Administration and Water Supply (Election) Department, dated 26.09.1996. As per the said G.O. the Engineering and Water Supply Service Rules were framed, wherein the erstwhile Inspectors were designated in the new service rules as Technical Assistants in the Scale of Pay of Rs.1350/- 2,200/-. Likewise the erstwhile Electricians, Fitters, Meter Reader, Work Inspectors, Mechanics etc., were categorized as skilled Assistant Grade-1, in the scale of pay of Rs.1100-1660. But inadvertently,



the post of Tap Inspector was not dealt with in any service in the Corporation Rules. But the petitioner and the similarly persons were allowed to continue as Tap Inspector in Corporation. Thereafter to resolve this issue a clarification was issued in G.O.Ms.No.140, Municipal Administration and Water Supply Department, dated 27.05.1997, wherein the post of Tap Inspector is designated as Skilled Assistant, Grade -II, in the Corporation Service Rules. The petitioner's request to keep the post as Grade I and grant seniority in the post of Technical Assistant and other benefits was rejected by the Corporation vide proceedings dated 13.01.2000. Aggrieved over the petitioner filed Writ Petition in W.P(MD).No.3855 of 2000 and this Court vide order dated 30.07.2009 has allowed the Writ Petition and has held as follows:

"4. Admittedly, as per the Municipal Service Rules applicable to erst while Thirunelveli Municipality, the post of Drainage Inspector and Water Tap Inspector were kept in the same cadre. When the corporation came into being, unfortunately, there was no post provided in the service Rules of the Corporation for the erstwhile Tap Inspectors, Rightly the Government issued G.O.Ms.No.140, providing service for Tap Inspector in the Corporation service Rules. But, while doing so, as rightly contended by the petitioner, the Government has failed to take note of the fact that under the Municipal Service Rules, Drainage Inspectors and Tap Inspectors were of the same cadre. When Drainage Inspectors were posted as Technical Assistants, the post of Tap Inspector should have also been provided as Technical Assistant. The learned counsel for the petitioner would submit that at least the Tap Inspectors should have been treated as skilled Assistant Grade -I, as it was done in the case of fitters and others.

5. The grievance of the petitioner is justifiable. The order of the second respondent is consequent upon the Government order. Therefore, the order of the 2nd respondent as well as the Government are not sustainable and accordingly, they need to be interfered with.

6. In the result, the Writ Petition is allowed. G.O.Ms.No.140, Municipal Administration and Water Supply Department dated 27.05.1997 to the extent it states that the post of Tap Inspector shall be treated as Skilled Assistant Grade -II, in the 2nd respondent Corporation is set aside and instead the



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Corporation vide proceedings dated 13.01.2000. Aggrieved over the petitioner filed Writ Petition in W.P(MD). No.3855 of 2000 and this Court vide order dated 30.07.2009 directed the respondents to place the petitioner under Grade - I. Hence the Government issued G.O. Ms. No. 165 and granted the relief. However the government has not placed the petitioner in the seniority list for further promotion to the post of Technical Assistant. Hence the petitioner filed W.P. (MD) No. 2916 / 2014 and this Court has directed the respondent to consider and pass order. The respondent have passed an order dated 17.07.2014 denying promotion on two grounds, the petitioner is not possessing Diploma in Engineering and there is punishment against the petitioner. Aggrieved over the petitioner has preferred this Writ Petition with the prayer to quash the impugned order dated 17.07.2014 and consequently promote him as Technical Assistant. The petitioner Counsel relied on G.O. Ms. No. 140, dated 27.05.1997, wherein in Appendix 6 Sub Clause 3(1) it is stated as follows:

"1) The Tap Inspectors, work Inspectors, Line Inspectors, Meter Readers, Meter Mechanics who have completed 20 years of service on the date of issue of this order may be promoted as Skilled Assistant Grade-I, i.e., in the scale of pay of Rs.1100/- 1660/-. After completion of a minimum of one year service in the post of Skilled Assistant Grade-I, they may be promoted as Technical Assistants in the Scale of Pay of Rs.1350/- - 2200. The qualification that a pass in Diploma for the post of Technical Assistant need not be insisted on them."

7. Therefore, when the G.O. itself states that the past Technical Assistant need not be insisted on them, the impugned order rejecting the claim of the petitioner that he has no qualification is erroneous.

8. The second reason the respondents have stated that the petitioner has undergone punishment during the period of consideration and relied on Government Letter No. 52312 / S / 2000-14, dated 03.03.2013. The petitioner relied on the full Bench Judgment of this Court reported in **2011 MLJ 4** in the case of **Deputy Inspector General of Police, Thanjavur Range, Thanjavur and another Vs. V. Rani**, wherein the said letter was quashed and therefore, the rejection order ought to be set aside and the respondent cannot quote the quashed letter and deny the claim. The respondent counsel submitted that recovery of Rs.5,53,831/- is ordered on the petitioner and therefore, he is not entitled to the promotion. This Court in Full Bench Judgment has held that the government letters have no statutory force and hence the Government Letter No. 52132 / S / 2000-14 Personnel and administrative Reforms (S) Department dated 03.03.2003 cannot be held against the government employee, stating that the promotion cannot be granted until the recovery of



the amount is over. In this case the petitioner is awarded with a punishment of stoppage of increment for 3 years without cumulative effect and has ordered for recovery of amount of Rs. 5,53,831/-. There are two aspects in the order, one is stoppage of increment and another one is recovery. For recovery, an installment is granted to the petitioner. In cases of recovery, the installments may run beyond the superannuation period also and during that time the pension amount would be modified. Likewise if promotion is granted, there will be increase in the salary amount and the respondents have power to modify the installment based on the increase in salary in the promoted post. Moreover the respondents have power to collect from the terminal benefits also. Therefore the respondent cannot deny the promotion beyond the period of three years by showing the recovery is still pending. Moreover the Government Letter No. 52132 / S / 2000-14 Personnel and administrative Reforms (S) Department dated 03.03.2003 has no statutory force as held in Rani's case. Therefore this Court is of the considered opinion that the respondent cannot deny the promotion for the above stated reasons.

9. Therefore, on both the grounds impugned order passed by the respondent is set aside and accordingly, the Writ Petition is allowed. The respondent is directed to grant promotion to the petitioner in accordance to law without denying by showing the qualification and recovery of amount. The respondent is at liberty to modify the installment amount based on the increase in salary in the promotion post. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2022

Sub Assistant Registrar(CS)

trp
To

The Commissioner,
Tirunelveli Municipal Corporation, Tirunelveli.

+1 CC to M/s.D.SARAVANAN, Advocate (SR-38019[F] dated 09/12/2021)

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