



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.11679 of 2018

and

W.M.P (MD)Nos.10629, 10630 & 10631 of 2018

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K.S.Baskar Pandian

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai-9.
- 2.The Chief Engineer/Personal,
Tamil Nadu Generation & Distribution
Corporation Ltd., (Administration Branch)
8th Floor, N.P.K.R.R.Malligai,
144, Anna Salai,
Chennai-2.
- 3.The Commissioner of Municipal Administration,
Municipal Administration and Water Supply Department,
Chepauk, Chennai-5.
- 4.The Commissioner,
Madurai Corporation,
Madurai.
- 5.The Superintending Engineer,
Madurai Electrical Distribution Circle Metro,
K.Pudur, Madurai.

6.S.Nalla Thambi

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings in Memo No.033379/349/G14/G141/2017, dated 20.04.2018 and quash the same as illegal and unconstitutional, consequently direct the fourth respondent to appoint the petitioner as Assistant Engineer (Electrical) by promotion, taking into account of his educational qualification in the light of G.O.Ms.No.13, Municipal Administration and Water Supply Department, dated 14.02.2003 and in light of recommendation made by the first respondent in Na.Ka.No.30451/2016/F4, dated 27.02.2018.



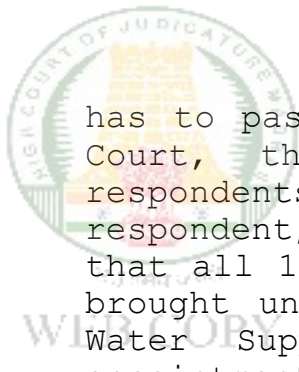
For Petitioner : Mr.M.Thirunavukkarasu
For R1 : Mr.P.Subbaraj
Government Advocate
For R2 & R5 : Mr.T.Sakthikumaran
For R4 : Mr.T.S.Mohamed Mohideen

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ORDER

This writ petition is filed by the petitioner to quash impugned order passed by the second respondent in his proceedings in Memo No.033379/349/G14/G141/2017, dated 20.04.2018, and consequently direct the fourth respondent to appoint the petitioner as Assistant Engineer (Electrical) by promotion, taking into account of his educational qualification in the light of G.O(Ms)No.13, Municipal Administration and Water Supply Department, dated 14.02.2003 and in light of recommendation made by the first respondent in Na.Ka.No.30451/2016/F4, dated 27.02.2018.

2. According to the petitioner, he was working as Skilled Assistant Grade-II (Line Inspector) in the fourth respondent Corporation and after creation of posts, due process of selection by Selection Committee, the fourth respondent, by his proceedings, dated 06.01.1998, appointed the petitioner as Line Inspector and he joined duty on 12.01.1998 at Street Lights Maintenance Section in the fourth respondent Corporation. At the time of appointment as Line Inspector (Street Light), the petitioner had completed ITI and subsequently, after obtaining permission from the fourth respondent, he obtained Diploma in Electrical Engineering and B.E., (Electrical Engineering). For more than 21 years, the petitioner and similarly placed persons were working as Line Inspectors. One A.Palanikumar and 4 others, who are similarly placed persons, like the petitioner, filed a writ petition in W.P.(MD)No.18186 of 2016 for a direction to the respondents 1 and 3 herein to promote them to higher posts either by bringing them under the preview of the existing Service Rules or by framing appropriate Service Rules. This Court, by order, dated 22.09.2016, directed the respondents 1, 3 and 4 herein to complete the whole exercise within two months from the date of receipt of a copy of that order, by taking into consideration the fact that the petitioners are longing for promotion for quite a long time. In pursuance of the order of this Court, dated 22.09.2016, made in W.P.(MD)No.18186 of 2016, the fourth respondent, by the proceedings, dated 16.11.2016, addressed to the first respondent through the third respondent, with a request to issue suitable orders whether the petitioners in the said writ petition should be brought under the Corporation Employees Services Rules based on their educational qualification or to create separate Service Rules for Street Light Section. On receipt of the said letter, the third respondent through his letter, dated 20.12.2016, informed the first respondent stating that the appointing authority to the post of Assistant Engineer is the Commissioner, Madurai Corporation and he



has to pass orders in this regard. Pursuant to the order of this Court, there was some *inter se* correspondence between the respondents 1,3 & 4. After such correspondence, the first respondent, by the proceedings, dated 15.02.2017 passed an order that all 17 Street Light Employees of Madurai Corporation should be brought under the Tamilnadu Municipal Corporations Engineering and Water Supply Service Rules, 1996 and they should be given appointment based on their educational qualification. Based on such direction, the fourth respondent vide proceedings, dated 31.03.2017, reverted the petitioner and 15 others from their respective posts and the petitioner was reverted to the post of Skilled Assistant (Grade-II) from the Line Inspector without any valid reason and against the orders of the respondents 1 & 3. The petitioner and others gave a memorandum to the third respondent to revoke the order passed by the fourth respondent, dated 31.03.2017. While there was an *inter se* correspondence between the respondents 1,3 & 4 with regard to promotion of the petitioner as Assistant Engineer, the second respondent, by the proceedings, dated 20.04.2018, posted the sixth respondent on deputation to the post of Assistant Engineer. The petitioner has come out with the present writ petition challenging the said order of the second respondent and also seeking appointment as Assistant Engineer (Electrical) by promotion taking into account of his educational qualification in the light of G.O. (Ms)No.13, Municipal Administration and Water Supply Department, dated 14.02.2003 and in the light of recommendation on the third respondent, dated 27.02.2018.

3. The learned counsel appearing for the petitioner vehemently contended that the impugned order appointing the sixth respondent in the fourth respondent Corporation as Assistant Engineer in the existing vacancy is contrary to the provisions of Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules, 1996. Rule 6 of the Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules, 1996 enables the appointing authority to appoint a person only in case of non-availability of suitable candidates at relevant point of time. When the petitioner and other eligible candidates are available, the impugned order appointing the sixth respondent is illegal and violation of service Rules of the fourth respondent.

4. As per the Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules, 1996, a person can be deputed to any posts in the service of the fourth respondent, only if there is no eligible candidate available in the fourth respondent Corporation. The learned counsel appearing for the petitioner submitted that the petitioner is having requisite educational qualification to be appointed as Assistant Engineer (Electrical), as he is possessed Diploma in Electrical and B.E. (Electrical). The learned counsel appearing for the petitioner further submitted that the deputation of sixth respondent as Assistant Engineer (Electrical) in the fourth respondent Corporation must be set aside.

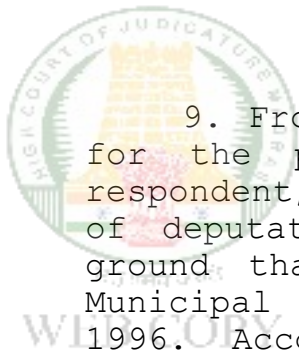


5. The learned counsel appearing for the petitioner further submitted that pending writ petition, the petitioner was promoted as Assistant Engineer (Electrical) as per the interim order passed by this Court. The promotion was given to the petitioner as per the direction, dated 19.03.2019, to the third respondent to promote the petitioner and others after verifying the qualification and subject to the result of the writ petition. On such direction, Council of the fourth respondent passed a resolution, dated 14.06.2019, resolving to promote the petitioner and others as Assistant Engineer (Electrical). The first respondent, by G.O.(D) No.149, Municipal Administration and Water Supply (MC4) Department, dated 30.04.2020, confirmed the appointment of the petitioner in the post of Assistant Engineer (Electrical) with effect from 19.03.2019 subject to the result of the writ petition.

6. The second respondent filed counter affidavit. The learned counsel appearing for the second respondent contended that the impugned order of deputation of the sixth respondent was cancelled, vide CE/Per/Chennai Memo.No.033379/345/G14/G141/2017-3, dated 11.06.2018 and the relief sought for by the petitioner to quash the order of deputation has become infructuous and prayed for dismissal of the writ petition against the second respondent.

7. The fourth respondent filed counter affidavit. The learned counsel appearing for the fourth respondent submitted that the petitioner was selected only for the purpose of Street Light Maintenance. As per the order of this Court, dated 22.09.2016, in W.P(MD)No.18186 of 2016, the said Palanikumar and four others were brought under the Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules, 1996, on 15.02.2017, but they are absorbed only as Skilled Assistant Grade-II fixing the same salary paid in the cadre of Street Light Maintenance (Line Inspector). The post of Assistant Engineer has to be filled up only by direct recruitment as per the Rule. The said post cannot be filled up by promotion. In view of the specific Government Order to the effect that the Street Light Assistant Engineer posts can be filled through deputation from Tamil Nadu Electricity Board, the fifth respondent deputed the sixth respondent in the said post and hence, the impugned order of deputation of sixth respondent is valid. The Street Light Maintenance Division Establishment is not under the Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules, 1996. Therefore, the request of the petitioner that he should be promoted as Assistant Engineer is not acceptable.

8. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the first respondent, learned counsel appearing for the respondents 2, 5 & 4 and perused the materials available on record.



9. From the above submissions of the learned counsel appearing for the petitioner, the respondents 1,3 & 4 and the second respondent, it is seen that the petitioner has challenged the order of deputation of sixth respondent as Assistant Engineer on the ground that the same is contrary to Rule 6 of the Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules, 1996. According to the petitioner, only when no eligible candidates are available in the fourth respondent Corporation, a person can be deputed to the post of Assistant Engineer (Electrical). When the petitioner and others are available in the fourth respondent, the deputation of sixth respondent is invalid and contrary to the Rule. The writ petition is filed on 29.05.2018. The second respondent in the counter affidavit has stated that the impugned order of deputation of sixth respondent as Assistant Engineer in the fourth respondent Corporation was cancelled by the proceedings, dated 11.06.2018. In view of cancellation of deputation of sixth respondent by the second respondent, subsequent to the filing of the writ petition, the question whether the deputation can be made when the eligible candidates are available in the fourth respondent and whether the same is contrary to Rule 6 of the Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules, 1996, is only academic interest in the present writ petition. If in future any deputation is made contrary to Rule 6 of the Tamilnadu Municipal Corporation Engineering and Water Supply Service Rules, 1996, it is open to the aggrieved person to challenge the same in the appropriate forum. In view of cancellation of deputation of sixth respondent, the first portion of the relief sought for to quash the deputation of sixth respondent has become infructuous. Hence, the writ petition is disposed of as the first prayer viz., quashing the impugned order of deputation, is infructuous.

10. From the proceedings of the respondents 1, 3 & 4, it is seen that the petitioner was appointed as Assistant Engineer (Electrical) on 08.03.2019 and the said appointment is subject to result of present writ petition and direction is given to the fourth respondent to verify the qualification of the petitioner and others and appoint them as Assistant Engineer (Electrical). The petitioner is having requisite educational qualification. The Council of the fourth respondent passed a resolution, dated 14.06.2019, resolving to promote the petitioner and others as Assistant Engineer (Electrical) and the same was confirmed by the first respondent in G.O.(D) No.149, Municipal Administration and Water Supply (MC4) Department, dated 30.04.2020, subject to the result of the writ petition. The case of the petitioner and other similarly placed persons were considered as per the direction of this Court, dated 22.09.2016 made in W.P(MD)No.18186 of 2016 filed by A.Palanikumar and 4 others as petitioner and others were stagnating in the same post for more than 21 years. The respondents 1, 3 and 4 were directed to consider the petitioner and others to higher post either by bringing them under the purview of existing services or by framing appropriate service Rules. In view of



the same, the contention of the fourth respondent that post of Assistant Engineer can be filled up only by direct recruitment is without merits. Similarly, the judgment in W.A.No.1 of 2011 relied on by the learned counsel for the fourth respondent is not applicable to the facts of the present case.

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11. Considering the proceedings of the respondents 1, 3 & 4 and resolution of the fourth respondent, dated 14.06.2019, the petitioner is entitled to the second portion of relief sought for in the writ petition as the petitioner is fully qualified to be appointed as Assistant Engineer (Electrical). The petitioner was promoted as Assistant Engineer (Electrical) pending writ petition and such appointment is confirmed from 08.03.2021. The fourth respondent is directed to permit the petitioner to continue to work as Assistant Engineer (Electrical).

12. The learned counsel appearing for the petitioner submitted that from the date of promotion on 14.06.2019 the petitioner was not paid the salary. The fourth respondent is directed to pay the arrears of salary as well as continue to pay the salary in the promotional post.

13. With the above directions, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

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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 Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai-9.



2.The Chief Engineer/Personal,
Tamil Nadu Generation & Distribution
Corporation Ltd., (Administration Branch)
8th Floor, N.P.K.R.R.Malligai,
144, Anna Salai, Chennai-2.

3.The Commissioner of Municipal Administration,
Municipal Administration and Water Supply Department,
Chepauk, Chennai-5.

4.The Commissioner,
Madurai Corporation,
Madurai.

5.The Superintending Engineer,
Madurai Electrical Distribution Circle Metro,
K.Pudur, Madurai.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-22432[F] dated
14/07/2021)

+1 CC to M/s.M.THIRUNAVUKARASU, Advocate (SR-22439[F] dated
14/07/2021)

+1 CC to M/s.T.S.MOHAMED MOHIDEEN, Advocate (SR-22570[F] dated
14/07/2021)

W.P. (MD) No.11679 of 2018

14.07.2021

PM(CO)

LR (23.07.2021) 7P 9C