



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.29231 of 2010
and M.P.No.1 of 2010

P.Selvaraj

.... Petitioner

-Vs-

1. Director of Municipal Administration,
Chepauk, Chennai-5.
2. Regional Director of Municipal,
Administration, Tanjore Regional Office,
Tanjore, Tanjore District.
3. Executive Officer,
Ariyalur Municipality,
Ariyalur, Ariyalur District.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to promote the petitioner as Sanitary Supervisor as per the panel of the 3rd respondent in Na.Ka.A1/591/2009 dated 20.07.2009 by considering the representation dated 27.07.2009 made by the petitioner.

For Petitioner : M/s.C.S.Associates
For Respondents : Mrs.E.Renganayaki
Additional Government Pleader-For R1 & R2

O R D E R

This Writ Petition is filed for a direction to the respondents to promote the petitioner as Sanitary Supervisor as per the panel dated 20.07.2009.

2. The case of the petitioner is that the petitioner was working as a Sanitary Worker in the 3rd respondent Municipality. The next higher post is that of the post of Sanitary Supervisor and the said post is to be filled up in accordance with the Municipal Subordinate Service Rules. The petitioner was fully eligible to be promoted to the said post. As a matter of fact,



the panel was drawn on 20.07.2009, wherein, the name of the petitioner was shown at No.1. However, eventhough thereafter one K.Villavan was promoted, the petitioner was never promoted and hence this Writ Petition is filed.

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3. The respondents have filed a counter affidavit and an additional counter affidavit. It is the case of the respondents that the panel referred to by the petitioner is the tentative seniority list and Thiru K.Villavan, who is shown as No.2 in the seniority list objected to the tentative seniority list, and upon consideration of his objection list, thereafter, revised list was published on 07.09.2009 whereby, the said K.Villavan name has become No.1 and the petitioner was placed on Serial No.2. However, when there were two posts of Sanitary Supervisor, which were vacant, by proceedings of the Director of Municipal Administration namely, the 1st respondent dated 19.10.2010, it was ordered that one of the post of Sanitary Supervisor is to be filled up by way of compassionate appointment and therefore promotion was not given to the petitioner.

4. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the records of the case.

5. In this case, I am unable to accept the stand of the respondents because the Recruitment Rules for the post of Sanitary Supervisor is as per the Tamil Nadu Municipal (Non-Centralized-Regular) Public Health Establishment Regularization, 1976 and the relevant Rule is extracted hereunder:

Category	Method of Recruitment
(1)	(2)
Category 5-Driver (lorry motor or tractor)	(i) Promotion from among Cleaners, or (ii) if no qualified and suitable person is available for promotion, recruitment by transfer.
Category 11-Sanitary Supervisor	(i) Promotion from among Sanitary Workers and Watchman, or
Category 12-Public Health Peon	(ii) If no qualified and suitable person is available for promotion by transfer or by direct recruitment.
Category 17-Sanitary Workers	Direct Recruitment

6. Therefore, it may be seen that the post of Sanitary Supervisor has to be filled up by way of promotion and only if



there are no suitable candidates available, then it can be filled up by way of transfer or direct recruitment. Only the vacancies arising in respect of direct recruitment can be filled up by way of compassionate appointment. When there are eligible candidates for promotion, there was no jurisdiction for the 1st respondent to set apart one vacancy for compassionate appointment and deprive the petitioner for promotion, as the same is directly in contravention with the Rules. Therefore, I hold that the action of the respondents is illegal. The petitioner is entitled for promotion from the date of promotion of the said Thiru K.Villavan i.e, from 22.11.2010.

7. However, since the petitioner is superannuated from service on 30.06.2020, this Writ Petition is allowed on the following terms:

(i) The petitioner is to be promoted as Sanitary Supervisor notionally with effect from 22.11.2010;

(ii) Accordingly, his last drawn salary to be refixed and the petitioner is entitled to retiral and pensionary benefits on such basis;

(iii) The petitioner shall not be entitled to arrears of salary till date of his superannuation;

(iv) The petitioner shall be entitled to arrears of retiral benefits and pension, however without any interest;

(v) The above exercise to be carried out within a period of two months from the date of receipt of a copy of this order.

8. With the aforesaid observations and directions, this Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Anu
To

1. Director of Municipal Administration,
Chepauk, Chennai-5.



2. Regional Director of Municipal,
Administration, Tanjore Regional Office,
Tanjore, Tanjore District.

3. Executive Officer,
Ariyalur Municipality,
Ariyalur, Ariyalur District.

+1 cc to Mr.P.Ganesan, Advocate Sr.NO.25206
+1 cc to Mr.T.Seenivasan, Advocate Sr.NO.25034
+1 cc to Government Pleader Sr.NO. 26157

W.P.No.29231 of 2010

NR(CO)
A.SK(29/04/2022)