



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
22.02.2022	21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.13362 of 2020

1 M.Rajan ...Petitioner

Vs.

1 Principal Secretary To Government,
Municipal Administration And Water Supply
Department, Secretariat, Chennai -9.

2 Director of Municipal Administration,
No.78, Urban Administrative Building,
Santhome High Road, Chennai -28.

3 Regional Director Of Municipal Administration,
Salem.

4 Commissioner
Mettur Municipality, Mettur, Salem District.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the concerned records relating to the Letter No.5811/Na.Pa.3/2018-19 dated 12.07.2018 passed by the 1st respondent and quash the same in so far as the petitioner is concerned and direct the 1st respondent to regularise the services of the petitioner as electrician Grade-I from the date of his initial appointment on 30.03.1990 with all consequential and monitory and other benefits.

For Petitioner	:	Mr.Gnanasekar
For Respondents 1 to 3	:	Mr.S.Rajesh, G.A.
For Respondent No.4	:	Mr.L.P.Maurya



O R D E R

The case of the petitioner is that he was appointed as Helper on 30.3.1990 in the 4th respondent Municipality being sponsored through Employment office. On 25.8.1999, he was promoted as Electrician Grade I and his scale of pay for the said promotional post was fixed by the fourth respondent on 7.2.2017. Thereafter, a proposal was sent by the 4th respondent on 4.9.2017 to the first respondent recommending the petitioner's case for regularisation for the said promotional post. However, the same was rejected by the first respondent by order dated 12.7.2018. Challenging the impugned order, the petitioner has filed the instant writ petition before this Court.

2. The fourth respondent has filed counter affidavit wherein it is stated that audit objection raised with regard to appointment of the petitioner. As per the Tamil Nadu Municipal Engineering Subordinate Service Rules, 1970, the post of Electrician Grade I can be filled up only by promotion and only in the absence of suitable candidates available for promotion, the appointing authority after getting approval of the Director of Municipal Administration can fill up the vacancies. In the audit objection for the year 2010-2011, it has been specifically pointed out that the necessary permission from the Director of Municipal Administration has not been obtained by the appointing authority for promoting the petitioner to the post of Electrician Grade I. The petitioner was not fully qualified for the said post. Further it is stated that in the absence of educational qualification, the appropriate relaxation ought to have been obtained from the Government which was also not obtained. The Regional Director of Local Fund Audit had indicated that the appointment of the petitioner ought to have been sent to the Government for appropriate orders. Under these circumstances, the representation made by the petitioner seeking regularisation was rejected by the respondent.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. The Regional Director of Local Fund Audit conducted Audit in the fourth respondent Municipality during the year 2010-2011, wherein it was noticed that the petitioner was appointed to the post of Electrician Grade I contrary to the Tamil Nadu Municipal Engineering Subordinate Service Rules, 1970. The Electrician Grade I post comes under Class V Category 4 of the said Rules and the said post should be filled up by way of promotion to the employees comes under the



categories comes under Class VII and VII A i.e. Electrician Grade II, Lighting Inspector, Tap Inspector, etc., not by way of direct appointment or from any other categories of posts. Further, the said Rules prescribes qualification for the post of Electrician Grade I which comes under Category 4 of Class V, viz., Pass in X Standard examination. The petitioner did not possess the prescribed qualification at the time of promotion to the aforesaid post and he was promoted contrary to the said Rules. A xerox copy of the SSLC mark sheet of the petitioner is filed in the typedset which shows the petitioner failed in X Standard examination.

5. A perusal of the audit report of the Regional Director of Local Fund Audit shows that the petitioner who was working as Helper in the respondent Municipality, was promoted to the post of Electrician Grade I contrary to the Rules as well as without obtaining permission from the Commissioner of Municipal Administration and also without prescribed qualification and pay also fixed in the scale of pay of Rs.4000-100-6000 applicable to the Electrician Grade I. Therefore, the Regional Director of Local Fund Audit raised objection in this regard and also directed the fourth respondent to get ratification from the Government and the ratification order should be furnished to the Director of Local Fund Audit. Further, it is also pointed out that by way of promoting the petitioner contrary to the Rules, without permission from the Commissioner of Municipal Administration and without possessing prescribed qualification, a sum of Rs.2,29,360/- was disbursed to the petitioner during the period 2010-2011 towards the difference of pay received by the petitioner in the Electrician Grade I post and the said amount should be recovered from the petitioner.

6. Based on the audit objection, the fourth respondent Municipality forwarded a proposal to the Government to consider the proposal as a special case for approval of the appointment of the petitioner and one Shanmugam in the said post. Further, the petitioner also filed writ petition before this Court in W.P.No.28979 of 2017 seeking direction to the first respondent to consider the proposal submitted by the fourth respondent and regularise the service of the petitioner from the date of his promotion to the post of Electrician Grade I. However, this Court vide order, dated 13.2.2018 without expressing any opinion on merit, directed the first respondent to consider the proposal sent by the fourth respondent and pass orders within a period of eight weeks from the date of receipt of order.



7. Under this background, the first respondent on perusal of the Tamil Nadu Municipal Engineering Subordinate Service Rules, 1970, considered the proposal sent by the fourth respondent Municipality and found that the petitioner and one K. Shanmugam did not possess prescribed qualification at the time of promotion to the post of Electrician Grade I, appointed in the said post contrary to the Rules and without obtaining permission from the Commissioner of Municipal Administration, and such view of the matter, the first respondent rightly rejected the proposal sent by the fourth respondent.

8. Therefore, there is no irregularity or illegality in the order passed by the first respondent and there is no warrant to interfere with the order of the first respondent.

9. Accordingly, the writ petition stands dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1 Principal Secretary To Government,
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- 2 Director Of Municipal Administration,
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Santhome High Road, Chennai -28.
- 3 Regional Director of Municipal Administration, Salem.
- 4 Commissioner, Mettur Municipality, Mettur,
Salem District.

+1 CC to Mr.M. Gnanasekar, Advocate sr 19220
+1 CC to M/s.L.P. Mayura, Advocate sr 19073.
+1 CC to The Special Government Pleader sr 19135.

W.P.No.13362 of 2020

SKM(CO)
SP(11/04/2022)