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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON
04.02.2022

ORDERS PRONOUNCED ON
23.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.18770 OF 2020

AND

W.M.P.NOS.23332, 23333 & 23335 OF 2020

S.Ashok Sudhakar

... Petitioner

.Vs.

1. The Special Officer,
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.
2. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.
3. The Regional Deputy Commissioner (Central),
Greater Chennai Corporation,
No.36B, 2nd Cross Street,
Pulla Avenue,
Shenoy Nagar,
Chennai - 600 030.
4. The Assistant Commissioner (GA&P),
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.
5. G.Muthtamailselvean,
Assistant Executive Engineer,
Coordinator,
Office of Chief Engineer(General),
Greater Chennai Corporation,
Chennai - 600 003.



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6. V.Gughan,
Assistant Executive Engineer,
Zone-IX,
Greater Chennai Corporation,
Chennai - 600 034.
7. V.Radha,
Assistant Executive Engineer,
Mechanical Engineering Department,
Greater Chennai Corporation,
Chennai - 600 003.
8. K.Prabhudass,
Assistant Executive Engineer,
Zone - IV,
Greater Chennai Corporation,
Chennai - 600 021.
9. S.Gomathi,
Assistant Executive Engineer,
Zone - VII,
Greater Chennai Corporation,
Chennai - 600 053.
10. A.Muthukumaraswamy,
Assistant Executive Engineer,
Quality Control Department,
Greater Chennai Corporation,
Chennai - 600 003.
11. K.M.Archana,
Assistant Executive Engineer,
Mechanical Engineering Department,
Greater Chennai Corporation,
Chennai - 600 003.
12. R.Ashok Kumar,
Assistant Executive Engineer,
Bridges Department,
Greater Chennai Corporation,
Chennai - 600 003.
13. P.Arivzhagan,
Assistant Executive Engineer,
Quality Control Department,
Greater Chennai Corporation,
Chennai - 600 003.



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14. M.Jagan,
Assistant Executive Engineer,
North Regional Office,
Greater Chennai Corporation,
Chennai - 600 021.
15. S.V.Akilandeswari,
Assistant Executive Engineer,
Mechanical Engineering Department,
Greater Chennai Corporation,
Chennai - 600 003.
16. S.K.Moorthy
Assistant Engineer,
Zone - XIII,
Greater Chennai Corporation,
Chennai - 600 020.
17. K.Thirumaran
Assistant Engineer,
Zone - X,
Greater Chennai Corporation,
Chennai - 600 024.
18. T.S.Saravanan,
Assistant Engineer,
Zone - VI,
Greater Chennai Corporation,
Chennai - 600 082.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the second respondent impugned selection order and promotion order both in Po.Thu.Na.Ka.No.E1/15211/2019 dated 16.09.2020 and quash the same in so far as respondents 5 to 18 are concerned and the consequent fourth respondent impugned reply letter in Po.thu.Na.Ka.No.E1/21580/2020 dated 20.10.2020 and quash the same consequently directing the second and fourth respondents to promote the petitioner to the post of Assistant Executive Engineer by placing the petitioner above the respondents 5 to 18 in the impugned selection order and the promotion order both dated 16.09.2020 from the date on par with the respondents 5 to 18 with all consequential benefits, continuity of service and other attendant benefits.



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For petitioner : Mr.J.Saravana Vel

For respondents : M/s.Karthikaa Ashok
For R1 to R4

No appearance
For R5 to R18

O R D E R

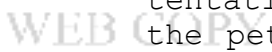
The prayer in the writ petition is as follows:

To issue a Writ of Certiorarified Mandamus to call for the records pertaining to the second respondent impugned selection order and promotion order both in Po.Thu.Na.Ka.No.E1/15211/2019 dated 16.09.2020 and quash the same insofar as respondents 5 to 18 are concerned and the consequent fourth respondent impugned reply letter in Po.thu.Na.Ka.No.E1/21580/2020 dated 20.10.2020 and quash the same consequently directing the second and fourth respondents to promote the petitioner to the post of Assistant Executive Engineer by placing the petitioner above the respondents 5 to 18 in the impugned selection order and the promotion order both dated 16.09.2020 from the date on par with the respondents 5 to 18 with all consequential benefits, continuity of service and other attendant benefits.

2. The facts and circumstances that gave rise to the filing of the writ petitioner are briefly stated hereunder.

2.1 The petitioner is working as Assistant Engineer in the Greater Chennai Corporation, the 4th respondent herein. While he was working as Assistant Engineer in Division No.142, he was issued with a charge memorandum dated 07.02.2017 by the 3rd respondent alleging that the petitioner did not take any action against deviated constructions in respect of unauthorised construction put up by some persons. The petitioner submitted his reply on 15.02.2007 denying the allegations levelled against him. According to him, he had given a detailed explanation as to how he was not responsible in respect of the allegation hurled against him.

2.2 The 3rd respondent, however, not satisfied with the explanation by the petitioner, passed an order of punishment on 09.03.2017, imposing a penalty of stoppage of increment for a period of six months without cumulative effect. As against that, the petitioner preferred an appeal before the first respondent. However, the appeal came to be rejected by the 1st respondent vide order dated 10.08.2017. The punishment which was imposed on



2.3 While matter stood thus, the 4th respondent circulated tentative seniority list dated 25.07.2020, in which, the name of the petitioner was shown at Serial No.19. Subsequent to that, a circular was issued by the 2nd respondent on 16.09.2020, in and by which, it was declared Nil panel for the year 2018-2019 for the purpose of promotion to the next higher cadre of Assistant Executive Engineer. Simultaneously, on the same day, the 2nd respondent issued proceedings selecting respondents 5 to 18 herein and promoting them as Assistant Executive Engineers overlooking the seniority and claim for promotion of the petitioner. According to the petitioner, admittedly, the respondents 5 to 18 herein are juniors to him in the feeder category of Assistant Engineers.

3. Mr.J.Saravanavel, the learned counsel for the petitioner reiterated the above facts. According to him, the reliance placed by the Corporation authorities in rejecting the claim of the petitioner is totally misconceived and misplaced as the Act 2016 is not applicable to Class-III & IV service of the 4th respondent Corporation. The learned counsel would elaborate his submission on the said legal objection as under.

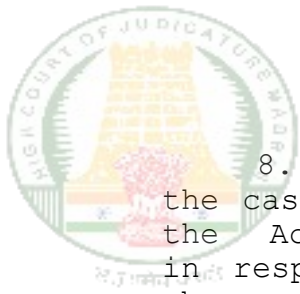


4. The 4th respondent Corporation has formulated its own service rules/regulations governing the service conditions of its employees belonging to particular classes of service. The petitioner herein admittedly belongs to Class-III service which is not in dispute at all. His claim for promotion to the next higher grade of Assistant Executive Engineer falls within the framework of The Madras (Chennai) Corporation Engineering Service Rules, 1969. The promotion to the post of Assistant Executive Engineer to be effected in terms of the above Engineering Services Rules, 1969, exclusively applicable to the 4th respondent Corporation.

5. As far as the promotion of employees belonging to Class-III and Class-IV service of the Corporation and who come under a cloud facing disciplinary or criminal action, they are governed by Chennai Corporation Class-III and IV Service (Discipline and Appeal) By-laws, 1983. In terms of the scheme of the by-laws, the 5 years embargo is not part of the prescription, as in the case of the Government employees covered under the Act, 2016. In the said circumstances, the rejection of the petitioner's claim for promotion in 2017 on the basis of the rules which are not applicable to the Corporation employees belonging to Class-III and IV services, suffers from non-application and misapplication of mind on the part of the authorities concerned.

6. In this regard, the learned counsel would refer to Section 85 of the Chennai City Municipal Corporation Act, 1919, hereinafter referred to as the Act, 1919. In terms of Section 85, the posts of Assistant Engineer are classified as Class-III and they are appointed to service under the Corporation. In terms of sub-clause(b) of section 85, every appointment to any post included in Class-I(B) or Class-II shall be made by the council and shall be subject to confirmation by the State Government. The learned counsel would clarify that the promotional post of Assistant Executive Engineer is classified as Class-II service. The subject promotion is therefore, from Class-III to Class-II service.

7. In the same breath, the learned counsel would also refer to section 86 which lay down conditions of service of Corporation establishment. The learned counsel would particularly draw reference to sub-clause 2 of Section 86 which provides that in case of employees included in Class-III and Class-IV, the conditions of service shall be regulated by, by-laws made by the Council under Section 349 of the Act, 1919. Since the subject promotion is from Class-III to Class-II, the Discipline and Appeal By-laws, 1983 that are specifically framed for the Corporation Employees belonging to Group III and Group IV services alone would be applicable.



8. The learned counsel would further contend that it is not the case of the Corporation that the rules have been amended or the Act 2016 has been specifically adopted by the Corporation in respect of Class-III and Class IV services also. In the absence of any categorical statement in this regard and also the provision of the Chennai City Municipal Corporation Act, 1919, being very clear on this aspect, the basis for rejection of the petitioner's claim therefore, cannot be countenanced in law or on facts.

9. According to the learned counsel, the claim for promotion by the petitioner to the post of Assistant Executive Engineer in 2017 is not denied or resisted, that he was otherwise not qualified or eligible. The only basis for rejection and opposition to the grant of relief is the application of the aforementioned provision of the Act, 2016. In order to re-emphasise the fact that the Act, 2016 is not be applicable to the officers of the Corporation, unless it is specifically adopted by any resolution of the Corporation Council, the learned counsel would in this regard refer to Section 2 of Act, 2016 which read as under.

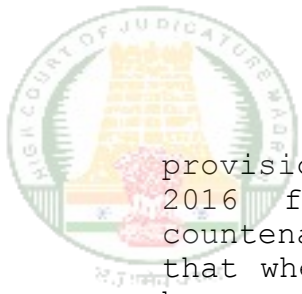
2.Application- This Act shall apply to the holders of all posts, whether temporary or permanent, in all State and Subordinate Services except to the extent otherwise expressly provided-

(a) By or under any law for the time being in force; or

(b) In respect of any member of such service by a contract or agreement subsisting between such member and the Government.

10. As could be seen above, it has been specifically stated that the Act shall apply to the holder of all posts in all State and Subordinate Service. In such circumstances, there is no escaping from the fact that the petitioner's claim falls outside the scope of the Act 2016 on one hand and on the other, it is governed by the provisions of the Madras (Chennai) Corporation Class III and Class IV Services (Discipline and Appeal) Bye-laws, 1983 r/w The Madras (Chennai) Corporation Engineering Service Rules, 1969.

11. The learned counsel would finally draw the attention of this Court to the counter affidavit which clearly admitted that the petitioner was senior and it was also not disputed that the juniors namely respondents 5 to 18 were posted ahead of the petitioner. Therefore, the only issue that requires clarification and the ruling from this Court is whether the



provision relied upon by the Corporation in terms of the Act 2016 for rejecting the claim of the petitioner can be countenanced in law or not? The learned counsel would submit that when an employee belonging to specified classes is governed by a separate set of regulations and the rules, it is not open to the Corporation to rely on an alien provision from the Act 2016 stated to be applicable to the Government servants only. He would therefore, implore this Court to hold that the impugned rejection by the corporation is unsustainable in law.

12. In response to the notice issued in the Writ petition, Ms.Karthikaa Ashok, entered appearance for the respondent Corporation. On behalf of the Corporation, counter affidavit has also been filed. In the counter affidavit, the only contention raised against the petitioner's claim is the applicability of Schedule-XI, Part A, II(11). As submitted by the learned counsel for the petitioner, in the counter affidavit, it is fairly stated that the petitioner is senior and his seniority has been overlooked only because of the bar provided in the Act 2016.

13. The learned counsel for the Corporation would then proceed to make submissions that the Act, 2016, is applicable throughout the State and would govern all services. According to her, since the Madras (Chennai) Corporation comes under the overall control of the State Government, any State Act governing the conditions of service of the Government servants would automatically apply to the Corporation services also.

14. In this regard, the learned counsel would rely on two decisions of this Court. The first decision which has been referred to by her is a Division Bench decision rendered in W.A.No.546 & 620/2015 dated 05.10.2018. According to the learned counsel, the Division Bench of this Court, while dealing with the case of Assistant Health Officer of the Corporation, considered the dispute relating to the promotion to the post of Additional City Health Officer, belonging to higher service. The learned counsel, further relied upon another recent Division Bench decision in W.A.Nos.844 and 1947 of 2020 dated 24.11.2021. The decision of the Division Bench as a matter of fact support and strengthen the case of the petitioner. In the decision, a reference has been drawn to the fact that the service conditions of Class-III and Class IV employees are governed by the By-laws made by the Corporation Council. The relevant paragraphs of the decision would be referred to infra to demonstrate how reliance place on the decision is misplaced and erroneous.

15. The learned counsel would also submit that the Discipline & Appeal bye-laws are applicable only to Class-III



and IV services. As the present appointment is to the post of Class II Service, such appointment is governed by the Government Regulations and the Act 2016, as applicable to all Government Servants, in terms of sub-clause (b) of Section 85 of the Act, 1919. Once, the petitioner is seeking promotion to Class II service, whatever conditions of service that are applicable to such service alone would said to be applicable.

16. According to the learned counsel, the petitioner herein had suffered a punishment for an act of misconduct and was imposed with the penalty of stoppage of increment for a period of 6 months without cumulative effect. The imposition of penalty was during the crucial period when the petitioner came within the zone of consideration for promotion as Assistant Executive Engineer (Class II Service) in 2020. In terms of the provision as contemplated in Schedule-XI Part-A, II(11) five year bar comes into operation for promotion in cases of Government servants imposed with penalty as in the case of the petitioner. She referred to the particular clause which reads as under.

Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.

Therefore, the claim of the petitioner has been rightly rejected and the same cannot be faulted with, warranting interference by this Court.

17. By way of reply, the learned counsel for the petitioner would submit it is an admitted position that in the matter of promotion from the cadre of Assistant Engineer to the post of Assistant Executive Engineer, it is done in terms of the Madras (Chennai) Corporation Engineering Service Rules, 1969. That being the case, the determination of eligibility or qualification of the candidates must also be with reference to the Service Rules applicable to the Corporation employees and it is not open to the Corporation to rely upon a provision outside its own regulation for the purpose of denying promotion. The learned counsel would therefore, submit that it is a fit case for grant of relief as prayed for in the writ petition.



18. Heard Mr.J.Saravanavel, the learned counsel for the petitioner and Ms.Karthikaa Ashok, learned Standing Counsel for the Corporation.

19. Despite notice served on the private respondents, there is no appearance for 5th to 18th respondents.

20. From the above narrative, the focal point for consideration of this Court is whether the provision relied upon for rejecting the claim of the petitioner as per the Act 2016 can stated to be a legally correct position or not? In examination of the above question, it is imperative to refer to section 85 of the Chennai City Municipal Corporation Act, 1919. The reference to the section assumes significance as both the counsels for the petitioner as well as for the Corporation have drawn support for advancing their respective positions in the matter. Section 85 deals with the Corporation establishment.

85. Corporation establishment.-(1) In addition to the other officers appointed under sub-section (2) of section 7, the corporation establishment shall consist of the following classes of officers, namely:- Class I-A.-A health officer, an engineer, an electrical engineer, a waterworks engineer, a drainage engineer, a revenue officer, a chief accounts officer and the educational officer.

Class I-B.-Officers, who in the opinion of the council are of a status equivalent to the status of Class I-A officers appointed to serve under the Corporation.

Class II.-Assistants to Class I-A and Class I-B officers.

Class III.-All other persons (not being persons holding post in a service classified by the council as a last grade service) appointed to service under the corporation.

Class IV.-All persons holding posts in a service classified by the council as a last grade service.

(2) All Class I-A and Class I-B officers shall be heads of departments working under the commissioner.

(3) (a) Every appointment to any post included in Class I-A shall be made by the State Government.



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(b) Every appointment 3 [to any post included in Class I-B or Class II shall be made by the council and shall be subject to confirmation by the State Government.

(c) Appointments to all posts included in Class III and in Class IV and to all other posts not so included shall be made by the appointments committee consisting of the Mayor, the commissioner and two councillors elected by the council, which shall be established for the corporation subject to the bylaws, if any, made by the council.

21. The fact that the petitioner herein belong to Class-III service is not in dispute nor is it in dispute that he is seeking promotion to Class II service (Assistant Executive Engineer). In this regard, two divergent arguments have been advanced opposing each other. On behalf of the petitioner, the learned counsel contended that since the petitioner presently belongs to Class III service, the conditions of service as laid down by the Corporation alone would be applicable. On the other hand, the contention of the Corporation counsel is that the promotion being to Class-II service, it is governed by the Government Rules and Regulation as the Corporation Bye-laws are applicable only to Class III and Class IV services.

22. While examining the rival contentions as above, it is crucial to refer to Section 86 of the Act, 1919, as conjoint reading of both the sections would lend clarity on the controversy. For the purpose of this case, it is sufficient to refer to Section 86 (1) & (2).

86. Conditions of service of corporation establishment.- (1) Save as otherwise provided in this Act, the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the corporation establishment shall be regulated--

(i) in the case of Class I-A, Class I-B and Class II officers, by rules made by the State Government in this behalf ;

(ii) in the case of the employees included in Class III and Class IV, by by-law made by the council under section 349 :

23. In terms of section 86(1) and sub-clause(ii) as extracted above it is beyond any pale of doubt that the employees included in Class III are governed by Conditions of



Service as per the by-laws made by the Council under section 349. Section 349 of the Act 1919 confers power on the Corporation Council to make by-laws. In terms of the power conferred therein, the Chennai Corporation Class-III & IV Service (Discipline Appeal) by-laws came to be framed. The by-laws as framed was also confirmed by the Government as per Section 352. Section 352 reads as under.

352. Confirmation of by-laws by 7 [State Government].—

(1) No by-law made by the council under this Act shall have any validity unless and until it is sanctioned by the 7 [State Government.]

(2) The State Government may, at any time, by notification, repeal wholly or in part or modify any by-law :

Provided that before taking any action under this sub-section, the State Government shall communicate to the council, the grounds on which they propose to do so, fix a reasonable period, for the council to show cause against the proposal and consider its explanations and objections, if any.

(3) The repeal or modification of any by-law shall take effect from the date of the order and shall not affect any thing done, omitted to be done or suffered before such date.

In terms of the requirement of the above section, the Government passed G.O.Ms.363 Rural Development and Local Administration Department dated 18.03.1993, confirming the by-laws, framed by the Council. Therefore, the applicability of the bye-laws to Class III & Class IV services is not open to contest or disputation.

24. The contention on behalf of the Corporation is that the subject promotion being to Class II service (Assistant Executive Engineer), the Act, 2016, any circular/order issued by the Government governing all the Government servants alone are to be made automatically applicable to such appointment by promotion and not the by-laws of the Corporation. According to the counsel, the applicability of the by-laws ought to be confined to appointment/promotions within Class IV and Class II services. This Court is unable to appreciate the stand of the Corporation as canvassed by the counsel in the teeth of the clear provisions contained in Sections 85 and 86 of the Act, 1919. With a view to explicate the position, for clearer



understanding, sub-clauses 3(a) and (b) of Section 85 of the Act, 1919 are once again extracted hereunder.

(a) Every appointment to any post included in class 1-A shall be made by the State Government.

(b) Every appointment to any post included in class I-B or Class II shall be made by the council and shall be subject to confirmation by the State Government.

25. From the above, it could be clearly deduced that the appointing authorities are different in respect of appointment to any post included in Class 1-A and appointment to any post included in Class 1-B or Class-II. In so far as the former, the appointing authority is the Government. For the latter, it is the council, subject to confirmation by the Government. The above provision must be read in conjunction with Section 86 of the Act 1999 is reproduced hereunder once again for due appreciation.

86. Conditions of service of corporation establishment.- (1) Save as otherwise provided in this Act, the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the corporation establishment shall be regulated--

(i) in the case of Class I-A, Class I-B and Class II officers, by rules made by the State Government in this behalf ;

(ii) in the case of the employees included in Class III and Class IV, by by-law made by the council under section 349 :

An officer said to be governed by the rules made by the State Government, if he or she belongs to class 1-A, Class I-B and Class II. Class III and IV are governed by the by-laws made by the Council. The petitioner herein can said to come within the grip of the Act, 2016 or any regulation that are applicable to Government servants after the appointment to Class II Service and not before.

26. In such circumstances, insofar as the subject appointment for promotion is concerned, from Class III to class-II, the conditions of service that are applicable to Class II service cannot be pressed into service at all. Therefore, the contention on behalf of the Corporation by the learned counsel is misplaced, erroneous and liable to be discountenanced. On the



other hand, this Court finds persuasive force in the contention of the learned counsel for the petitioner that the conditions of service as laid down by the Corporation Establishment covering Class-III and IV services alone would be applicable. In such event, as rightly contended by him the 5 year embargo as contemplated in the Act 2016 as relied on by the Corporation can have no application and consequently, denial of promotion on that basis is legally unsustainable.

27. Although, the learned counsel for the Corporation argued vehemently that the State Government is overall in charge of all services and that included the Corporation Services therefore, the conditions of service applicable to the Government servants in terms of the scheme of the Act 2016 are automatically applicable to the services of the Corporation employees, does not inspire this Court to be persuaded for its acceptance. Such sweeping statement unsupported by any materials demonstrating that the Corporation has indeed adopted the Act 2016 in respect of its employees, particularly class III and IV services, being admittedly governed by the by-laws of the Council, in terms of Section 86 of the Act, 1919. In the absence of a pari materia provision namely 5 year bar in the Madras (Chennai) Corporation Class III and Class IV Service (Discipline and Appeal) By-laws, the petitioner herein cannot be stated to have suffered disqualification at the relevant point of time for consideration of his promotion. As stated above, in the absence of any material being produced before this Court that the respondent Corporation has adopted the Act, 2016, for all its services, the argument put forth on that basis is to be rejected as being devoid of merits and substance.

28. As a matter of fact, the Corporation is governed by its own Service Rules for recruitment/promotion and it is also governed by its own Conduct Rules. It was framed in 1968 called Chennai Corporation Servants Conduct Rules, 1968 and so is Disciplinary and Appeal Bye-Laws which came into force in 1993. As referred to above, once, the confirmation has been granted under Section 352 of the Act 1919 by the State Government, the sanctity of the bye-laws cannot be questioned or assailed. The confirmation comes from the Government only after exercising power by the Corporation Council in terms of Section 349 and in that view of the matter, it is not open to the Corporation to contend that the promotion from Class III to Class II service is governed by the provision relied upon by the Corporation in terms of the Act, 2016.

29. At the risk of repetition it is to be held that when a Class III Service person claims promotion to Class II post, the claim of such employee is to be considered within the framework of the provisions that are applicable to Class III service. When



the bye-laws are framed in consonance with the provisions of the Chennai City Municipal Corporation Act, 1919 as per Section 349, the same would have precedence over any other provision or Act. As long as the by-laws are in force, the same would have complete application in governing the service conditions of Class III employees. Merely because the petitioner is seeking promotion to Class II service, certain provisions of Act 2016 cannot be pitchforked into the claim of the petitioner, resulting in denial of his rightful claim for his promotion to the post of Assistant Executive Engineer along with his juniors.

30. As regards the two decisions cited by the learned counsel for the Corporation, the first one W.A.No.546 & 620 of 2015 dated 05.10.2018. That was a case relating to the position held by the petitioner therein, namely Zonal Head Officer which was a Class II post. In that factual context, some discussion centred around applicability of certain provisions of the Tamil Nadu State and Subordinate Service. This Court after perusing the judgment does not see any relevance to the facts and the controversy herein. The decision appears to have been rendered on the entirety of the facts of that case. This Court is unable to countenance the applicability of the decision herein at all.

31. The second decision viz., W.A.No.844 & 1947 of 2013 dated 24.11.2012, the Division Bench as a matter of fact, reinforced and authoritatively affirmed that class III and IV services are governed by the by-laws of the Corporation. This Court is unable to comprehend how the decision is helpful to the cause put forth on behalf of the Corporation. On the other hand, it solidifies the case of the petitioner herein. The discussion and the observations of the Division Bench as found in paragraph Nos.4 and 6 which are reproduced herein below:

4. The learned counsel appearing for the first respondent submitted that the Establishment of Corporation has four classes of Officers and the appellants come under Class - III. So far as the appointment to the posts for Class - III & Class - IV employees are concerned under Section 85(3)(C) of Chennai Municipal Corporation Act, 1919 (hereinafter referred to as 'Act'), the appointment committee of the Corporation consisting of the Mayor, Commissioner and two councilors elected by the council is competent to make appointment. The conditions of Service of Class - III & Class - IV employees are governed by the bye-laws made by the Council of Corporation. In respect of the other two classes, they are governed by the rules made by the State Government under Section 86(1)(2) of the Act and it is only the Council that has the power to



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make the bye-laws and by virtue of the above power conferred on the Council, the present bye-laws was made by the Council for governing their service conditions. The appellants after initial appointment on compassionate grounds, were also appointed as Tax Collectors based on the above bye-laws and promotions were also given to them only based on the same bye-laws. Therefore, after accepting the appointment and also the promotion and after working in the Corporation for nearly 20 years, now, the appellants cannot say that the bye-laws have not been followed and they are not bound by it. Apart from that, under Section 24 of the Act, the first respondent is bound to give effect to every resolution of the Council, unless such a resolution is cancelled in whole or in part by the State Government. It is only the Council which has the powers to frame the bye-laws for the conditions Classes III & IV employees and based on the bye-laws passed by the Council, only promotions were given to the appellants with the above condition. Hence, the appointing authority in so far as the appellants are concerned is the Appointment Committee headed by the Mayor and two Councilors elected by the Council. On the other hand, the appellants accepted the condition stipulated by the respondent Corporation and joined duty as License Inspectors.

....

6. As contended by the learned counsel appearing for the respondent Corporation that the appellants do come under Class ? III services and as per Section 85(3)(i) of the Act, the Appointment Committee of the Corporation consisting of the Mayor, Commissioner and the two Councilors elected by the Council is competent to make appointments. Their conditions of service shall be regulated by the bye-laws made by the Council of the Corporation. Under Section 24 of the Act, the respondent Corporation is bound to give effect to every resolution of the Council, unless such a resolution is cancelled in whole or in part by the State Government. The promotions are being given only in accordance with the existing resolution of the Corporation Council to all Chennai Corporation employees commonly. The introduction of passing of the Accounts Test for Subordinate Officers to the Corporation officials was introduced in the year 1970 itself.



The rulings of the Division Bench in the aforementioned appeals cannot therefore, said to have even a remote application to the factual matrix of this case. As stated above, the latter decision as a matter of fact lends strength to the case of the petitioner, ironically .

32. For all the above reasons, this Court finds that the foundational reason for rejection of the petitioner's claim cannot be countenanced in law. In the said circumstances, the Writ Petition is allowed. The two impugned orders passed by the 2nd respondent in Po.Thu.Na.Ka.No.E1/15211/2019 dated 16.09.2020 and the consequential order passed by the fourth respondent in Po.thu.Na.Ka.No.E1/21580/2020 dated 20.10.2020 are hereby set aside.

33. The respondents 1 to 4 are directed to pass consequential order, promoting the petitioner as Assistant Executive Engineer in Class II service category on par with his juniors who were promoted (respondents 5 to 18) in the panel year 2019-20.

34. On such promotion being granted, the petitioner is also entitled to all attendant benefits like pay fixation, allowances, arrears and fixation of seniority etc.

35. The above encompassing directions are necessary in view of the admitted stand of the Corporation itself that the petitioner was otherwise eligible and senior to be considered for promotion in the panel year 2019-20.

36. The official respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

vsi

To

1. The Special Officer,
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.



2. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.

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3. The Regional Deputy Commissioner (Central),
Greater Chennai Corporation,
No.36B, 2nd Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030.

4. The Assistant Commissioner (GA&P),
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.

+2ccs to Mr.J.Saravana Vel, Advocate, S.R.No.19661
+1cc to M/s.Karthikaa Ashok, Advocate, S.R.No.19441

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