



Writ Appeal No.820 of 2017

Has IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.820 of 2017

The Corporation of Chennai,
Represented by its
Commissioner,
Rippon Building,
Chennai – 600 003. : Appellant

Vs.

1. Dr.K.V.Srinivasalu,
Assistant Health Officer, Zone IX,
Corporation of Chennai,
Chennai – 600 015. : Respondent/Writ Petitioner

2. The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Municipal Administration and
Water Supplies Department,
Fort St. George, Chennai – 9.

3. K.S.Padmini
4. K.S.Mahesh Kumar
5. K.S.Suresh Kumar : Respondents

[RR 3 to 5 substituted vide order of Court dated 17.08.2017 by HGRJ & GJJ
made in CMP.No.13579 of 2017 in W.A.No.820 of 2017]



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Writ Appeal filed u/s.15 of Letter Patent against the order passed by this Court in W.P.No.40386 of 2002 dated 25.09.2012.

For Appellant : Mr.S.Gopinathan
[Panel Advocate for Greater Chennai Corporation]

For Respondent : R1 - Died
Mr.K.M.Ramesh [R3 to R5]

Ms.C.Sangamithirai
Special Government Pleader [R2]

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN.J.)

The Chennai Corporation is on appeal aggrieved by the order of the Writ Court made in W.P.No.40386 of 2002 allowing the writ petition filed by the first respondent challenging the order of the Corporation dated 30.07.2002 rejecting his representation for promotion to the post of Additional Health Officer.

2. The first respondent, who is a graduate in medicine and has also acquired Diploma in Public Health, was appointed as Medical Officer in



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Corporation of Chennai on 20.09.1972 and his services were regularized with effect from 07.10.1973 on completion of successful probation. He was subsequently promoted to the post of Assistant Health Officer temporarily on 10.12.1982. Since then, he was continuously working in that capacity. While so, the Government of Tamilnadu issued a Government Order vide G.O.Ms.No.2309, Health, Indian Medicine Homeopathy and Family Welfare Department, dated 16.12.1989 confirming the temporary promotion as Assistant Health Officer. Subsequently, except the first respondent all the other Assistant Health Officers retired from service or died in harness.

3. Claiming that the next avenue of promotion to the persons holding the post of Assistant Health Officer is Additional Health Officer, the first respondent made a representation to the Corporation seeking promotion. Since the said representation was not considered, the first respondent filed writ petition in W.P.No.9815 of 1997 seeking a mandamus. The said writ petition was allowed on 22.04.1998 directing the second respondent therein/appellant herein to consider the representation of the first respondent herein and fill up the vacancy of the Additional Health Officer. The Corporation filed WMP.No.21288 of 1998 in W.P.No.9815 of 1997 seeking modification of the order dated 22.04.1998 claiming that there was no post of Additional Health



Officer in existence. The said writ miscellaneous petition was allowed and the order in W.P.No.9815 of 1997 was set aside.

4. The first respondent herein preferred an appeal against the order, made in W.M.P.No.21288 of 1998, setting aside the original direction issued in W.P.No.9815 of 1997 in W.A.No.1692 of 1993 and the same was pending. Certain disciplinary proceedings that were pending against the first respondent herein were closed and therefore, the first respondent made a representation on 03.08.2001 seeking promotion. Since the said representation was not considered, he filed W.P.No.19310 of 2001 to consider his representation dated 03.08.2001. This Court issued a direction to dispose of the representation within a period of four weeks. To get over the second direction issued in W.P.No.19310 of 2001, the Corporation claimed that the first respondent has not passed the language test, by its letter dated 09.04.2002. The Corporation also addressed the Government seeking exemption in 2002. The Government rejected the said application by letter dated 29.07.2002. Following the said letter, the Corporation intimated the first respondent that he is not entitled to the promotion on 30.07.2002. It is this order that was challenged in W.P.No.40386 of 2002. This Court, upon consideration of Rule 12-A and Rule 12-F of the Tamil Nadu State and Subordinate Service Rules in W.P.No.1231 of 1981 had



concluded that the Rule 12-A, having been introduced on 05.01.1976, cannot be given retrospective effect. The first respondent was appointed even in the year 1972 and his probation was also declared in 1973, therefore, the new Rule which requires a pass in the Tamil language test cannot be made applicable to the first respondent.

5. The Writ Court also held that the Rule 12-F as it stood at the time of appointment of the first respondent would govern the situation and the same does not require a pass in the language test. As per Rule 12-F, the requirement is that working knowledge of Tamil is sufficient. Having appointed the first respondent in 1972 and having regularised his services in 1973 after satisfactory completion of probation, the appellant Corporation cannot turn around and say that the amended Rule would apply to him.

6. The Writ Court was convinced that the amended Rule will not apply and the original Rule, which requires working knowledge of Tamil language is satisfied by the first respondent. On the said conclusion, the writ petition was allowed, quashing the order of the Corporation and directing the Corporation to grant service benefits as if the first respondent was promoted as Additional Health Officer taking into account the fact that the first respondent had



superannuated by them.

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7. Mr.S.Gopinathan, learned Counsel appearing for the Corporation would contend that the request of the Corporation for exemption was rejected by the Government, which resulted in Corporation denying the promotion to the first respondent. Therefore, it was not responsible for the rejection and it is because of the rejection of the exemption request made to the Government, the Corporation was compelled to deny the promotion to the first respondent.

8. We are afraid that the said stand of the Corporation is unjustifiable. Once it is found that the amended Rule 12-A, which was introduced in 1976, would not retrospectively apply to the first respondent and he satisfied the requirement of law on the date of his appointment, promotion cannot be denied to him on the basis of the Rule introduced subsequently. The original Rule as it stood only requires working knowledge of Tamil which was satisfied by the first respondent.

9. This Court had in fact even in 1981 as pointed out by the Writ Court held that the amended Rule cannot be given retrospective effect. Therefore, we do not find any reason to interfere with the order of the Writ Court. Hence, the



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writ appeal fails and accordingly it is dismissed.

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10. In view of the fact that the first respondent is no more, his legal representatives would be entitled to the benefits. The Corporation will calculate the benefits payable to him by making a notional promotion from the date on which he would be entitled to promotion as Additional Health Officer and pay the retirement benefits to the legal heirs within a period of four (4) months from the date of receipt of a copy of this order.

[R.S.M.,J]

[S.S.K., J]

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Index: Yes/No
mp/srm



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R.SUBRAMANIAN, J
and
SATHI KUMAR SUKUMARA KURUP, J

mp/srm

To

The Secretary to Government,
Municipal Administration and
Water Supplies Department,
Fort St. George, Chennai – 9.

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