

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.30922 of 2019

G.Sundararajan

... Petitioner

-Vs-

The Commissioner
Greater Chennai Corporation
Rippon Building, Chennai 600 003.

... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records by quashing the impugned order Po.Thu.Na.Ka.No.E8/13863/2015 issued by respondent dated 11.01.2018 and direct the respondent to promote as Typist from the date of approval of the Panel 13.12.2010 with all service and monetary benefits.

For Petitioner : Mr.A.Muruganandam

For Respondents : Ms.M.Dhanisha
for Mrs.Karthika Ashok,
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records by quashing the impugned order Po.Thu.Na.Ka.No.E8/13863/2015 issued by respondent dated 11.01.2018 and direct the respondent to promote the petitioner as Typist from the date of approval of the Panel 13.12.2010 with all service and monetary benefits.

2. The petitioner was appointed as Sweeper at the respondent Corporation sometime in the year 2008. Prior to his appointment some 79 Nos.of promotions were given from the feeder category to the post of Typist by taking 01.10.2006 as the crucial date by making necessary amendment in the bye-laws framed in this regard by the Corporation Council.

3. Subsequently, in the year 2009 once again the bye-laws

got amended under which the amending provision makes it clear that the approved probationers from all lower categories can be promoted, but the candidate should have completed two years of qualifying service.

4. In this context, since the petitioner was appointed only in the year 2008 he has not completed the two years qualifying service on the crucial date. Therefore, only five persons who have completed the qualifying service as per the amended Rule got promoted.

5. Third time also the Rule got amended. Now the qualification fixed for promotion is that the person who seeks promotion should have completed two years service in the feeder category viz., Record Clerk. Since the petitioner had never been appointed as Record Clerk and was only working as Sweeper, he was not considered for promotion to the post of Typist.

6. Thereafter, fourth time once again the Rule got amended under which from all categories promotion can be given for those who have completed two years in the feeder category. Only by virtue of this amendment, since the petitioner had already completed two years in the Sweeper post, which was also considered to be one of the feeder category, he has been given promotion by the proceedings dated 29.01.2015 and accordingly he has been promoted as Assistant in the year 2016.

7. After getting these promotions, the petitioner sought for retrospective promotion to the post of Assistant with effect from 2009 on par with others as per the earlier amended Rule. Since the said request had been turned down by the respondent Corporation by order dated 11.01.2018, challenging the same the present writ petition has been filed.

8. Heard the learned counsel for the petitioner, who would submit that, the earlier amendments made thrice ie., in the years 2006, 2009 and 2010 were made without following the procedure as contemplated under Section 352 of the Chennai City Municipal Corporation Act, 1909 and therefore based on those amendments, if at all any promotion had been given to others, the same promotion has to be given to the petitioner. Therefore, he seeks retrospective promotion at least from 2009. Since the same has been turned down, the impugned order could not be sustained, he contended.

9. Heard the learned Standing Counsel appearing for the respondent Corporation, who would submit that the Corporation is

empowered to make amendments to the bye-laws in accordance with law. Accordingly, no doubt four times the Rule got amended depending upon the contingency and exigency. Therefore, those amendments cannot be questioned. More over, those amendments were not questioned by the petitioner.

10. In fact one such amendment has paved the way to the petitioner to get promotion to the post of Assistant in the year 2016 and therefore the petitioner cannot go hot and cold and accordingly the claim made by the petitioner is unsustainable and the writ petition is liable to be dismissed, she contended.

11. I have considered the rival submissions made by the learned counsel on either side and have perused the materials placed on record.

12. As has been rightly pointed out by the learned Standing Counsel for the respondent Corporation, the power to make amendment to the bye-laws is vested with the Council of the Chennai Corporation, which they have done at least four times. The petitioner has not challenged the first three amendments, whereas he makes a hue and cry now without challenging any of the amendment.

13. Be that as it may. Now he has challenged the fourth amendment, that too orally, which alone paved the way for the petitioner to get promotion to the post of Assistant. When that being the position, the manner in which the earlier amendments have been made is same as that of the one that is made in the fourth amendment, now the fourth amendment cannot be questioned by the petitioner as that action is nothing but the petitioner has remained hot and cold on the same issue.

14. More over, in this writ petition such earlier amendments have not been challenged by the petitioner and the impugned order rejecting the request of the petitioner for retrospective promotion alone is under challenge. Therefore, all the earlier amendments, according to the petitioner, have been given effect to and therefore that has not been questioned. Hence, the petitioner also cannot seek for any retrospective promotion based on the amendments made either in the year 2009 or in 2010, under which the petitioner admittedly is not entitled or eligible to the post of Assistant.

15. For all the above reasons, the impugned order cannot be successfully assailed by the petitioner. The writ petition is liable to be dismissed and it is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

KST

To

The Commissioner
Greater Chennai Corporation
Rippon Building, Chennai 600 003

+1cc to Mr.A.Muruganandham, Advocate, S.R.No.32137

+1cc to M/s.Karthikaa Ashok, Advocate, S.R.No.32208

W.P.No. 30922 of 2019

JPL(CO)
UMA(13/06/2022)