



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2022

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) Nos. 3088 & 3107 of 2020

and

W.M.P. (MD) Nos. 2637, 2638, 2640, 2645, 2648 & 2649 of 2020

K.Gopi

...Petitioner in both Writ Petitions

/Vs./

1. State of Tamil Nadu,
represented by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai-600 009.
2. The Commissioner of Municipal Administration,
Urban Administration Office Complex,
9th and 10th Floor,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028.
3. The Director of Town Panchayats,
Urban Administration Office Complex,
7th and 8th Floor,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028. ...Respondents 1 to 3 in all Writ Petitions
4. B.K. Ramesh,
Assistant Engineer,
Tiruchendur Town Panchayat,
Thoothukudi District,
Tirunelveli Region.
5. S.Arun Kumar,
Assistant Engineer,
Kattumannar Kovil,
Cuddalore District,
Cuddalore Region. ...4th and 5th Respondents in
W.P (MD) No.3088 of 2020
4. M.Gurusamy
Assistant Engineer,
Courtalam Town Panchayat,
Tirunelveli District,
Tirunelveli Region. ...4th Respondent in
W.P. (MD) No.3107 of 2020



PRAYER in W.P. (MD)No.3088 of 2020:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, Calling for the records on the file of the 2nd respondent in connection with impugned proceeding issued in Roc.No.98/2019/F-2 dated 26.12.2019 and the impugned proceedings of the 3rd respondent issued in Na.Ka.No.1796/2018/A6 dated 10.01.2020 and quash both in respect of deputing and accommodating the respondents 4 and 5 to the 3rd respondent department as illegal, arbitrary and without jurisdiction and consequently direct the 1st respondent to approve and publish Draft Rules send by the 3rd respondent based on the specific direction of this Honourable Division Bench of this Court in a batch of Writ Appeals in W.A.(MD) Nos. 1136 of 2013 etc. so as to enable the eligible Overseers working in the 3rd respondent department for promotion to the post of Junior Engineer/Assistant Engineer in the available vacancies within the time limit that may be stipulated by this Hon'ble Court.

PRAYER in W.P. (MD)No.3107 of 2020:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, Calling for the records on the file of the 2nd respondent in connection with impugned proceeding issued in Roc.No.98/2019/F-2 dated 18.12.2019 and the impugned proceedings of the 3rd respondent issued in Na.Ka.No.1796/2018/A6 dated 10.01.2020 and quash both in respect of retaining and accommodating the respondents 4 and 5 to the 3rd respondent department as illegal, arbitrary and without jurisdiction and consequently direct the 1st respondent to approve and publish Draft Rules send by the 3rd respondent based on the specific direction of this Honourable Division Bench of this Court in a batch of Writ Appeals in W.A.(MD) Nos. 1136 of 2013 etc. so as to enable the eligible Overseers working in the 3rd respondent department for promotion to the post of Junior Engineer/Assistant Engineer in the available vacancies within the time limit that may be stipulated by this Hon'ble Court.

For Petitioners	: Mr.M.Raja Ravi Varma for M/s.G.Thalaimutharasu
For Respondents	: Mr.N.Satheesh Kumar Additional Government Pleader for R1 to R3

COMMON ORDER

The transfer and posting orders issued under Rule 31(c) of Part II General Rules under the Tamil Nadu Municipal Service Rules, 1970 transferring certain Assistant Engineers including the respondents 4 and 5 in proceedings dated 26.12.2013 is under challenge in the present writ petitions.



2. At the time of filing the writ petitions, the petitioner was holding the post of Overseer in Srivaikundam Town Panchayat. The petitioner was initially appointed as Technical Assistant as NMR and subsequently brought under the regular establishment. The grievances of the writ petitioner is that the respondents 4 and 5, who are working as Assistant Engineers, were transferred and posted at Town Panchayat on deputation. Because of their deputation, the promotional opportunities are denied. Thus, the petitioner is constrained to move the present writ petitions.

3. The relief sought for is hypothetical and not based on any service conditions. The petitioner at the time of filing the writ petitions is working as Overseer and his next promotional post is Junior Engineer and the petitioner is awaiting transfer and posting of Assistant Engineers in Town Panchayat on deputation. Transferring an employee on deputation is an administrative exigency. The deputation of employees are no way connected with the promotional opportunities of other employees. Promotion per se cannot be claimed as an absolute right, only when the panel is prepared, all the eligible persons are to be considered for inclusion of their names in the panel. Thus, the consideration is a fundamental right of an employee but promotion is not.

4. In the present writ petitions, the petitioner admittedly was holding the post of overseer and challenging the transfer order of the respondents 4 and 5, who were posted as Assistant Engineers on deputation, therefore, the petitioner during the relevant point of time was not even working in the feeder category. Thus, the writ petitions are unnecessary and filed based on certain assumptions and presumptions.

5. The learned counsel for the petitioner made a submission that during the pendency of the writ petitions, the writ petitioner was promoted to the post of Junior Engineer in proceedings, even then, the petitioner has to be further considered for promotion to the post of Assistant Engineer, if he is otherwise qualified and an administrative decision is taken by the competent authority to fill up the post of Assistant Engineer. Therefore, the petitioner has no right to claim promotion and whenever a panel is prepared, the names of all eligible persons are to be considered in the order of seniority and in accordance with the promotion rules in force.

6. The writ petitions are filed merely based on certain presumptions and assumptions as if the deputation of certain Assistant Engineers would affect the promotional prospects of the petitioner. Even the petitioner during the relevant point of time was not working in the feeder category and therefore, he has not established even a semblance of legal right for the purpose of considering the relief as such sought for in the present writ



7. In view of the fact that the petitioner was further promoted to the post of Junior Engineer, he has no locus to question the deputation of Assistant Engineer in Town Panchayat.

8. The writ petitions are devoid of merits and accordingly, the writ petitions stand dismissed. No costs. Consequently connected miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

RR

To

1. State of Tamil Nadu,
represented by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai-600 009.

2. The Commissioner of Municipal Administration,
Urban Administration Office Complex,
9th and 10th Floor,
75, Santhome High Road,
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3. The Director of Town Panchayats,
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Chennai-600 028.

+1 CC to M/s.SPL.GP. (SR-18372,SR-18146[F] dated 12/04/2022)

W.P.(MD)Nos.3088 & 3107 of 2020

and

W.M.P.(MD)Nos.2637, 2638, 2640, 2645, 2648 &2649 of 2020

11.04.2022

RD(12.05.2022) 4P 5C