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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18520 of 2021

and

W.M.P(MD)Nos.15291 & 15294 of 2021

Manikavasagam

... Petitioner

v.

1.The Secretary to the Government
Municipal Administration,
Water Supply Department,
St.Fort George, Chennai – 600 009.

2.The Commissioner of Municipal Administration,
Municipal Administration Commissionerate,
MRC Nagar, Raja Annamalai Puram,
Santhome, Chennai – 600 028.

3.The Commissioner and Special Officer,
Tiruchirappalli City Corporation,
Tiruchirappalli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings in Na.Ka.No.7753/2019/C1 (main) dated 23.04.2021 and to quash the same as illegal, and consequently directing the 2nd respondent to give promotion to the petitioner fixing the date of original appointment (i.e.)



21.10.1993 in the light of G.O.Ms.No.140, Municipal Administration and Water Supply Department dated 27.05.1997 APPENDIX 1 Clarification No. 4(1) and consequently directing the 3rd respondent to give promotion to the petitioner as Assistant Revenue Officer within the time frame as fixed by this Court.

For Petitioner : Mr.M.R.Sreenivasan

For Respondents : Mr.R.Baskaran,
Standing Counsel/Additional Advocate General

ORDER

Heard the learned counsel for the petitioner and the learned standing counsel/Additional Advocate General for the respondents.

2.The petitioner joined K.Sathanur Town Panchayat as Bill Collector on 21.10.1993. The said local body got merged with Trichy Corporation. The petitioner continued to be a corporation employee in the capacity of Tax Collector. The petitioner seeks promotion to the post of Assistant Revenue Officer. His request was rejected by the impugned order. Challenging the same, this writ petition has been filed.



3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He took me through the relevant rules and regulations issued by the Government vide G.O (Ms) No.140 Municipal Administration and Water Supply Department dated 27.05.1997. He placed considerable reliance on the order dated 03.09.2012 made in WP (MD)No.11555 of 2008 (***S.Durai v. The State of Tamil Nadu***).

4.The respondents filed counter affidavit and the learned Additional Advocate General took me through its contents. He submitted that the impugned order is strictly in consonance with the relevant rules and that the impugned order does not warrant any interference.

5.I carefully considered the rival contentions and went through the materials on record. There can be no dispute that the issue raised in this writ petition is covered by the earlier order dated 03.09.2012 made in WP(MD)No. 11555 of 2008. Paragraph Nos.12 & 13 of the said order reads as follows :

“12.As on today, Mr.P.Subramaniam and Mr.S.Sirajudeen are stated to be working as Assistants and that the said fact has not been disputed. Perusal of the proceeding in R.C No.89/09/C1 Centre, dated 20.10.2010 enclosed at Page



No.53 of the typed set of papers also shows that even though Revenue Assistant Mr.P.Sugumaran has been considered along with Junior Assistants Mrs.Jayachithra and V.Ramamoorthy, for promotion to the post of Assistants and it fortifies the contention that all the three posts namely Junior Assistant cum Tupist, Typist, Revenue Assistants have been considered for promotion to the post of Assistants on the basis of G.O Ms.No. 237, Municipal Administration and Water Supply Department dated 26.09.1996. The contention of the learned counsel for the corporation that the petitioner has passed the departmental tests prescribed for the post of Junior Assistants only in December 2007 and that therefore, he could be considered for the post of Junior Assistant-cum-typist only from the said date onwards, cannot be countenanced in view of the fact that orders have been issued even as early as on 02.11.2006 posting the petitioner as Junior Assistant. Even assuming that the petitioner had not opted to work as Junior Assistant and gave his consent to serve as Junior Assistant only in the year 2006, that would not be a proper reason to ignore the case of the petitioner who was working as Bill Collector/Revenue Assistant, which is an interchangeable post. When the post of Junior Assistant cum typist/Bill Collector are interchangeable post and even in the recent order dated 20.10.2010, when the authorities have considered Revenue Assistant for promotion to the post of Assistant, the same yardstick ought to have been applied to the case of the petitioner also, as per the seniority and that the respondents ought to have considered both



categories, for the purpose of inclusion of their names in the panel for promotion to the post of Assistant without reference to the qualifications prescribed for the post of Assistants under the new service rules, which clearly exempts the applicability of the rules to the existing employees for first promotion, to which they have been considered, after the issue of the rules. If Mr.Sirajudeen and Mr.P.Subramanian were allowed to work as Assistants, on the basis of their inclusion in the seniority list, then, the case of the petitioner is also similarly placed.

13.If the interpretation of the respondent has to be accepted, then the said rules would have the effect of retrospective operation and would affect the chances of promotion of the existing employees. The reason that the petitioner had not worked a Junior Assistant cum Typist is not a ground to ignore his legitimate claim, for inclusion in the panel of Assistantss as per the service rules. As rightly contended by the learned counsel for the petitioner, in the panel in RC No.3332/2009/C1 centre is the pendency of the Writ Petitions filed by Mr.P.Subramanian and Mr.S.Sirajudeen. The said reason is more in existence and that the petitioners therein are stated to be continuing as Revenue Assistants. In the light of the above discussion, this Court is of the view that the services of the petitioner in the post of Bill Collector have to be reckoned for promotion to the post of Assistant and consequently he is entitled for promotion to the post of Assistant.”



I wanted to satisfy myself regarding the applicability of the terms of the aforesaid order to the case on hand. The judgment proceeds on the basis that the posts of Bill Collector and the Junior Assistant are interchangeable. The learned counsel appearing for the petitioner drew my attention to G.O (Ms) No. 211 Municipal Administration and Water Supply Department dated 21.09.1999 in which it has been held that these two posts, namely, Bill Collector and Junior Assistant are interchangeable.

6.The aforesaid G.O has not been taken note of by the respondents. The order impugned in this writ petition is set aside. The matter is remitted to the file of the third respondent to pass orders afresh in accordance with law. The third respondent will take note of the order dated 03.09.2012 made in WP(MD)No.11555 of 2008 and the G.O (Ms) No.211 Municipal Administration and Water Supply Department dated 21.09.1999. Such an order will be passed within a period of four weeks from the date of receipt of copy of this order. The writ petition is allowed accordingly. No costs. Connected miscellaneous petitions are closed.

29.11.2022

Index : Yes / No
Internet : Yes/ No
skm



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G.R.SWAMINATHAN, J.

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