



WEB COPY

W.P.(MD)No.15715 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.03.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.15715 of 2014

and

M.P. (MD)Nos.1 & 2 of 2014

V.Bose

... Petitioner

vs

1. The State of Tamil Nadu,
represented by its Secretary,
Municipal Administration and Water Supply,
Department, Secretariat, St.George Fort,
Chennai.

2. The Commissioner of Municipal Administration,
O/o. the Commissioner of Municipal Administration,
Chepauk, Chennai.

3. The Commissioner,
Chinnamanur Municipality,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in his proceedings in Roc.No.47026/2011/K2, dated 08.07.2013 and quash the same as illegal and consequentially to direct the respondents to promote the petitioner as Class-IV officer in Tamil Nadu Municipal General Services by including the petitioner in the panel within the time that may be stipulated by this Court.

For Petitioner : M/S.J.Irfana Fathima
for M/S.Ajmal Associates

For Respondents: M/S.D.Farjana Ghoshia for R1
Special Government Pleader

Mr.G.Karuppasamy Pandian for R2 & R3

O R D E R

The petitioner has challenged this writ petition to quash the impugned order, dated 08.07.2013 with a consequential prayer to promote the petitioner as Class-IV Officer in Tamil Nadu Municipal General Services by including the petitioner in the panel.



2. The brief facts of the case are that the petitioner was originally appointed as Office Assistant on 07.12.1990. Thereafter, the petitioner was appointed as Revenue Assistant on 07.01.1994 purely on temporary basis. As per Municipal Service Rule 8 (a) (1) the petitioner has passed the Department Test in the year 1995 and the post of Revenue Assistant was regularized on 13.03.1994. The petitioner was promoted as Junior Assistant on 08.05.2000. The petitioner was placed in the seniority panel for the year 2009-2010 and promoted as Assistant on 02.11.2010. The grievance of the petitioner is that since the petitioner has passed the Department Test in the year 1995 itself, the respondents have denied the promotion because the petitioner is a physically challenged person. While the petitioner was in service in the year 2007, he became blind and the respondents have declined the promotion by showing that the petitioner is totally blind and he is not eligible for the promotion. The petitioner retired in the year 2018.

3. The third respondent has filed a counter affidavit stating that as per the G.O.Ms.No.773, dated 22.08.1986 the Junior Assistant and Bill Collector are inter-transferable and equal in nature and the same is not applicable to the petitioner. Likewise, G.O.Ms.No.264 Municipal Administration and Water Supply Department, dated 18.09.1991 also will not help the claim of the petitioner. The petitioner has qualified S.S.L.C and completed X standard in the year 1992. Hence the claim of the petitioner for promotion is not applicable as per the Government Order as stated supra. As per the G.O.Ms.No.222, Municipal Administration and Water Supply Department, dated 30.09.1999, the petitioner is eligible for the promotion. In the said Government Order, the promotion is given to the direct recruitment also. The petitioner was promoted as Revenue Assistant purely under Rule 8 (a) (1) but it has been regularized in the year 1994 and the said regularization is against the provisions. Since the regularization can be granted only by Government, in the present case the Municipal Commissioner has granted the regularization. The petitioner has passed the Department Test will not give any legal right to the promotion. The respondents have stated that they have given an intimation on 02.11.2011 about the qualification of the petitioner, but the name of the petitioner was not included in the panel for promotion. Thereafter, the petitioner's name was included in the panel for the year 2009-2010. It is not proved that the petitioner was eligible for the promotion in the year 1995. In the earlier round of litigation, this Court has directed to consider the case of the petitioner and pass orders. In order to obey the order, the present impugned order is passed. Aggrieved over the impugned order, the petitioner has filed this writ petition.

4. Heard M/S.J.Irfana Fathima, learned Counsel appearing for the petitioner and M/S.D.Farjana Ghoshia, learned Special Government



Pleader appearing for the first respondent and Mr.G.Karuppasamy Pandian, learned Counsel appearing for the second and third respondent.

5. The contention of the petitioner is that the petitioner has passed the Department Test and has put in service also. Therefore, the petitioner is eligible for the promotion. The promotion is not right but considering for promotion is right. In the present case, the petitioner was granted promotion in the year 2009-2010. However, for the earlier period his candidature was not considered because there was some problem in his regularization. Since the petitioner was appointed under Rule 8 (a) (1), the regularization ought to be granted by the first respondent or by the second respondent. In the present case, the third respondent, Commissioner has granted regularization which is highly irregular. In the counter affidavit, the respondent has also stated as under:

"The averments set out in Para 5 of the affidavit are denied as false. The petitioner was promoted purely temporary as Revenue Assistant as per Municipal Service Rule 8(a) (1) (as Junior Assistant) on 07.01.1994. But he has been regularized on the petitioner's pass in the department test will not given any legal right to the promotion. But it is qualification for promotions. It is true that this respondent had given an intimation on 02.11.2001 about the qualification of the petitioner. It is not the list of panel for promotion. It is true that the petitioner's name was considered for promotion in the year 2009-2010. It is not true that the petitioner was eligible for the post of Assistant in the year 1995."

6. The contention of the respondents are that the eligibility was intimated, but the petitioner's name was not in the list in the year 2001. Therefore, this Court is of the considered view that because of the delay in regularization and there was no proper communication about the regularization of the petitioner and the petitioner was denied promotion in the year 2001. Therefore, this Court is of the considered opinion that the petitioner is eligible for the promotion in the year 2001 and not prior to that. Even according to RTI reply, the petitioner is eligible for promotion in the year 2001 itself. Therefore, this Court is directing the respondents to confer notional promotion in the year 2001 and the petitioner is not eligible for any monetary benefits. But the notional benefits shall be granted in the petitionary benefits. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.



7. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The State of Tamil Nadu,
represented by its Secretary,
Municipal Administration and Water Supply,
Department, Secretariat, St.George Fort,
Chennai.
2. The Commissioner of Municipal Administration,
O/o. the Commissioner of Municipal Administration,
Chepauk, Chennai.
3. The Commissioner,
Chinnamanur Municipality,
Theni District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-11062[F] dated 10/03/2022)

+1 CC to M/s.SPL GP (SR-11178[F] dated 10/03/2022)

Order made in
W.P. (MD) No.15715 of 2014
09.03.2022

SS/04.04.2022 : 4P/6C

<https://hcservices.ecourts.gov.in/hcservices/>