



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.6408 of 2015

and

M.P.(MD)No.2 of 2015

WEB COPY

R. Dulasinathan

... Petitioner

vs.

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

2.The Director,
Local Fund Audit Department,
Kuralagam, Chennai-600 108.

3.The Commissioner of Municipal Administration
and Water Supply Department,
Chepauk, Chennai - 05.

4.The Commissioner,
Puliyangudi Municipality,
Puliyangudi Post, Tirunelveli 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 in pursuant to the impugned order passed by the 2nd Respondent in Na.Ka.No.31321/Na.Th 6/2010, dated 07.06.2012 and to quash the same and consequently to direct the respondents to give notional promotion to the Petitioner in the post of Junior Assistant from the date of passing the departmental test in the year 1982 and to grant consequential promotion based on his seniority and consequently to refix the pension and to pay all attendant and monetary benefits to the petitioner.

For Petitioner : Mr.M.Saravanakumar

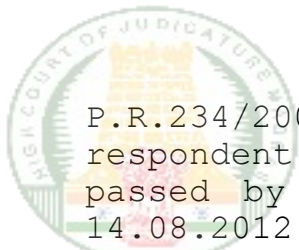
For R1 to R3 : Mr.D.Sachi Kumar
Additional Government Pleader

For R4 : Mr.T.S.Mohamed Mohideen

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash impugned order passed by the 4th respondent in his proceedings in D.O.563/2006/C.No.H1(1)/

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



P.R.234/2005 dated 17.4.2006 and also the order passed by the 3rd respondent in C.No.B2/AP.57/2007, dated 24.12.2007 and the order passed by the 2nd respondent in R.C.No.76251/AP.2(2)/2012, dated 14.08.2012 and order passed by the first respondent in G.O.(2D). No.379 Home (Police VI Department), dated 15.10.2014 and consequently to direct the respondents to pay all the monetary and other benefits payable to the deceased Saravanakumar to the petitioner herein.

2. The petitioner was appointed as Revenue Assistant in Puliyangudi Municipality, Tirunelveli District on 20.02.1972 and has attained superannuation as Revenue Assistant on 31.12.2008. The petitioner has passed departmental test in the year 1983. The Government has issued G.O.Ms.No.773, Finance (Pay Cell) Department, dated 22.08.1986, wherein, it has been held that the Bill Collectors and Junior Assistants will be made inter transferable and the scale of pay are also same.

3.The contention of the petitioner is that he was deputed as Junior Assistant under Rule 8 a (i) of Tamil Nadu Municipal Service Rules. Whenever the work demanded, the petitioner was posted as Junior Assistant from 01.10.1979 to 31.10.1979. Again on 18.05.1981 to 02.08.1981 and again on 08.08.1983 to 27.08.1983. The petitioner was granted Selection Grade on completion of 10 years of service on 20.02.1982. The contention of the petitioner is that since the Revenue Assistant post and Junior Assistant post are inter changeable and on completion of departmental test the petitioner is eligible for one more bonus increment for completing 30 years service. Since the same was not granted, the petitioner submitted a representation. Thereafter, the second respondent considered the case and passed an order, dated 03.01.2011, wherein it is stated that the petitioner is eligible for Selection grade but not eligible for bonus increment, since it was granted for stagnating in the same post beyond 30 years.

4.The respondents have filed a counter affidavit stating that the petitioner has worked as Junior Assistant as stated in the affidavit of the petitioner for 3 terms. The placing of the petitioner as Junior Assistant was purely temporary and it was not placed before any appointment committee. During the audit conducted in the year 2006-2007, it was found that the appointment was made wrongly calculating the service of the petitioner as Junior Assistant. Against this audit, an appeal was preferred and that was rejected and the audit was upheld by the local fund audit on 19.01.2010. It was also observed that the increase in scale of pay for getting through departmental exams is wrong and therefore, a direction was issued to recover the excess payments made. The petitioner was qualified as SSLC even before his entry into service. In the year 1980 itself, he got through departmental exam. Therefore, payment made for getting through departmental exam was



revised. The petitioner worked as Revenue Assistant and Junior Assistant and they are different post and one is the promotion post. Hence the scale of pay provided is wrong. Therefore, it was recommended for refund.

5. Heard Mr.M.Saravanakumar, learned Counsel appearing for the petitioner, Mr.D.Sachi Kumar, learned Additional Government Pleader appearing for respondents 1 to 3 and Mr.T.S.Mohamed Mohideenand, learned Counsel appearing for fourth respondent and perused the materials placed on record.

6. The contention of the petitioner is that he was appointed as Revenue Assistant in the year 1972. This contention of the petitioner was denied by the learned Additional Government Pleader stating that there was no post by the name of Revenue Assistant in the year 1972 and has referred the Tamil Nadu Municipal General Service, 1972. Under Clause 9, the post Revenue Assistant Grade II appears. Below that it has been clarified in Serial No.9 the word "Bill Collector" was substituted as Revenue Assistant Grade II and the said substitution was given effect from 30.09.1999. Therefore, this Court is of the considered opinion that the petitioner was appointed as Bill Collector in the year 1972 and the post was redesignated as Revenue Assistant Grade - II.

7. Thereafter, the petitioner was given temporary promotion as Junior Assistant during 01.10.1979 to 31.10.1979, then from 18.05.1981 to 02.08.1981 and again from 08.08.1983 to 27.08.1983. In the said Rules it has been stated under Clause 7, the feeder category for the appointment of Revenue Assistant Grade I is by direct recruitment or by promotion from the category of Revenue Assistant Grade II and Record Clerk. For the post of Junior Assistant also it is by direct recruitment or by promotion from the feeder category of Record Clerk and Revenue Assistant Grade II. Therefore, it ought to be taken for the post of Revenue Assistant Grade I and Junior Assistant the feeder category is Revenue Assistant Grade II.

8. The contention of the respondents since the Revenue Assistant Grade II is a feeder category post for the promotion of Junior Assistant / Revenue Assistant Grade I, the petitioner was **temporarily** posted as Junior Assistant for three spells, then it ought to be taken he was granted promotion as Revenue Assistant Grade I / Junior Assistant, if it is so, the petitioner is not entitled to bonus amount in the year 1999. Now the question arises whether "temporary promotion for three spells" would amount to granting of promotion to the petitioner. Generally, the government grants promotion and would indicate in the promotion order as "temporary promotion" only. In the present case the temporary promotion was granted in three spells i.e.



- a. From 01.10.1979 to 31.10.1979 - 31 days
- b. From 18.05.1981 to 02.08.1981 - 81 days
- c. From 08.08.1983 to 27.08.1983 - 20 days

9.This Court is of the considered opinion this cannot be considered as promotion and the petitioner has served as Revenue Assistant Grade - II for 30 years and therefore, the petitioner is entitled to the bonus increment.

10.Since this Court has held that the petitioner is entitled to bonus increment, the next contention whether the recovery can be ordered after retirement is left open. If any amount is recovered from the petitioner, the same shall be paid to the petitioner. The respondents are directed not to recovery further from the petitioner.

11.With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

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/ /2022

Sub Assistant Registrar(CS)

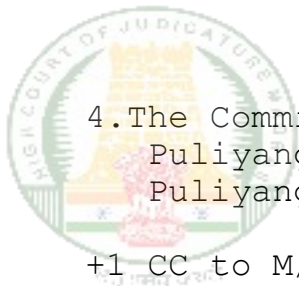
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Note:

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 Secretary to Government,
State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai-600 009.
- 2.The Director,
Local Fund Audit Department,
Kuralagam, Chennai-600 108.
- 3.The Commissioner of Municipal Administration
and Water Supply Department,
Chepauk, Chennai - 05.



4.The Commissioner,
Puliyangudi Municipality,
Puliyangudi Post, Tirunelveli District.

+1 CC to M/s.SPL.GP (SR-3986[F] dated 03/02/2022)

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