



W.P.(MD).No.1387 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.1387 of 2017

and

W.M.P.(MD).No.1140 of 2017

K.Kani

... Petitioner

Vs.

1. The Commissioner,
Madurai Corporation,
Madurai Corporation Building,
Madurai- 625 002.

2. J.Salomon Jeyaprabhu

3. A.Murugan

4. R.Ramasubramanian

5. G.T.Phelix Ruban

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent made in MaNe 31/22982/2016, dated 28.07.2016, rejecting petitioner's objection for seniority and quash the same and consequently direct the first respondent to grant promotion to the Petitioner as Technical Assistants effect from 06.11.2013 grant all consequential benefits appended to that post from 06.11.2013.



W.P.(MD).No.1387 of 2017

For Petitioner : Mr. R.Alagumani

For R-1 : Mr. T.S.Mohamed Mohideen

ORDER

This Writ Petition is filed challenging the order dated 28.07.2016, rejecting petitioner's objection for seniority and consequently direct the first respondent to grant promotion to the petitioner as Technical Assistants effect from 06.11.2013 grant all consequential benefits appended to that post from 06.11.2013.

2. The brief facts as stated in the affidavit are that the petitioner joined the service of Madurai Corporation on 15.02.1990. With the permission of the Corporation, the petitioner got training in Tamil Nadu Polytechnic for 4 years from 1999 to 2003 and the same was entered in the service book. The first respondent vide order dated 29.11.2006 granted promotion as Technical Assistant and stated that the salary will be fixed after getting approval from the Government and till then, the old salary will be paid. As per the seniority list, the petitioner was placed in Serial No.21 behind one Saravanan, who was in the Serial No.20. By order dated 30.07.2007, upto Saravanan, only Technical



W.P.(MD).No.1387 of 2017

Assistant promotion salary was fixed. By order dated 02.12.2008, the respondents 2 to 5 were appointed under category of unskilled labour on compassionate basis. By individual orders dated 06.11.2013, the respondents 2 to 5 were given promotion as Technical Assistants. The petitioner submitted objection to the first respondent on 14.05.2013 and no reply was given. Thereafter, the seniority list for the post of Technical Assistants for the year 2016-2017 was published on 05.07.2016 and the names of respondents 2 to 5 were arrayed after Saravanan and the petitioner's name was removed from the list. Aggrieved over the same, the petitioner submitted his objection. But the first respondent vide order dated 28.07.2016 rejecting the petitioner's objection by stating on 20.07.2007, when promotion to the post of Technical Assistant with salary was given, due to availability of vacancies, only for persons upto Saravanan who was just before the petitioner were given promotion and the petitioner's case was not considered for want of vacancy. Hence, the salary of old post was fixed to the petitioner. The petitioner is aggrieved by the promotion granted to the respondents 2 to 5 in the post of Technical Assistant, since there is vacancy when the said respondents were granted promoted and the reason stated that there was no vacancy is a false one. In the seniority list, the next person is the petitioner and he ought to have been granted promotion



W.P.(MD).No.1387 of 2017

instead of granting promotion to the respondents 2 to 5. Since the respondents have denied the promotion, the petitioner has come up with this Writ Petition.

3. The first respondent has filed a counter stating that the writ petitioner was appointed as Motor Attender on 19.02.1990. Subsequently, promoted as Skilled Assistant Grade II. Meanwhile, the respondents 2 to 5 were appointed as unskilled Worker on 30.07.2007. At the time of appointment, they are fully qualified and had a qualification of Diploma in Engineering. In addition to that, the above said respondents were entered as compassionate appointment. They have been promoted as per the order of Municipal Administration Commissioner dated 28.11.2013 and also council resolution No.17, 18 and 19 dated 17.10.2013. During the time of promotion, the writ petitioner was working as Skilled Assistant Grade II. The feeder category for the technical Assistant post is Skilled Assistant Grade-I. On this ground alone, the petitioner's name was not included in Technical Assistant Seniority Panel. The petitioner has given his objection after the publication of the panel and his claim was rejected on 21.09.2016 by duly indicating the detailed reason for rejection. The writ petitioner is working as Skilled Assistant Grade II and the feeder category in the post of Technical Assistant is Skilled Assistant Grade I.



W.P.(MD).No.1387 of 2017

Without going to next stage, the petitioner cannot seek promotion to the post of Technical Assistant. Hence, prayed to dismiss this Writ Petition.

4. Heard Mr. R.Alagumani, learned counsel for the petitioner and Mr. T.S.Mohamed Mohideen, learned counsel for the first respondent and perused the records.

5. The contention of the respondent is that since the petitioner is serving as Skilled Assistant Grade II, he cannot be granted promotion to the post of Technical Assistant by skipping the Skilled Assistant Grade I post. The learned counsel appearing for the petitioner submitted that even though he is working in the post of Skilled Assistant Grade II, he is having educational qualification of Diploma in Civil Engineering and he is eligible to be considered for the post of Technical Assistant. Moreover, the petitioner submitted that the respondents 2 to 5 were working as unskilled worker and they were considered for the post of Technical Assistant, in such circumstances, the petitioner ought to be considered for promotion to the post of Technical Assistant. For this plea, the respondents submitted that the respondents 2 to 5 even though they were working as unskilled worker, they have requisite qualification, therefore they



W.P.(MD).No.1387 of 2017

are considered for the said post. The claim of the respondents is totally biased.

If the unskilled workers have been considered on the ground that they have requisite qualification, then the Skilled Worker Grade II who have requisite qualification should also be considered for the promotion to the post of Technical Assistant.

6. Therefore, this Court is of the considered view that the impugned order is passed without application of mind and it is classic example of bias. Hence this Court is passing the following order:

- a. The impugned order is quashed.*
- b. The first respondent is directed to grant promotion to the petitioner in the post of Technical Assistant by taking into account of the petitioner's educational qualification.*
- c. The promotion shall be granted on the date when the respondents 2 to 5 were granted promotion.*
- d. The petitioner is entitled to monetary and service benefits applicable to the promoted post.*
- e. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.*



W.P.(MD).No.1387 of 2017

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7. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

01.12.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

The Commissioner,
Madurai Corporation,
Madurai Corporation Building,
Madurai- 625 002.



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W.P.(MD).No.1387 of 2017

S.SRIMATHY, J.

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W.P.(MD).No.1387 of 2017

01.12.2022