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WP.No.10688 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 10688 of 2015

and

M.P.Nos.1 & 2 of 2015

P. Santhi

...

Petitioner

Vs

1. The Commissioner,
Tiruverkadu Municipality,
Chennai – 600 077.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai – 600 005.

...

Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 2nd respondent issued in Na.Ka No.3519/2015/K3 dated 01.04.2015 and the consequential order issued by the 1st respondent issued in Na.Ka.No.140/2015/C1, dated 01.04.2015 and quash the same and consequently direct the 1st respondent to consider the case of the petitioner for appointment as Revenue Assistant by promotion in the existing vacancy in accordance with the provisions under the Special Rules issued in respect of Tamil Nadu Municipal General Service. **(Prayer amended as per order dated 09.06.2015 in M.P.No.3 of 2015 in W.P.No.10688 of 2015)**



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For Petitioner : Mr.T.Ranganathan
For R1 : Mr.R.Mohandoss
For R2 : Ms.Akhila Rajendran
Government Advocate

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 2nd respondent issued in Na.Ka No.3519/2015/K3 dated 01.04.2015 and the consequential order issued by the 1st respondent issued in Na.Ka.No.140/2015/C1, dated 01.04.2015 and quash the same and consequently direct the 1st respondent to consider the case of the petitioner for appointment as Revenue Assistant by promotion in the existing vacancy in accordance with the provisions under the Special Rules issued in respect of Tamil Nadu Municipal General Service.

2. Heard the leaned counsel appearing on either side and perused the materials available on record.

3. The petitioner appointed as a daily wage employee in the Maduravoyal Panchayat in the year 1996. Subsequently, the said Panchayat was upgraded as Grade-III Municipality. The petitioner's service was regularised as per G.O.(Ms) No.125, M.A & W.S



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Department, dated 27.05.1999.

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4. The learned counsel appearing for the petitioner would submit that according to the Tamil Nadu Municipal General Service Rules 1970 (herein after called the “Rules”), the post of Record Clerk is classified as Category 1 of Class X of the said Rules. The next promotion to the post of Record Clerk is to the post of Bill Collector, now re-designated as Revenue Assistant. According to the Rule 3(c) of the said Rules, the post of Revenue Assistant category 2 of Class IX shall be filled up by promotion or by direct recruitment. As per Rule 4(b) of the said Rules, the Appointing Authority is the Commissioner of concerned Municipality. As per Rule 7 of the said Rules, the Unit of Appointment is the Municipality concerned. Therefore, the second respondent has no power to fill up the post of Revenue Assistant in any other Municipality as per Rule 7 of the said Rules.

5. There is a vacancy in the Tiruverkadu Municipality in the category of Revenue Assistant from 23.11.2014. Therefore, the petitioner made a representation to the first respondent. On receipt of the same, the first respondent instead of promoting the petitioner as



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Revenue Assistant in the existing vacancy, has sent a proposal to the second respondent dated 28.01.2015 seeking directions to appoint the petitioner as Revenue Assistant in the vacancy. While being so, the first respondent had sent promotion proposal, by a communication dated 28.01.2015, to the second respondent. However, the second respondent transferred one V.Ramesh as Revenue Assistant from Arakkonam Municipality to Tiruverkadu Municipality in the exiting vacancy to the post of Revenue Assistant from 23.11.2014. However, it was challenged by the petitioner and interim stay was obtained. Therefore, the order of stay was not effected to the said V.Ramesh. Pending writ petition in W.P.No.6998 of 2015, the first respondent rejected the request made by the petitioner by the impugned order dated 01.04.2015 for the reason that there is no permanent vacancy in the post of Revenue Assistant Grand-I.

6. The second respondent transferred one V.Ramesh from Arakkonam Municipality to the petitioner's Municipality viz., Tiruverkadu Municipality to the post of Revenue Assistant in the permanent vacancy and subsequently, it was stayed by this Court. The first respondent ought not to have rejected the claim of the petitioner for the reason that there is no permanent vacancy in the post of Revenue



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Assistant.

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7. A perusal of the counter filed by the second respondent revealed that the Revenue Assistant Grade-II is applicable only to those persons who failed in S.S.L.C. As the petitioner has got +2 qualification, her next promotion is Revenue Assistant (Grade-I) which comes under Category 5 of Class VII, which is in the ratio of 2 : 1. There are five sanctioned posts in the first respondent Municipality in category 1 (3 Junior Assistants) and category 5 (2 Revenue Assistant Grade-I) in Class VII in the first respondent Municipality and the said posts are interchangeable. Out of the said 5 posts, 4 posts were filled up by direct recruitment and one post was filled by promotion of one G.Raja, who was earlier working as Record Clerk in the said Municipality. Thereafter, no permanent vacancy arose and the petitioner is eligible to be promoted only after the retirement of the said G.Raja. Hence, the request made by the petitioner was rightly rejected by the second respondent.

8. As rightly pointed out by the learned counsel appearing for the petitioner, there is no permanent vacancy of Revenue Assistant in Tiruverkadu Municipality, and therefore the question of posting another



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person from Arakkonam Municipality does not arise. The request made by the petitioner is rejected only because she challenged the order of transfer in respect of one V.Ramesh in W.P.No.6998 of 2015 and obtained an interim order of stay. Now, the said V.Ramesh was subsequently transferred to other place and as such, the order of transfer has become infructuous.

9. Admittedly, the petitioner has also filed the present writ petition before appointing a Revenue Assistant in the place of transferred person viz., V.Ramesh. Now, she has been transferred to the another place and as such, the petitioner is incharge to the post of Revenue Assistant. Therefore, she is entitled to promoting the post of Revenue Assistant.

10. In view of the above, the impugned order dated 01.04.2015 passed in Na.Ka.No.140/2015/C1 by the first respondent is hereby quashed. The first respondent is directed to appoint the petitioner as Revenue Assistant by promotion in the existing vacancy in accordance with the provision under the Special Rules issued in the Tamil Nadu Municipal General Services Rules, 1970, within a period of eight weeks



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from the date of receipt of a copy of this order.

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11. In the result, this Writ Petition stands allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Internet: Yes/No

To

1. The Commissioner,
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G.K.ILANTHIRAIYAN,J.



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