



W.P.Nos.27284 & 25984 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	29.11.2022
PRONOUNCED ON :	09.02.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.Nos.27284 & 25984 of 2015
and M.P.Nos.1 & 2 of 2015(in both W.P's)
W.M.P.No.3848 of 2017

R.Govindaraj ... Petitioner in
W.P.No.27284 of 2015

M.Vijayakumar ... Petitioner in
W.P.No.25984 of 2015

Vs.

1.The Commissioner,
Poonamallee Municipality,
Poonamallee. ... R1 in
W.P.No.27284 of 2015

2.The Commissioner,
Kancheepuram Municipality,
Kancheepuram ... R1 in
W.P.No.25984 of 2015

3. The Commissioner of Municipal
Administration, Chepauk,
Chennai 600 005 ... R2 in
W.P.No.27284 of 2015



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4. The Director of Municipal
Administration,
Chepauk, Chennai 600 005

... R2 in
W.P.No.25984 of 2015

4. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai 600 009.

... R3 in both W.P's

PRAYER in W.P.No.27284 of 2015: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in Roc.No.36712/2014/K3 dated 27.7.2015 and quash the same and consequently to direct the 2nd Respondent to place the petitioner below Tmt. G.Geetha, Junior Assistant in the seniority list with all monetary benefits in the light of the orders issued in G.O.(Ms) No.264, M.A. & W.S. Department dated 18.9.1991 and to consider the name of the Petitioner for promotion as Superintendent in the Proceedings dated 5.8.2013 within a reasonable period as may be fixed by this Court.

PRAYER in W.P.No.25984 of 2015: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in Roc.No.36703/2014/K3 dated 27.7.2015 and quash the same and consequently to direct the 2nd Respondent to consider the name of the petitioner in the panel for the post of Class-V officers in the Tamil Nadu Municipal General Service



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prepared for the years 2008-09 with all monetary benefits above to Thiru.K.Nagarathinam, Typist in the light of the orders issued in G.O.(Ms.)No.264, M.A. & W.S. Department dated 18.9.1991 within a reasonable period as may be fixed by this Court.

In both cases:

For Petitioners	:	Mr.T.Ranganathan
For R-1	:	Mr.P.Srinivas
For RR 2 & 3	:	Mr.M.Shahjahan, Special Government Pleader

COMMON ORDER

The above writ petitions are filed challenging the impugned order dated 27.07.2015 passed by the 2nd respondent wherein, the claim of the petitioners for drawing parallel promotion post by setting right the inter-se seniority list, is rejected.

2. The petitioner in W.P.No.27284 of 2015 was appointed as Revenue Assistant on 29.10.1995. The petitioner in W.P.No.25984 of 2015 was initially appointed as Wireman Helper on 22.12.1989 and subsequently promoted as Bill Collector on 11.03.1997.



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3. The Government issued G.O.(Ms).No.264, M.A.& W.S.Department, dated 18.09.1991 making the post of Revenue Assistant interchangeable with Junior Assistant.

4. The grievance of the petitioners was that consequent to the above cited Government orders issued in G.O.(Ms).No.264, the Commissioner of Municipal Administration, the respondents would have prepared the combined seniority list of Revenue Assistants and Junior Assistants fixing their inter-se-seniority among the Revenue Assistants and Junior Assistants.

5. The learned counsel for the petitioners submits that the petitioner in W.P.No,27284 of 2015, viz.,R.Govindaraj was shown against serial No.152 but his Junior K.Muralidharan, Junior Assistant was shown against serial No. 51 and requested the 2nd respondent to promote him with effect from the date of his junior who was included in the panel for the post of Class-V officers.

6. Likewise, the petitioner in W.P.25984 of 2015 sought to be placed along with Illavarasan (Sl.No.54) and to consider his name for promotion as



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RI/Assistant in 2008-2009 panel.

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7. The learned counsel for the petitioners drew the attention of this court to Section 40(2) of the Tamilnadu Government Servants (Conditions of Service Act, 2016). Section 40(2) reads as under:

"The seniority of a person in a Service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as à punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade"

The learned counsel submits that the above provisions are applicable to the employees of the Municipality as per Rule 41 of the Tamil Nadu Municipal Service General Rules, 1970. The petitioners herein are employees of Municipality and therefore, their seniority is to be fixed in the appropriate place.

8. Since the inter-se seniority of the petitioners has not been fixed with reference to G.O.Ms.No.264 MAWS Department dated 18.9.1991, the petitioners preferred representation dated 07.11.2014 to the Commissioner of Municipal



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Administration, seeking to consider their request in the light of the order issued by the Government in G.O.(Ms).No.264, M.A.& W.S.Department, dated 18.09.1991, thereby the posts of Junior Assistant and Revenue Assistant were made interchangeable and consequently their seniority should be fixed as on that date along with the Junior Assistant and to consider their name for promotion as Revenue Inspector/Assistant in 2008-09 panel prepared by the Commissioner of Municipal Administration in proceedings Roc.No.408355/2008/K3, dated 28.02.2009 above Thiru.K.Nagarathinam, Typist in W.P.No.25984/015 ; P.Meenakshi, Typist in W.P.No.27284/2015 and consequently grant promotion as Assistant/Revenue Inspector shall be from the date of the promotion of their juniors, who is also included in the panel for the post of Class V officers in the Tamil Nadu Municipal General Service prepared for the year 2008-09 with all monetary benefits.

9. The second respondent, vide impugned order dated 27.07.2015, rejected the request of the petitioners holding that the claim of the petitioners is not in accordance with rules and therefore, their request for revision of seniority sought was rejected. The second respondent pointed out as under :-



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“Promotion to Class-V (Assistant) could be made from Class-VII (Junior Assistant) and VIIA (Typist & Steno-Typist) only; Under rule 3(b) of Tamil Nadu Municipal General service Rules.

The individual was in Class-IX (Revenue Assistant) till the rules were amended in 1999. He becomes eligible for promotion only after 1999.

The individual had not interchanged his post from Revenue Assistant to Junior Assistant as allowed in the G.O.No.264 MAWS Dept. dated 18.09.1991. Therefore classification of his post would be in Class IX, which is not the feeder category to Class-V (Assistant).

The persons (Computer-cum-Clerk) recruited under IPP-V were already equivalent to Class-V (Assistant) post. Therefore, they were absorbed accordingly. Whereas, Tr.M.Vijayakumar & R.Govindaraj belongs to Class-IX and the feeder category to Class-V is Class VII and VIIA as per rules. Therefore, the claim of the individual drawing parallel with IPP-V post is totally arbitrary and misleading. “

10. The learned counsel for the petitioners pointed out that the second respondent has revised and restored the seniority of the Computer-cum-Clerk, who were working in the Indian Population Project V, on abolition of the scheme, based on the orders issued in G.O. (Ms) No. 35 MAWS Department dated



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07.03.2006, without amending the Service Rules. It is also submitted that the petitioner in W.P.No.25984 of 2015 has attained the age of superannuation. The learned counsel hence prayed for the grant of notional promotion as Assistant so as to get revised pension in that regard.

11. Per contra, the learned Special Government Pleader appearing for the respondents would submit that as per the Tamil Nadu Municipal General Service Rules, the post of Junior Assistant falls under Class-VII category and the post of Revenue Assistant as Class IX. The post of Junior Assistant was a promotional post for Revenue Assistant. The Government Order in G.O.Ms.No.264 M.A. & W.S. Department dated 18.09.1991 could be used for interchanging the post for Junior Assistant and Revenue Assistant and Combined Seniority could be issued only after the Rules were amended, which was done vide G.O.Ms.No.222 M.A. & W.S. Department dated 30.09.1999. According to the learned special Government Pleader, till such amendment is made, the petitioners belonging to Class-IX cannot be promoted as Assistant (post categorised as Class-V) because the feeder categories to Class-V is Class-VII (Junior Assistant). The petitioners belong to Class IX which is not a feeder category to Class V (Assistant). Therefore, there



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cannot be inter-se-seniority between two posts of different classes (VII and IX) especially when Class VII was the promotional post of Class IX. Therefore the contention of the petitioner has to be summarily rejected.

12. Further, the learned Special Government Pleader stated that the persons (Computer-cum- Clerk) recruited under Indian Population Project-V (IPP-V) were already equivalent to Class-V (Assistant) post. Therefore, they were absorbed accordingly. Whereas, the petitioners belong to Class-IX and the feeder category to Class-V is Class VII and VIIA as per rules. Therefore, the claim of the individuals drawing parallel with IPP-V post is liable to be rejected. Therefore, the learned Special Government Pleader prayed for dismissing the petitions.

13. Heard both sides and perused the records.

14. Admittedly, vide G.O.(Ms.)No.264, M.A. & W.S. Department dated 18.09.1991, the post of Revenue Assistants and Junior Assistants were made interchangeable. Therefore, based on that, the seniority list ought to have been prepared by the respondents. But it was not implemented as the Rules were not



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amended. The Rules were amended only in the year 1999 vide G.O.Ms.No.222

M.A. & W.S. Department dated 30.09.1999.

15. As rightly pointed out by the learned counsel for the petitioners, after the amendment of the Rules, interse seniority ought to have been fixed. The policy decision of the Government to absorb the Indian Population Project-V employees in the Local Bodies as a special case in G.O.(Ms).No.35, MAWS dated 07.03.2008 has been implemented without any amendment to the Tamil Nadu Municipal General Service Rules, 1970, though there is no such post of Computer-cum-Clerk in the Municipalities.

16. As per G.O.(Ms.)No.264, M.A. & W.S. Department dated 18.09.1991, the correct inter-se seniority ought to have been fixed to the petitioners as claimed by them in their representation dated 07.11.2014.

17. The petitioners were appointed as Revenue Assistant on 29.10.1995. The Government issued orders in G.O.(Ms.)No.264, M.A. & W.S. Department dated 18.09.1991, whereby the nomenclature of Bill Collectors in Municipalities



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and in Municipal Corporations was designated as Revenue Assistant and be made inter-changeable with Junior Assistant/Typists. However, the 2nd respondent has not prepared the combined seniority list fixing the inter-se seniority among the Revenue Assistants, Junior Assistants/Typists till 1999.

18. It is to be noted that amendment to the Rules was issued vide G.O.(Ms).No.222, MAWS Department dated 30.09.1999. G.O.(Ms.)No.264, M.A. & W.S. Department dated 18.09.1991 has been passed as early as on 1991 whereby inter-se seniority is to be fixed as the G.O., was issued changing the nomenclature of Bill Collectors as Revenue Assistant and mater interchangeable with Junior Assistant/Typists. In this regard, the petitioners submitted a representation to the 2nd respondent on 07.11.2014 stating inter-se-seniority should be fixed by combining Junior Assistant and Revenue Assistant. The petitioners cited Indian Population Project-V (IPP-V) Scheme wherein, after abolition of the said project, the employees of the scheme were absorbed in the local bodies to the corresponding posts and their seniority have been revised and restored based on G.O.Ms.No.35 MAWS Department dated 07.03.2006. The petitioners therefore sought to consider their name for promotion as RI/Assistant



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in the 2008-09 panel. However, the said request was rejected by the 2nd respondent stating that the individual has not interchanged his post from Revenue Assistant to Junior Assistant as allowed in G.O.Ms.No.264 MAWS Department dated 18.09.1991 and his post is not the feeder category.

19. In the considered opinion of this court, the rejection of the petitioner's claim is unsustainable and it is totally contrary to the orders issued in G.O.(Ms.)No.264, M.A. & W.S. Department dated 18.09.1991. G.O.Ms.No.222 MAWS Department dated 30.09.1999 is based on the policy decision already arrived in G.O.(Ms.)No.264 MAWS Department dated 18.09.1991 which should take effect from the date of the G.O. dated 18.09.1991, otherwise the amendment brought to Rules will have no meaning.

20. The reasons set out in the impugned order dated 27.07.2015 for rejecting the claim of the petitioners is not in consonance with the provisions set out in G.O.Ms.No.264 M.A.&W.S.Department dated 18.09.1991. The amendment to the Rule was also brought in 1999. Therefore, the impugned orders in both WPs dated 27.07.2015 are liable to be set aside.



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21. In the result, both the Writ Petitions are allowed. The impugned orders in both WPs dated 27.07.2015 are set aside. The respondents are directed to fix the inter-se-seniority of the petitioners among the Junior Assistants, Typists and Revenue Assistants by looking into the petitioners' date of appointment by duly applying the G.O.(Ms.)No.264, M.A. & W.S. Department dated 18.09.1991. After fixing their seniority at the appropriate place, notional promotion to the next higher post and consequential benefits are to be extended, if they are otherwise eligible. The said exercise shall be initiated and completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking Order : Yes/No
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J.NISHA BANU, J.

sts/nvsri

To

- 1.The Commissioner, Poonamallee Municipality, Poonamallee.
- 2.The Commissioner, Kancheepuram Municipality, Kancheepuram
- 3.The Commissioner of Municipal
Administration, Chepauk, Chennai 600 005
4. The Director of Municipal Administration,
Chepauk, Chennai 600 005.
5. The Secretary to Government, Municipal Administration and
Water Supply Department, Secretariat, Chennai 600 009.

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