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WA No. 1753 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 1753 of 2022
and
C.M.P. No. 12642 of 2022

1. The Special Officer
Greater Chennai Corporation
Ripon Buildings
Chennai - 600 003

2. The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai - 600 003

3. The Regional Deputy Commissioner (Central)
Greater Chennai Corporation
No.36-B, 2nd Cross Street
Pulla Avenue, Shenoy Nagar
Chennai - 600 030

4. The Assistant Commissioner (GA & P)
Greater Chennai Corporation
Ripon Buildings
Chennai - 600 003

.. Appellants

Versus



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1. G. Muthamilselvan
Assistant Executive Engineer
Co-ordinator
Office of Chief Engineer (General)
Greater Chennai Corporation
Chennai - 600 003
2. V. Gughan
Assistant Executive Engineer
Zone-IX
Greater Chennai Corporation
Chennai - 600 034
3. V. Radha
Assistant Executive Engineer
Mechanical Engineering Department
Greater Chennai Corporation
Chennai - 600 003
4. K. Prabhudass
Assistant Executive Engineer
Zone - IV
Greater Chennai Corporation
Chennai - 600 021
5. S. Gomathi
Assistant Executive Engineer
Zone - VII
Greater Chennai Corporation
Chennai - 600 053
6. A. Muthukumarasamy
Assistant Executive Engineer
Quality Control Department
Greater Chennai Corporation
Chennai - 600 003



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7. K.M. Archana
Assistant Executive Engineer
Mechanical Engineering Department
Greater Chennai Corporation
Chennai - 600 003
8. R. Ashok Kumar
Assistant Executive Engineer
Bridges Department
Greater Chennai Corporation
Chennai - 600 003
9. P. Arivzhagan
Assistant Executive Engineer
Quality Control Department
Greater Chennai Corporation
Chennai - 600 003
10. M. Jegan
Assistant Executive Engineer
North Regional Office
Greater Chennai Corporation
Chennai - 600 021
11. S.V. Akilandeswari
Assistant Executive Engineer
Mechanical Engineering Department
Greater Chennai Corporation
Chennai - 600 003
12. S.K. Moorthy
Assistant Engineer
Zone - X
Greater Chennai Corporation
Chennai - 600 024
13. T.S. Saravanan
Assistant Engineer
Zone - X, Greater Chennai Corporation
Chennai - 600 082



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14. S. Ashok Sudhakar
Son of Late. P. Sankara Moorthy
Old No. 70, New No.4
South Mada Street, Padi
Chennai - 600 050

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 23.03.2022 passed in Writ Petition No. 18770 of 2020 on the file of this Court.

For Appellants : Mr. Ramanlal, Additional Advocate General
assisted by Mrs. Rama Devi

For Respondents : No appearance for RR2, 3, 4, 5, 6, 7, 8, 9, 10
and 11

Mr. C. Ravichandran for R14

JUDGMENT

(Judgment of the Court was delivered by **R.MAHADEVAN, J**)

This writ appeal is filed by the appellants, questioning the correctness and validity of the order dated 23.03.2022 passed by the learned Judge in allowing the writ petition No. 18770 of 2020 filed by the contesting 14th respondent herein.

2. The above referred writ petition was filed by the 14th respondent/ writ petitioner by stating that on 07.02.2017, while he was working as Assistant Engineer in the Corporation of Madras, a charge memo was issued to him alleging that he failed to take action against the unauthorised construction



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put up by some persons. He submitted his explanation on 15.02.2017.

Notwithstanding the explanation offered, an enquiry officer was appointed for conducting disciplinary proceedings. After conducting enquiry, an order dated 09.03.2017 came to be passed by the disciplinary authority imposing the punishment of stoppage of increment for a period of six months without cumulative effect. Aggrieved by the order of punishment, the 14th respondent / writ petitioner filed a statutory appeal before the appellate authority, but it was rejected on 10.08.2017. Thereafter, the punishment imposed on the 14th respondent / writ petitioner was given effect to and it was in force from 01.04.2017 to 01.10.2017.

3. According to the 14th respondent / writ petitioner, three years from the date on which his punishment was over, a tentative seniority list dated 25.07.2020 was circulated, but to his surprise, his name was not included therein. Subsequently, on 16.09.2020, the second appellant prepared a panel for the year 2018-2019 for promotion to the post of Assistant Executive Engineer and on the same day, issued the impugned proceedings selecting the respondents 5 to 18 in the writ petition/respondents 1 to 13 herein for promotion to the post of Assistant Executive Engineer. It was further submitted by the 14th respondent / writ petitioner that the promotees are



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WEB COUNCIL juniors to him in the feeder category post of Assistant Engineer and there is no justification to deny him promotion to the higher post. Questioning the rationale in promoting his juniors, the 14th respondent / writ petitioner preferred a statutory appeal to the fourth appellant, but the same was rejected on 20.10.2020 by stating that the currency of punishment imposed on the writ petitioner is in force. In other words, it was reasoned that the five year check period operates as an embargo for conferring promotion to the writ petitioner/14th respondent as contemplated under the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and therefore, he is not entitled to promotion. Challenging the orders of rejection, the 14th respondent / writ petitioner filed the writ petition.

4. Before the learned Judge, the foremost contention urged on behalf of the writ petitioner was that the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 has no application to his case and that he is governed by Chennai Corporation Class-III and IV Service (Discipline and Appeal) by-laws, 1983 and also the provisions of Chennai Corporation Engineering Service Rules, 1969. It was therefore contended that the five year check period contained in the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 will not be a bar for conferring promotion to



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the writ petitioner. It was also contended that denial of promotion to him by citing the five year bar is arbitrary and it amounts to gross violation of the rights guaranteed to him under Articles 14 and 21 of The Constitution of India. Therefore, the writ petitioner/14th respondent herein prayed for allowing the writ petition.

5. A counter affidavit was filed by the fourth respondent in the writ petition viz., Assistant Commissioner (GA & P), General Department, Greater Chennai Corporation, stating *inter alia* that the period of punishment imposed on the writ petitioner ends on 01.11.2017. However, as per Schedule XI, Part - A, Clause 11 (11) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the writ petitioner is not eligible for promotion for a period of five years prior to the crucial date. The crucial date for the panel drawn to the post of Assistant Executive Engineer is 01.06.2019 and the operation of five years check period against the writ petitioner commences from 09.03.2017 till 08.03.2022. Therefore, the name of the writ petitioner in the panel dated 01.06.2019 was not included. It was further stated that the writ petitioner is seeking promotion to the post of Assistant Executive Engineer, which is classified as Class II category and such promotion is governed by the provisions of Tamil Nadu Government Servants (Conditions of Service) Act,



2016. Therefore, the claim of the writ petitioner was not considered for promotion to the post of Assistant Executive Engineer.

6. On consideration of the rival submissions, the learned Judge allowed the writ petition filed by the writ petitioner/14th respondent herein by order dated 23.03.2022. The relevant portion of the same reads as follows:

"21. The fact that the petitioner herein belong to Class-III service is not in dispute nor is it in dispute that he is seeking promotion to Class II service (Assistant Executive Engineer). In this regard, two divergent arguments have been advanced opposing each other. On behalf of the petitioner, the learned counsel contended that since the petitioner presently belongs to Class III service, the conditions of service as laid down by the Corporation alone would be applicable. On the other hand, the contention of the Corporation counsel is that the promotion being to Class-II service, it is governed by the Government Rules and Regulation as the Corporation Bye-laws are applicable only to Class III and Class IV services.

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24. The contention on behalf of the Corporation is that the subject promotion being to Class II service (Assistant Executive Engineer), the Act, 2016, any circular/order issued by the Government governing all the Government servants alone are to be made automatically applicable to such appointment by promotion and not the by-laws of the Corporation. According to the counsel, the applicability of the by-laws ought to be confined to appointment/promotions within Class IV and Class III services. This Court is unable to appreciate the stand of the Corporation as canvassed by the counsel in the teeth of the clear provisions contained in Sections 85 and 86 of the Act, 1919. With a view to explicate the position, for clearer understanding, sub-clauses 3(a) and (b) of Section 85 of the Act, 1919 are once again extracted hereunder.

(a) Every appointment to any post included in class I-A shall be made by the State Government.

(b) Every appointment to any post included in class I-B or Class II shall be made by the council and shall be subject to confirmation by the State Government.

25. From the above, it could be clearly deduced that the appointing authorities are different in respect of appointment to any post included in Class I-A and appointment to any post included in Class I-B



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or Class-II. In so far as the former, the appointing authority is the Government. For the latter, it is the council, subject to confirmation by the Government. The above provision must be read in conjunction with Section 86 of the Act 1999 is reproduced hereunder once again for due appreciation.

86. Conditions of service of corporation establishment:-

(1) Save as otherwise provided in this Act, the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the corporation establishment shall be regulated-

(i) in the case of Class I-A, Class I-B and Class II officers, by rules made by the State Government in this behalf;

(ii) in the case of the employees included in Class III and Class IV, by by-law made by the council under section 349:

An officer said to be governed by the rules made by the State Government, if he or she belongs to class I-A, Class I-B and Class II. Class III and IV are governed by the by-laws made by the Council. The petitioner herein can said to come within the grip of the Act, 2016 or any regulation that are applicable to Government servants after the appointment to Class II Service and not before.

26. In such circumstances, insofar as the subject appointment for promotion is concerned, from Class III to class-II, the conditions of service that are applicable to Class II service cannot be pressed into service at all. Therefore, the contention on behalf of the Corporation by the learned counsel is misplaced, erroneous and liable to be discountenanced. On the other hand, this Court finds persuasive force in the contention of the learned counsel for the petitioner that the conditions of service as laid down by the Corporation Establishment covering Class-III and IV services alone would be applicable. In such event, as rightly contended by him the 5 year embargo as contemplated in the Act 2016 as relied on by the Corporation can have no application and consequently, denial of promotion on that basis is legally unsustainable.

27. Although, the learned counsel for the Corporation argued vehemently that the State Government is overall in charge of all services and that included the Corporation Services therefore, the conditions of service applicable to the Government servants in terms of the scheme of the Act 2016 are automatically applicable to the services of the Corporation employees, does not inspire this Court to be persuaded for its acceptance. Such sweeping statement unsupported by any materials demonstrating that the Corporation has indeed adopted the Act 2016 in respect of its employees, particularly class III and IV services, being admittedly governed by the by-laws of the Council, in terms of Section 86 of the Act, 1919. In the absence of a *pari materia* provision namely 5 year bar in the Madras (Chennai) Corporation Class III and Class IV Service (Discipline and Appeal) By-laws, the petitioner herein cannot stated to have suffered disqualification at the relevant point of time for



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consideration of his promotion. As stated above, in the absence of any material being produced before this Court that the respondent Corporation has adopted the Act, 2016, for all its services, the argument put forth on that basis is to be rejected as being devoid of merits and substance.

28. As a matter of fact, the Corporation is governed by its own Service Rules for recruitment/promotion and it is also governed by its own Conduct Rules. It was framed in 1968 called Chennai Corporation Servants Conduct Rules, 1968 and so is Disciplinary and Appeal Bye-Laws which came into force in 1993. As referred to above, once, the confirmation has been granted under Section 352 of the Act 1919 by the State Government, the sanctity of the bye-laws cannot be questioned or assailed. The confirmation comes from the Government only after exercising power by the Corporation Council in terms of Section 349 and in that view of the matter, it is not open to the Corporation to contend that the promotion from Class III to Class II service is governed by the provision relied upon by the Corporation in terms of the Act, 2016.

29. At the risk of repetition it is to be held that when a Class III Service person claims promotion to Class II post, the claim of such employee is to be considered within the framework of the provisions that are applicable to Class III service. When the bye-laws are framed in consonance with the provisions of the Chennai City Municipal Corporation Act, 1919 as per Section 349, the same would have precedence over any other provision or Act. As long as the bye-laws are in force, the same would have complete application in governing the service conditions of Class III employees. Merely because the petitioner is seeking promotion to Class II service, certain provisions of Act 2016 cannot be pitchforked into the claim of the petitioner, resulting in denial of his rightful claim for his promotion to the post of Assistant Executive Engineer along with his juniors.

30. As regards the two decisions cited by the learned counsel for the Corporation, the first one W.A.No.546 & 620 of 2015 dated 05.10.2018. That was a case relating to the position held by the petitioner therein, namely Zonal Head Officer which was a Class II post. In that factual context, some discussion centred around applicability of certain provisions of the Tamil Nadu State and Subordinate Service. This Court after perusing the judgment does not see any relevance to the facts and the controversy herein. The decision appears to have been rendered on the entirety of the facts of that case. This Court is unable to countenance the applicability of the decision herein at all.

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32. For all the above reasons, this Court finds that the foundational reason for rejection of the petitioner-s claim cannot be countenanced in law. In the said circumstances, the Writ Petition is allowed. The two impugned orders passed by the 2nd respondent in Po.Thu.Na.Ka.No.E1/15211/2019 dated 16.09.2020 and the consequential order passed by the fourth respondent in



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Po.thu.Na.Ka.No.E1/21580/2020 dated 20.10.2020 are hereby set aside.

33. The respondents 1 to 4 are directed to pass consequential order, promoting the petitioner as Assistant Executive Engineer in Class II service category on par with his juniors who were promoted (respondents 5 to 18) in the panel year 2019-20.

34. On such promotion being granted, the petitioner is also entitled to all attendant benefits like pay fixation, allowances, arrears and fixation of seniority etc.

35. The above encompassing directions are necessary in view of the admitted stand of the Corporation itself that the petitioner was otherwise eligible and senior to be considered for promotion in the panel year 2019-20.

36. The official respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

The aforesaid order dated 23.03.2022 passed by the learned Judge is assailed herein.

7. Mr. Raman Lal, learned Additional Advocate General appearing for the appellants would contend that the provisions of the Tamil Nadu Government Servants (Condition of Service) Act, 2016 is applicable to the case of the writ petitioner/14th respondent. The learned Additional Advocate General, referring to Section 85(3)(a) of the Chennai City Municipal Corporation Act, would contend that every appointment to any post included in Class 1-A shall be made by the State Government. As per Section 85 (3) (b), every appointment to any post included in Class 1-B or Class II shall be made by the council and shall be subject to confirmation by the State Government. Therefore, the provisions of the Chennai City Municipal Corporation Act are not applicable to the case of the writ petitioner. It is also submitted that the



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writ petitioner is seeking promotion to the post of Assistant Executive Engineer, which is categorised as Class-II category. In other words, the writ petitioner is presently holding a Class-III post viz., Assistant Engineer and the post of Assistant Executive Engineer, to which, he sought promotion, is classified as Class-II category and therefore, he is governed by the provisions of the Tamil Nadu Government Servant (Condition of Service) Act, 2016. That apart, Section 86 of the Chennai City Municipal Corporation Act, 1919 specifies that Class-1A and 1B Officers are regulated by the Rules made by the State Government. According to the learned Additional Advocate General, the writ petitioner/14th respondent, being an employee of the Corporation is a public servant. On the other hand, if it is the argument of the writ petitioner/14th respondent that he cannot be regarded as a public servant, then the protection under Article 311 (1) of the Constitution of India will not enure to his benefit. In such a situation, no employee of the local body or other Corporations can invoke the provisions under Article 226 (1) of the Constitution of India and file writ petition before this Court in the event of his / her termination on the ground of unconstitutionality. The Corporation is under the administrative control of the Municipal Administration and Water Supply Department. The Service Rules of the Government are very much applicable to the employees working in the corporation. The writ petitioner,



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on the other hand, relies on the Engineering Service Rules, 1969 which were framed for classification of Engineers and the method of their appointment.

Thus, according to the learned Additional Advocate General, as per the provisions of the Tamil Nadu Government Servants (Condition of Service) Act, 2016, the check period is in force and hence, the writ petitioner/14th respondent cannot be conferred with promotion to the higher post. The learned Judge, without taking note of the above aspects, allowed the writ petition filed by the 14th respondent herein. Therefore, the learned Additional Advocate General prayed for setting aside the order of the learned Judge by allowing this appeal.

8. Per contra, Mr. C. Ravichandran, learned counsel appearing for the contesting 14th respondent would contend that the appointing authorities are different in respect of appointment to the posts included in Class 1-A and Class 1-B or Class-II. Insofar as the posts falling within Class 1-A, the Government is the appointing authority. On the other hand, for the posts falling under Class 1-B or Class-II, the appointing authority is the Council of Corporation. However, such appointment by the Corporation Council is subject to confirmation by the Government. Therefore, the question of operation of check period against the writ petitioner will not arise. The period



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of punishment imposed on the writ petitioner was over and there was no currency of punishment in force. This was rightly appreciated by the learned Judge and the writ petition filed by the writ petitioner/14th respondent herein was allowed. Hence, there is no requirement for this court to interfere with the order of the learned Judge.

9. We have heard the learned Additional Advocate General appearing for the appellants as well as the learned counsel for the contesting 14th respondent and also perused the records.

10. On analysis of the aforesaid facts, it is evident that during the course of employment as Assistant Engineer in Corporation of Madras, the 14th respondent herein was subjected to disciplinary proceedings by issuing a charge memorandum dated 07.02.2017. Ultimately, the disciplinary proceedings culminated in an order dated 09.03.2017 passed by the disciplinary authority, imposing the punishment of stoppage of increment for a period of six months without cumulative effect. Admittedly, the period of punishment was enforced between 01.04.2017 and 01.10.2017 and there was no currency of punishment in force as against the 14th respondent as on 02.10.2017. However, when a panel was drawn for the year 2018-2019 for



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promotion to the post of Assistant Executive Engineer, the name of the 14th respondent was excluded purportedly on the ground that five year check period operates as an embargo for inclusion of his name in the panel for promotion. Aggrieved by the same, the 14th respondent approached the writ court.

11. The learned Judge held that the provisions of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 has no application for the 14th respondent who is holding the post of Assistant Engineer, which is the feeder category post for promotion to the post of Assistant Executive Engineer. Referring to the provisions of the Chennai City Municipal Corporation Act, the Chennai Corporation Service Conduct Rules, 1968 as well as the Tamil Nadu Government Servant (Conditions of Service) Act, 2016, the learned Judge concluded that the 14th respondent is holding a Class III post in the Corporation of Madras and hence, he is governed only by the provisions of the Corporation Service Conduct Rules, 1968 and consequently, the check period of five years cannot be made applicable to the post held by him. Aggrieved by the same, the appellants are before this court with the present appeal.



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12. It is the specific contention of the learned Additional Advocate General appearing for the appellants that the appointment to the post of Assistant Engineer held by the 14th respondent, was admittedly made by the Council of Corporation. However, after such appointment is made, it is for the State Government to accord concurrence/approval for the same. In such circumstances, it cannot be said that the provisions of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 will not be applicable to the post held by the 14th respondent insofar as it relates to the enforceability of punishment imposed against him. Thus, the five year check period imposed by the State Government is equally applicable to the 14th respondent and consequently, his name cannot be included for further promotion to the post of Assistant Executive Engineer.

13. It is not in dispute that the post of Assistant Engineer held by the 14th respondent falls within Class III category in the establishment of the Corporation of Madras. This is fortified from Section 85 of the Chennai City Municipal Act, 1919, wherein, it was clearly envisaged that the post of Assistant Engineer appointed in the service of the Corporation, falls under Class III. The service conditions of the employees so appointed under Class III shall be regulated only by the by-laws made by the Council of Corporation.



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On the other hand, it is an admitted fact that the post of Assistant Executive Engineer, to which promotion is sought by the 14th respondent, falls within Class II category. The said post of Assistant Executive Engineer only falls within the scope and ambit of the provisions of the Tamil Nadu Government Servant (Service Conditions) Act, 2016, as is evident from Section 85 (b) of the Chennai City Municipal Corporation Act, 1919. In other words, the promotional post of Assistant Executive Engineer only will fall within the rigour of the provisions of the Tamil Nadu Government Servant (Service Conditions) Act, 2016 and the operation of check period of five years is applicable. This was rightly appreciated by the learned Judge while allowing the writ petition filed by the 14th respondent herein and hence, the same does not call for any interference by this court.

14. In such view of the matter, the Writ Appeal fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.M.D., J) (M.S.Q., J)

03.10.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

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and
MOHAMMED SHAFFIQ, J

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