



W.P.No.39718 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.02.2023
Pronounced on	08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.39718 of 2016

S.Henry Christy Raj

... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. by its Secretary,
Municipal Administration & Water Supply
Department,
Fort St. George,
Chennai-600 009.

2.The Director of Town Panchayats,
Kuralagam,
Chennai-600 108.

3.The Assistant Director of Town Panchayat,
Kancheepuram Zone,
Kancheepuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the first respondent vide in G.O. (3D) No.22 Municipal Administration and Water Supply (TP1) Department, dated 28.10.2015 and Letter No.9038/TP1/2016-1 dated 04.07.2016 and quash the same insofar as it treat the petitioner as a fresh candidate and consequently



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direct the respondents 1 and 2 to restore seniority as per para 6 of G.O.(Ms) No.118 Municipal Administration and Water Supply (TP1) Department, dated 21.08.2007 and consequently include the petitioner's name in the State Level seniority list of Executive Officer Grade-II/Head Clerk/Assistant in the panel year of 2008-2009 below Thiru. J.Mohammed Ibrahim (Serial No.145)I and above Tmt. R.Umarani Serial No.146 and further include the petitioner's name in the seniority list of Executive Officer Grade-I in the panel year of 2011-12, below Thiru J.Mohammed Ibrahim (Serial No.177) and above Tmt. R.Umarani (Serial No.178) and promote the petitioner as Executive Officer Grade-OO/Head Clerk/Assistant with effect from 24.01.2007 and as Executive Officer Grade-I with effect from 17.12.2013 with all monetary and other attendant benefits.

For Petitioner : Mr.N.Kolandaivelu

For Respondents : Mr.Haja Nazirudeen, AAG
Asst. by Meera Arumugham, AGP

O R D E R

The petitioner herein was originally inducted in the Town Panchayat on 31.08.1988 and was promoted as Junior Assistant on 24.04.2000 after obtaining concurrence from Tamil Nadu Public Service Commission (TNPSC). With effect from 14.06.2004, 49 Town Panchayats were re-designated as III Grade Municipality under the Commissioner of Municipal Administration. In the year 2009, options



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were called for from the employees of the III Grade Municipality to continue the services of its employees under the Municipality itself and the petitioner had also exercised his option to remain under the Municipality Services. However, the petitioner's lien in the department of Town Panchayat could not be severed, since the service of the Municipality was a non provincialised one, whereas the department of Town Panchayat was a provincialised one. Through a representation dated 19.06.2014, the petitioner had exercised his option to go back to the parent department namely, the Town Panchayat. Accordingly, the first respondent, had passed G.O.(3D) No.22, Municipal Administration and Water Supply (TP1) Department, dated 28.10.2015, reverting the petitioner to the Department of Town Panchayat, by treating him as a fresh candidate. When he had sought for restoration of his seniority, the consequential impugned order dated 04.07.2016 has been passed, reiterating their stand in the earlier G.O.(3D) No.22, dated 28.10.2015 . Challenging these orders, the present Writ Petition has been filed.

2. Heard Mr.N.Kolandaivelu, learned counsel for the petitioner and Mr.Haja Nazirudeen, learned Additional Advocate General appearing on behalf of the respondents.



3. It is not in dispute that when the services of the petitioners in the Town Panchayat were deputed to the III Grade Municipality, his lien with his parent department continued and was not severed. If that be so, the respondents may not be legally empowered to treat the petitioner as a fresh candidate while reverting him to the parent department in view of the fact that his lien therein continued. This issue came up for consideration before a learned Single Judge of this Court in the case of **A. Annie Sheela Rani Vs. The Principal Secretary to Government, Chennai and Others** reported in **2017 (3) CTC 209**, which was dealt with in the following manner:

"15. Though very many contentions have been raised on either side on the factual aspects, the core questions that have to be decided in the case are that whether the petitioner has acquired lien in her post in the 2nd respondent Department viz., State Planning Commission and whether the order passed by the 2nd respondent reverting her to the parental department is legally sustainable?"

16. It is the main submission of the learned counsel appearing for the petitioner that during the year 2005, when promotions were given in her parental department viz., Social Welfare Department, she sent a representation to the authorities in the Social Welfare



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Department, requesting to consider her case for promotion and at that time, she was informed by the Directorate of Social Welfare, vide his letter dated 03.07.2006, which was intimated to the petitioner through the 2nd respondent through his letter dated 28.07.2006, that she had acquired a lien in the post outside the cadre on which she is borne, as such, her lien in the Social Welfare Department ought to have been suspended or terminated. Therefore, according the learned counsel for the petitioner, the said letters dated 03.07.2006 & 28.07.2006 would go to show that the petitioner had already acquired her lien in the State Planning Commission.

17. But, a mere reading of the letter dated 03.07.2006 of the Director of Social Welfare and the letter dated 28.07.2006 of the 2nd respondent, would show that Social Welfare Department has to pass an order to suspend or terminate or cut off the lien from the said department. In fact, in the materials placed before this Court on the side of the respondents, it could be seen that the Member Secretary, State Planning Commission, has already sent a letter in D.O.Rc.No.8050/A1/SPC/2015, dated 14.08.2006, to the Director of Social Welfare, Chennai, clarifying the position, stating that the petitioner's appointment has not been made



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substantively as stated in the letter dated 03.07.2006 of the Director of Social Welfare and further, F.R.14(b) r/w Rule 14(A) Sub-Rule (d), quoted in the letter dated 03.07.2006 of the Director of Social Welfare, are not applicable to the case of the petitioner. From the said communication dated 14.08.2006 sent by the Member Secretary, State Planning Commission, it is clear that to claim lien in the 2nd respondent-department (State Planning Commission), the petitioner's lien in the Social Welfare Department ought to have been terminated by passing a specific order and the petitioner ought to have been substantively absorbed in the 2nd respondent-department. As per Rule 14-A sub-Rule (a), except as provided in clause (c) and (d) of Rule 14-A of the Fundamental Rules, a Government servant's lien on a post in no circumstances can be terminated even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. So far as the case of the petitioner is concerned, the petitioner's lien in the Social Welfare Department has not been terminated by passing a specific order. The petitioner was appointed in the State Planning Commission, while she was working in the post of Assistant in Social Welfare Department. She is



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still having lien only in the Social Welfare Department. Only in these circumstances, by the impugned order, the petitioner was reverted to her parental department Social Welfare Department and she was relived from the duties in the State Planning Commission with effect from 14.12.2015. Further, as per Rule 15(a) of the Fundamental Rules, a Government servant may be transferred from one post to another post on account of inefficiency or misbehaviour. Rule 15(a) reads as follows:-

"Government may transfer a Government servant from one post to another provided that, except_

(1)on account of inefficiency or misbehaviour; or

(2)on his written request a Government servant shall not be transferred substantively to or appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended under Rule 14."

Therefore, I am of the opinion that only in accordance with the above said Fundamental Rules, the impugned orders have been passed by the respondents, reverting her to parental



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department. When the petitioner's lien in the Social Welfare department was not terminated and when she was not substantively absorbed in the 2nd respondent-department, now the order passed by the 2nd respondent reverting her to her parental department, cannot be said to be legally unsustainable. Under such circumstances, the petitioner's regularization and promotion given in the year 2013 in the 2nd respondent-department, cannot be taken as an incident to show that her lien in the Social Welfare Department was terminated and she was substantively absorbed in the said post in the State Planning Commission. Therefore, absolutely, I do not find any infirmity in the impugned order passed by the 2nd respondent reverting her to the parental department. The judgments relied upon by the learned counsel for the petitioner cannot be made applicable to the present facts of the case as they were delivered in different facts and circumstances. Accordingly, the writ petition in W.P.No.589 of 2016 is liable to be dismissed and the same is hereby dismissed."



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4. The aforesaid extract is self explanatory. Thus, when the services of the petitioner in the parent department was not terminated by a specific order and was also not substantively absorbed in the Municipal department, his lien with the parent department is deemed to have continued and therefore, when reverting back the petitioner to his parent department, namely, Town Panchayat, his seniority requires to be protected. The aforesaid decision of the learned Single Judge in *Annie Sheela Rani's case (supra)* came to be affirmed by the Hon'ble Division Bench of this Court in its order passed in W.A.No.388 of 2017 dated 18.12.2017, which was also confirmed by the Hon'ble Supreme Court later.

5. It would be relevant to point out here that all the provincialised employees, who were reverted back to the Department of Town Panchayat was restored with their seniorities and the seniority of the petitioner alone was denied, by taking him back as a fresh candidate. In this background also, the impugned orders, treating the petitioner as a fresh candidate in his parent department, is discriminatory and therefore illegal.

6. In view of the fact that the petitioner was absorbed as a fresh



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candidate through the impugned orders, he was denied the rightful promotions to the post of Executive Officer Grade II in the panel year 2008-2009, as well as for the post of Executive Officer Grade-I in the panel year 2011-12, whereby his juniors were awarded with such promotions.

7. In the light of the above observations, the petitioner would be entitled for restoration of his seniority in the Department of Town Panchayat and thereby will be entitled for notional promotions on par with his juniors.

8. In the light of the above findings, the impugned orders of the first respondent dated 28.10.2015 and 04.07.2016, are quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders, granting notional promotion to the petitioner for the post of Executive Officer Grade-II for the panel year of 2008-09 and Executive Officer Grade-I for the panel year of 2011-12, by inclusion of his name in the State Level Seniority List, on par with his immediate juniors, who were granted such promotions, together with all the monetary and other attendant benefits. Such orders shall be passed, atleast within a period of four weeks from the



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date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. There shall be no order as to costs.

08.03.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes

DP

To

- 1.The Secretary,
Government of Tamil Nadu
Municipal Administration & Water Supply
Department,
Fort St. George,
Chennai-600 009.
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- 3.The Assistant Director of Town Panchayat,
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M.S.RAMESH,J.

DP

ORDER MADE IN

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