



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.25196 of 2021 and
W.M.P.No.26568 of 2021

R.Shivakumar

... Petitioner

Vs.

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai.

2.The Principal Secretary to Government,
Housing and Urban Development Department,
Namakkal Kavingar Maligai,
Chennai.

... Respondents

PRAYER : This Writ Petition has been filed to issue a Writ of Mandamus to direct the respondents to promote the petitioner as Deputy Planner with effect from 01.10.2020 pursuant to the Authority Resolution (AR120/2020) dated 30.09.2020 with all monetary and attendant benefits without approval or clearance from the State Government as had been done in all such similar cases.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.T.Arunkumar, AGP for R2

Mr.R.Sivakumar for R1



ORDER

WEB COPY

This Writ Petition has been filed to issue a Writ of Mandamus to direct the respondents to promote the petitioner as Deputy Planner with effect from 01.10.2020 pursuant to the Authority Resolution (AR120/2020) dated 30.09.2020 with all monetary and attendant benefits without approval or clearance from the State Government as had been done in all such similar cases.

2. Heard Mr.V.Vijay Shankar, learned counsel for the petitioner, Mr.R.Siva Kumar, learned counsel for R1 and Mr.T.Arun Kumar, learned Additional Government Pleader for R2.

3. The petitioner joined as Planning Assistant Grade IV in the year 1995 and now the petitioner is working in the promoted post of Assistant Planner. The next promotion is due to the petitioner in the cadre of Deputy Planner. So far as the first respondent is concerned, their service regulations have been approved vide G.O.Ms.No.210 dated 26.02.1980. As per the service regulations approved by the said Government Order,



the post falling under Classes III to VI can be filled up by appointment or promotion by the first respondent authority itself. The post of Deputy Planner falls under Class III. The service regulations would also contemplate that if there is any minimum qualification prescribed in respect of any post or category at the time of sanction, the same can be relaxed by the first respondent in specific cases of Classes III to VI. That means, the first respondent authority is limited only in respect of Classes III to VI, but any other relaxation in respect of Classes I and II is required to be addressed to the Government only. The table contains class of post, creation of post, the authority who is expected to prepare the panel and the appointing authority is shown as below:

Class of Post (1)	Creation of Post (2)	Preparation of panel (3)	Appointing Authority (4)
I	Government	Government	Government
II	Government	Authority	Authority
III	Authority	Selection Committee	Member Secretary
IV	Authority	Selection Committee	Member Secretary
V	Authority	Senior Planner	Member Secretary
VI	Authority	Senior Planner	Member Secretary



WEB COPY

4. Apparently, the appointing authority for Classes III to VI is only a Member Secretary. In respect of Class II, the appointing authority is the Authority and in respect of Class I, the appointing authority is the Government. However, the first respondent has chosen to send a proposal to the Government on 27.10.2020 by stating as under:

"In view of the above circumstances, on perusing the seniority list in the feeder post (i.e., AP) and the available eligible candidate for promotion for the post of DP, it is found that Thiru R.Shivakumar is the only available eligible candidate. Thiru.R.Shivakumar, AP is working as Assistant Planner from 03.10.2018 and having the required qualification of Associate Member of the Institute of Town Planners, India (AITP) and has acquired experience of 1 year 5 months and 28 days of service as on crucial date (i.e.) 31.03.2020 in the post of Assistant Planner as against the required experience of 4 years prescribed for promotion to the post of Deputy Planner in the approved service regulation of CMDA.

As per the approved service regulations (General regulations) Section II 8(iii), "No employee shall be considered for promotion unless he has put in minimum



WEB COPY



period of 2 years service in lower category."

Thiru.R.Shivakumar has completed 2 years of service as on date.

As the powers to relax the experience qualification in respect of the posts mentioned in Class III to VI are vested with the Authority as per the service regulations approved in G.O.Ms.No.210, H & UD Department dated 26.02.1980, the Authority in A.R.No.116/2011, dated 15.11.2011, has also resolved to clear such relaxation proposal in future in the Authority itself. The post of Deputy Planner is covered under Class III category. Hence the proposal was placed before the Authority for relaxing of shortfall service experience of 2 years 6 months 2 days in the post of Deputy Planner. "

5. Despite the rules have been rightly mentioned by the first respondent in the above proposal, it has been wrongly handled by sending the file to Government instead of taking the decision by the first respondent himself. Having admitted that the post of Deputy Planner is covered under Class III and the service regulations have been approved by G.O.Ms.No.210 dated 26.02.1980 and the Authority Resolution in



AR.116/2011 dated 15.11.2011, the proposal has been sent to the Government unnecessarily, instead of acting upon it.

6. The first respondent has got no hesitation to consider the available candidature of the petitioner to the post of Deputy Planner by relaxing the shortage of experience. In fact due to the delay caused, the petitioner had acquired necessary experience also by now. In fact the Authority Resolution in A.R.No.116/2011 is still more clear than the regulations wherein it has been resolved as under:

"Resolution : The Authority resolved to approve the proposal of relaxation of experience qualification in respect of promotion of PM as SEO/AO.JAO as SAO. Accountant as JAO and PC (Confdl.) as Private Secretary as in para 8 of the note.

It also resolved to clear such proposals in future in the Authority itself. Since the powers to relax the experience qualification in respect of the posts mentioned in Class III to VI are vested with the Authority as per the service regulations approved by Government in G.O.Ms.No.210, H & UD Department dated 26.02.1980. "



WEB COPY

7. Despite the Authority has once again resolved to approve the proposal and directed once again through A.R.No.120/2020 dated 30.09.2020, there is no need for passing a resolution by having an agenda for placing the subject of relaxation of experience before the authority. The above act is a classic example of how the power of an Authority is not properly used despite regulations are clear about the extent of the power. When the regulation itself contemplates that the appointing authority for Deputy Planner is the Member Secretary, the subject has been taken as an agenda unnecessarily by placing it before the authority for approval. It is an unnecessary exercise on the part of persons who occupy the key post either in the clerical level or any where which caused unnecessary delay in handling the file and taking a decision. What is more appalling is the letter dated 27.10.2020, wherein, the signing authority is fully aware of his functions, his power and also stated it explicitly in his own letter.

8. The learned counsel for the petitioner invited the attention of



WEB COPY
this Court to the judgment of the Hon'ble Supreme Court held in the case of *Anirudhsinhji Karansinhji Jadeja and another Vs. State of Gujarat, reported in (1995) 5 SCC 302*, wherein it is held in paragraph No.11 as under:

"11. The case against the appellants originally was registered on 19.03.1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20-A(1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be as case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20-A(1) was not exercised by the DSP at all."



WEB COPY

9. In the case in hand also the authority who is vested with the power has failed to do his job and attempted to pass the ball to the court of the second respondent unnecessarily. Having approved the appointment of the petitioner in the post of Deputy Planner by finding that he is the only eligible and available candidate, the authority concerned has sent the file to the Government unnecessarily. In fact that is the reason why the petitioner needed to implead the second respondent also as the party to the proceedings even though it is sufficient to give direction to the first respondent alone.

10. It is understandable if the authority proposes to make any amendment to the service regulations and that has been brought as a subject in any meeting and consequently, it needed to be sent to the Government for approval. But no such proposal has arisen from any quarters of the authority or from the first respondent for any known or unknown reasons. Under such circumstances, it is unnecessary to drag the file by sending it to the second respondent for getting their approval.



Since the first respondent himself has been vested with the power of appointment by promotion and by relaxing the shortage of experience which has been accepted by the first respondent himself on principle, that can be executed by himself.

11. In the result, this Writ Petition is allowed and the respondents are directed to promote the petitioner as Deputy Planner with effect from 01.10.2020 pursuant to the Authority Resolution (AR120/2020) dated 30.09.2020 with all monetary and attendant benefits, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18.12.2023

Index : Yes
Internet : Yes/No
Speaking / Non-speaking
gsk



WEB COPY

To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai.

2. The Principal Secretary to Government,
Housing and Urban Development Department,
Namakkal Kavingar Maligai,
Chennai.



WEB COPY



R.N.MANJULA, J.

gsk

W.P.No.25196 of 2021 and
W.M.P.No.26568 of 2021

18.12.2023