



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.03.2023
Pronounced on	27.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

Writ Appeal.No.1618 of 2017

B.Prabhakaran

.. Appellant

Vs

1.The State of Tamil Nadu
Rep by Secretary to Government
Municipal Administration & Water Supply
Department Secretariat,
Fort St. George,
Chennai- 9

2.The Commissioner
Municipal Administration,
Chepauk, Chennai-5



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3. The Commissioner
Coimbatore City Municipal Administration
Coimbatore.

4. K.Saravanakumar

....Respondents

Prayer: Writ Appeal has been filed under Clause 15 of Letters Patent against the order dated 11.07.2017 made in W.P. No.27061 of 2008 allow the writ appeal.

For appellant	: Mrs.A.L.Ganthimathi Senior Counsel
For RR1 & R2	: Mr.L.S.M.Hasan Fizal Additional Government Pleader
For R3	: Mr.Najeeb Usman khan
For R4	: Mr.K.Rajkumar

J U D G M E N T

(Judgment of the Court was delivered by K.GOVINDARAJAN

THILAKAVADI J.)

This writ appeal has been filed to set aside the order dated 11.07.2017 made in W.P.No.27061 of 2008.



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2.The appellant herein is the petitioner in the above writ petition. He filed the Writ Petition No.27061 of 2008 for quashing the resolution No.262 in Na.Ka.No.177769 of 2006/MCI dated 30.10.2008 of the Municipal Council of the Coimbatore City Municipal Corporation and the consequent proceedings in Na.Ka.No.177769/2006/MCI dated 31.10.2008 and the proceedings by the first respondent in G.O.No.526 dated 16.12.2008, quash the same and consequently, direct the respondents to consider the petitioner and appoint him to the post of Assistant Executive Engineer (Main Office) with effect from 13.06.2008 and grant of consequential benefits such as seniority, increments, further promotions etc.

3.The petitioner in the above writ petition, is challenging the proceedings relating to the promotion of the 4th respondent as Assistant Executive Engineer (Main Office) in the services of the Coimbatore City Municipal Corporation Coimbatore.



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4.The learned Single Judge dismissed the above writ petition by stating that the petitioner did not make any endeavour to make a representation for his posting in the main office, and that the petitioner having availed the benefit of relaxation of the said condition through G.O.(D).No.97 Municipal Administration and Water Supply (C-4) Department dated 19.02.2016 which ratified his promotion along with four others, cannot make any complaint with regard to the promotion given to the 4th respondent.

5.Aggrieved by this, the petitioner filed the above appeal.

6.The learned counsel appearing for the appellant/writ petitioner would contend that the learned Single Judge erred in observing that the appellant should have submitted a representation for posting in the Engineering Department in the Main Office. The learned Single Judge failed to note the fact that there was no post of Junior Engineer (Mechanical) in the Engineering Department in the Main Office and hence, there was no occasion for the respondent/corporation to serve in the Engineering Department in the Main Office as Junior Engineer/Assistant Engineer. The proceedings of the Commissioner of Municipal Administration dated 03.10.2007 and also the proceedings dated 19.10.2007 of the Municipal Administration and Water



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Supply Department of Government of Tamil Nadu, the said requirement of working in the Main Office in the Engineering Department was not insisted as the qualification for the promotion to the post of Assistant Executive Engineer. The categorical admission made by the respondent/corporation in their counter affidavit that not working in the main office for the period of one year may not be put against the appellant in view of the Government letter dated 17.10.2007 was not considered by the learned Single Judge. He would further submits that many promotions as Assistant Executive Engineer have been made by the respondent corporation with persons who did not possess the said experience of having worked for one year in the Engineering Department of the Corporations Main Office.

7.It is further submitted that the 4th respondent has joined as foreman and was not coming under the feeder category for appointment as Junior Engineer. However, the learned Single Judge erred in holding that the appellant was not qualified to the post of Assistant Executive Engineer and hence, the appointment of the 4th respondent was not valid. It is submitted that the learned Single Judge ought to have seen that when the vacancy to the



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post of Assistant Executive Engineer in the main office arose, appellant alone should have been considered for the said post on the basis of the qualification and experience possessed by the appellant and the 4th respondent ought not to have been considered for the same as the 4th respondent was 7 years junior to the appellant.

8.Mrs.A.L.Ganthimathi, learned counsel appearing for the appellant would submit that as per Rule 4 of the Tamil Nadu Municipal Corporations Engineering and Water Supply Service Rules, 1996, for promotion to the post of Assistant Executive Engineer, the concerned person must have worked as Assistant Engineer/Junior Engineer for not less than one year in the Engineering Department of the Corporation Main Office and for a period not less than three years in the Ward Offices and though the appellant did not fulfil the qualification with regard to the working in the main office, the fact remains that it is not his voluntary act and such posting should have been given by the Corporation of Coimbatore and admittedly, it was not done and as such, the petitioner cannot be put to blame. The learned Senior Counsel appearing for the appellant, in support of the said submission, placed reliance



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upon the order dated 12.06.2015 made in W.P.No.16427 of 2015 [***R.Shanthi***

v. The District Collector (PD Section), Tirupur District, Tirupur]. It is the further submission of the learned Senior counsel appearing for the appellant that the seniority list of Assistant Engineers/Junior Engineers have been prepared and after inviting objections, it was issued vide proceedings of the third respondent dated 31.08.2000 and as per the same, the name of the appellant was found at SL.No.10 and the name of the fourth respondent was found at SL.No.17 and the appellant joined the service on 30.04.1986 and whereas the fourth respondent joined the service on 21.10.1992. He further submitted that the appellant has drawn the attention of this Court to the proceedings of the Commissioner, Coimbatore Corporation dated 08.06.2001 and would submit that as per the said proceedings inter se seniority reflects the status of the Assistant Engineers/Junior Engineers prior to 01.10.1996 and in the said list, the appellant's name was found place at SL.No.15 and the fourth respondent's name found place at SL.No.22 and as such, all along the fourth respondent Junior to the appellant. The learned Senior Counsel appearing for the appellant has also drawn the attention of this court to the proceedings of the Commissioner of Municipal Administration, Chepauk,



Chennai-600 005 dated 16.02.2006, wherein it has been stated that with

regard to the request made by the fourth respondent for promotion to the post of Assistant Executive Engineer (Main Office), the Commissioner of Coimbatore Corporation has to consider the claim of the 4th respondent for promotion to the post of Assistant Executive Engineer (Main Officer) and the third respondent, vide proceedings dated 16.02.2006, has informed that as per G.O.No.140, Municipal Administration and Water Supply Department dated 27.05.1997 a clarification has been issued that Junior Engineer (Mechanical) cannot be considered for promotion to the post of regular Assistant Executive Engineer and new Corporation Service Rules have been sought for the said post and further clarified that as on date, the fourth respondent is in seniority list at SL.No.12 and above him, 11 persons are there in the panel and inclusion of his name in the inter se seniority is an erroneous one. The Commissioner of Coimbatore Corporation also informed in the said proceedings that as per Council Resolution No.235 dated, a request has been made that one post of Assistant Executive Engineer and Assistant Engineer (B.E. Degree) may be appointed for Solid Waste Management and therefore, requested the said official to send a fresh



proposal for the creation of Assistant Executive Engineer (Mechanical and Solid Waste Management) post at the first instance and then to send necessary proposals for filling up the post by promotion from Corporation Employees.

9. The learned Senior Counsel would further submit that subsequent to the said proceedings of the Commissioner, Coimbatore Corporation dated 16.02.2006, a combined seniority list was prepared and objections were raised in the said list and the petitioner's name was found in SL.No.7. It is also contended by the learned Senior counsel appearing for the appellant that Coimbatore City Municipal Corporation, without taking note of the Seniority position of the appellant and his experience and also the reasons for non-posting the appellant in the main office, seems to have initiated proposal to accommodate the fourth respondent for promotion to the post of Assistant Executive Engineer (Main Office) and accordingly, passed a resolution and the respondents 1 and 2, without due and proper application of mind, had simply accepted the proposal and accorded approval for promotion of the fourth respondent, overlooking the seniority of the appellant and though the



appellant has been belatedly given promotion as Assistant Executive Engineer, his claim ought to have been considered before accommodating the fourth respondent. The above facts were not taken into account by the learned Single Judge in the above writ petition and therefore calls for interference.

10. Per contra, Mr.Najeeb Usman khan, learned Counsel appearing for the third respondent has drawn the attention of this Court to G.O.(MS).No.237, Municipal Administration and Water Supply (Elections) Department dated 26.09.1996, stating that the post of Junior Engineer (Mechanical) was also grouped with that of the post of regular Junior Engineers and accordingly, his name was included in the combined *inter se* seniority or Assistant Engineers/Junior Engineers, vide proceedings dated 08.06.2001 and in the said seniority list, the fourth respondent name was placed at SL.No.22 and in the meantime, vide proceedings dated 22.12.2006, it was proposed to issue a separate seniority list to the post of Junior Engineer (Mechanical) to which the fourth respondent was promoted during December, 1995 and objecting the same, the fourth respondent submitted a



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representation stating that in the event of deleting his name from the subsequent seniority list published on 04.07.2007, his name must be considered for promotion as Assistant Executive Engineer (Main Office), which was exclusively created for maintenance of all Corporation vehicles and solid Waste Management as per G.O.(Ms). No.139, Municipal Administration and Water Supply Department dated 27.05.1997 and accordingly, the name of the fourth respondent was deleted in the combined seniority list, vide proceedings dated 04.07.2007 and a separate list was created and objection was invited and it was confirmed that the fourth respondent is the only person available in the said seniority list.

11. Since the 4th respondent was specialized in Mechanical Engineering and his involvement in Solid Waste Management, he was considered for the promotion of Assistant Executive Engineer which was exclusively created for the maintenance of Corporation vehicles and Solid Waste Management of the vide proceedings of the Commissioner of Coimbatore Corporation dated 13.06.2014 and vide G.O.(D).No.97 Municipal Administration and Water Supply (C-IV) Department dated 19.02.2016. It is further submitted that the



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requirement under Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules 1996 has been relaxed and the appellant though did not perform his duty in the Main Office for a period not less than one year and got the ratification of his promotion to the said post and as such, it is not open to the appellant to claim for posting in the Main Office and therefore, his claim is unjust.

12. Heard the submissions made by the respective counsels for the parties.

13. As per Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules, 1966, the qualification for promotion to the post of Assistant Executive Engineer is that the concerned person,

"must have worked as Assistant Engineer, Junior Engineer for not less than one year in the Engineering Department of the Corporation Main Office and for a period of not less than three years in the Ward Offices."



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14. Admittedly, the appellant did not fulfil one of the criteria, namely work experience of not less than one year in the main office.

15. Though it is vehemently contended on the side of the appellant that not working in the Main Office for a period of one year is not due to his fault and it is for the Coimbatore Municipal Corporation to give posting in the said place and for not doing so, the appellant cannot be blamed. The learned Single Judge however considering the above contention of the appellant has rightly observed that the appellant ought to have submitted his representation for posting in the Main Office for not less than one year, knowing very well the eligibility criteria for promotion. Moreover, the appellant was given promotion on 13.06.2014 as Assistant Executive Engineer, though he did not fulfil the required prescribed qualification of serving in the Main Office for not less than one year by relaxing the Rule. At this Juncture, it is pertinent to note that till date no amendment has been made to Rule 4 of the Tamil Nadu Corporation Engineering and Water Supply Rules 1996, deleting the prescription of not less than one year in the Main Office of the Coimbatore City Municipal Corporation. While so, the appellant without fulfilling the



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mandatory norms for promotion for the post of Assistant Executive Engineer cannot question the promotion of the 4th respondent who all along worked as in-charge of the maintenance of Motor vehicles and also in-charge of solid Wastage Management, which involves overseeing the operations in the dump yard/land filling areas of the Coimbatore City Municipal Corporation and had gained enough experience. Now, the appellant also cannot claim seniority over the 4th respondent who joined the post of Assistant Executive Engineer on 13.01.2018. [Ref: ***K.Balarama Raju vs. V.V.Subramanya Sharma and others*** reported in ***(2012) 2 SCC (L&S) 115***, ***Hardev Singh vs, U.O.I and Others*** reported in ***(2012) (7) SLR 1 (SC)***], ***P.Dasharatha and others v..Government of Andhra Pradesh and others, Dr.S.K.Gupta v. Maharshi Dayanand University, Rohtak*** reported in ***(2014 (2) SLR 515 (punjab and Haryana-DB)***)

16.Applying the principles laid down in the above decision cases, the petitioner was promoted as Assistant Executive Engineer vide the proceedings of the Commissioner of Coimbatore Corporation dated 13.06.2014 and vide G.O.(D).No.97 Municipal Administration and Water



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Supply (C-4) Department dated 19.02.2016 after relaxing the requirement under Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules 1996, though he haven't performed his duty in the Main Office for a period not less than one year. Having got ratification of his promotion to the said post, it is not open to the petitioner to claim for the posting in the Main Office, Senior to the 4th respondent. It is not in dispute that the 4th respondent performed duties in the maintenance of Motor vehicles and worked in Solid Waste Management and oversee operation of the dump yard/land filling for clearing garbage generated through the city, for quite long years. Only after taking into consideration of his experience, he was posted as Assistant Executive Engineer in the Main Office.

17. Therefore, the appellant having availed the benefit of relaxation of the condition contemplated under Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Rules, 1996 through G.O.(D).No.97, Municipal Administration and Water Supply (C-4) Department dated 19.02.2016, which ratified his promotion along with four others, cannot make any complaint with regard to the promotion given to the



4th respondent. Hence, this Court finds no infirmity or irregularity in the order of the learned Single Judge. Accordingly, the Writ appeal stands dismissed.

No costs.

(D.K.K.,J.) (K.G.T.,J.)

27.04.2023

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. The Secretary to Government
Municipal Administration & Water Supply
Department Secretariat,
Fort St. George,
Chennai- 9

2. The Commissioner
Municipal Administration,
Chepauk, Chennai-5

3. The Commissioner
Coimbatore City Municipal Administration
Coimbatore.



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D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

vsn

PRE- DELIVERY JUDGEMENT MADE IN

Writ Appeal.No.1618 of 2017

27.04.2023