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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.13586 of 2023

and

WMP(MD)Nos.11460 & 11461 of 2023

K.Punithan

... Petitioner

Vs.

1.The State of Tamilnadu,
Rep.by its Additional Chief Secretary
to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Director of Municipal Administration,
Chennai – 600 028.

3.The Regional Director of Municipal
Administration,
Madurai Region, Kochadai,
Madurai – 625 016.

4.The Commissioner,
Periyakulam Municipality,
Periyakulam, Theni District.

... Respondents



Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of reversion passed by the 1st Respondent in G.O (2D) No.51, Municipal Administration and Water Supply (ME.1) Department Dated 02.06.2023 as communicated by the 2nd Respondent in Endt (Roc) 13259/2023/C2 Dated 02.06.2023 and quash the same as illegal and consequently direct the respondents 1 to 3 to permit the petitioner to continue his service in the transferred service and issue the posting orders within the time limit fixed by this Court.

Petitioner : Mr.S.Srinivasa Raghavan
For Respondents : Mr.Veerakathiravan,
Additional Advocate General
assisted by Mr.T.Villavankothai,
Additional Government Pleader
for R1 to R3

Mr.G.Kaleeswaran for R4

ORDER

Heard both sides.

2.By the impugned order, the petitioner has been reverted to Secretariat as Assistant Section Officer. Questioning the same this writ petition came to be filed.



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3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition. He pointed out that the case on hand is covered by the order dated 21.04.2023 in WP(MD)No.7882 of 2023 and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The learned Additional Advocate General for the respondents submitted that the order passed by this Court has been put to challenge in WA(MD)No.932 of 2023. He called upon this Court to dismiss this writ petition.

5.I carefully considered the rival contentions and went through the materials record on record. The case on hand is identical. Paragraphs 8 to 12 of the order dated 21.04.2023 made in WP(MD)No.7882 of 2023 read as follows :

“8.I carefully considered the rival contentions and went through the materials on record. The first question that calls for consideration is the nature of the petitioner's appointment. According to the respondents, the petitioner's appointment is traceable to Section 17(1) of the Tamil Nadu Act 14 of 2016. Section 17(1) is as follows:



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“17.(1) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with the provisions of this Act and the special rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with this Act and the said rules:

Provided that no appointment by direct recruitment under this section shall be made of any person other than the one sponsored by the Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Commission:

Provided further that appointment by direct recruitment under this section in respect of posts within the purview of the Commission shall be made, only where new posts with new qualifications are created temporarily and where the Commission does not have a regular or reserve list of successful candidates for sponsoring.”

The above provision only means that when it is necessary to emergently fill up a vacancy but if there would be undue delay in making such appointment if the usual statutory procedure is followed, the appointing authority may temporarily appoint a



person possessing a requisite qualification prescribed for the post. The case on hand pertains to the post of Municipal Commissioner. It is governed by Special Rules for Tamil Nadu Municipal Commissioners Subordinate Service [G.O.Ms.No. 191, MA & Ws (ME-1), dated the 11th August 1999]. Rule 2 deals with appointments of Municipal Commissioners. It reads as follows:

“2.Appointments. - Appointment to the service shall be made, -

[(a) By direct recruitment from among the categories of Municipal employees in Class-I or Class-I-A of the Tamil Nadu Municipal General Service and the candidates to be appointed shall be selected based on seniority and assessment by a Selection Committee consisting of the following officials: -

The Director / Commissioner of Municipal

Administration.

Chairman

The Second level officer of the Directorate /

Commissionerate of Municipal

Administration in-charge of the Municipal

Commissioners' establishment Member-Secretary

An officer nominated by the Secretary to

Government, Municipal Administration

and water Supply Department

Member

Provided that the appointment shall be made by the Government with the concurrence of the Commission :



Provided also that the guidelines followed in respect of selection through Departmental Promotion Committee be followed by the Selection Committee.]

(b) From Open market; and

(c) By recruitment by transfer from among the holders of the post of -

(i) Executive Officer (Selection Grade Town Panchayats) in the Tamil Nadu Town Panchayats Subordinate Service;

(ii) Assistant Section Officer from the Tamil Nadu Secretariat Service who has served as Assistant Section Officer for a period of not less than five years in the departments of Secretariat under one unit system out of which two year working knowledge in Municipal Administration and Water Supply Department; and

(iii) Superintendent from the Directorate of Municipal Administration in the Tamil Nadu Ministerial Service in the ratio of 6 : 5: 9 in the following cycle : -

<i>(1)</i>	<i>(2)</i>
<i>(1) First Vacancy</i>	<i>Municipal employee in the prescribed categories</i>
<i>(2) Second Vacancy</i>	<i>Graduate in Open Market</i>
<i>(3) Third Vacancy</i>	<i>Executive Officer (Selection Grade Town Panchayats)</i>
<i>(4) Fourth Vacancy</i>	<i>Assistant Section Officer of Secretariat</i>



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<i>(5) Fifth Vacancy</i>	<i>Superintendent from the Directorate of Municipal Administration</i>
<i>(6) Sixth Vacancy</i>	<i>Municipal employee in the prescribed categories</i>
<i>(7) Seventh Vacancy</i>	<i>Graduate in Open Market</i>
<i>(8) Eighth Vacancy</i>	<i>Municipal employee in the prescribed categories</i>
<i>(9) Ninth Vacancy</i>	<i>Assistant Section Officer of Secretariat</i>
<i>(10) Tenth Vacancy</i>	<i>Superintendent from the Directorate of Municipal Administration</i>
<i>(11) Eleventh Vacancy</i>	<i>Municipal employee in the prescribed categories</i>
<i>(12) Twelfth Vacancy</i>	<i>Graduate in Open Market</i>
<i>(13) Thirteenth Vacancy</i>	<i>Executive Officer (Selection Grade Town Panchayats)</i>
<i>(14) Fourteenth Vacancy</i>	<i>Assistant Section Officer of Secretariat</i>
<i>(15) Fifteenth Vacancy</i>	<i>Municipal employee in the prescribed categories</i>
<i>(16) Sixteenth Vacancy</i>	<i>Graduate in Open Market</i>
<i>(17) Seventeenth Vacancy</i>	<i>Superintendent from the Directorate of Municipal Administration</i>
<i>(18) Eighteenth Vacancy</i>	<i>Assistant Section Officer of Secretariat</i>
<i>(19) Nineteenth Vacancy</i>	<i>Graduate in Open Market</i>



(20)	Twentieth	Municipal employee in the prescribed
Vacancy		categories

Provided that where for any such turn an officer of the required category is not available, the turn will lapse and the vacancy shall be filled by an incumbent from the other category.”

9.The recruitment rule specifically contemplates recruitment by transfer among the cadre envisaged in Rule 2(C)((i, ii & iii) of Tamil Nadu Municipal Commissioners Subordinate Service. Looking at the order appointing the petitioner as Municipal Commissioner (Grade II) would indicate that the statutory scheme contemplated by the Special Rules has been scrupulously adhered to. The above rule contemplates three modes of appointment. One of the modes of appointment is by recruitment by transfer from among the holders of the posts set out in Rule 2(c). The petitioner was working in Secretariat. He was appointed as Municipal Commissioner by invoking Rule 2(c)(ii) of the Special Rules. It is obvious that the appointment of the petitioner as Municipal Commissioner Grade II is in consonance with the statutory scheme. Since the post falls within the purview of TNPSC, its prior approval was obtained for the purpose of verifying the petitioner's eligibility. It was a regular appointment. It cannot be characterised as temporary under Section 17(1) of Tamil Nadu Act 14 of 2016.



10. The next question that calls for consideration is whether the petitioner was a probationer. The learned Additional Advocate General relies on Section 28 of Tamil Nadu Act 14 of 2016. Section 28(1) reads as follows:

“28.(1) If a person appointed temporarily either under sub-section (1) or sub-section (2) of section 17 to fill a vacancy in any service, class or category otherwise than in accordance with the provisions governing the appointment thereto, such vacancy being a vacancy which may be filled by direct recruitment, is subsequently appointed to the service, class or category, he shall commence his probation, if any, in such category either from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine. If the post is one to which appointment may be made by transfer, and the person who had been appointed thereto either under sub-section (1) or sub-section (4) of section 17 is subsequently recruited thereto by transfer and included in the list of approved candidates, the appointing authority may, in his discretion, allow such person to commence his probation, if any, from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine:

Provided that the date so determined by the appointing authority to commence probation in this section, shall not be earlier than the date of commencement of probation of the junior most person already in service:



Provided further that on the date so determined by the appointing authority to commence probation in this section, the person shall not only possess all the qualifications prescribed for appointment to the service, but also be fit for inclusion in the list of approved candidates drawn up by the Commission or the appointing authority, as the case may be.”

The aforesaid provision can be pressed into service by the respondents only if the initial appointment is on temporary basis under Sub Section (1) or Sub Section (4) of Section 17 of the Act. I have already held that there is nothing on record to show that the petitioner's original appointment as Municipal Commissioner was made under Section 17(1) of the Act. Therefore, Section 28(1) of the Act will not come to the aid of the respondents.

11. Section 68 of the Tamil Nadu Act 14 of 2016 enshrines the overriding effect of Special Rules. It reads as follows:

“68. If any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in respect of that service, prevail over the provisions of this Act. ”

Rule 7 of the Special Rules is as follows:

“7. Probation.- Every person appointed to the service by direct recruitment from Open Market or from among Municipal Employees shall, from the date on which he joins duty as



Municipal Commissioner, Grade II, be on probation for a total period of two years on duty within a continuous period of three years.

*The declaration of satisfactory completion of probation shall be ordered by the Director of Municipal Administration.” The above rule clearly states that the concept of probation is applicable only to those candidates appointed by direct recruitment from the open market or from among municipal employees. As already noted, Rule 2 of the Special Rules contemplates appointment in three modes. Clause (a) deals with direct recruitment. Clause (b) provides for recruitment from open market. Clause (c) provides for recruitment by transfer. Rule 7 excludes the applicability of the concept of probation for those appointed by recruitment by transfer. Even if I assume that Section 28 of Tamil Nadu Act 14 of 2016 can be invoked, there is clear inconsistency between Section 28 of the Act and Rule 7 of the Special Rules. In view of Section 68 of the Act, the Special Rules will prevail and therefore the petitioner could not have been placed under probation after he is appointed as Municipal Commissioner. The section issue is also answer in favour of the petitioner. The learned counsel appearing for the petitioner draws my attention to the decision reported in (2017) 5 SCC 783 (**Palure Bhaskar Rao and others Vs P.Ramaseshaiah and others**). Paragraphs 14 and 15 of the said decision read as follows :*

“14. Transfer and recruitment by transfer are entirely two different concepts. No doubt transfer can be from one category



to another category or within the class if the rule permits interchangeability of the categories within a class. Any other transfer both intra-category and inter-category are in fact, under law is a selection and appointment by way of a transfer from one category to another or from one class to another class or from one service to another. If it is a transfer simpliciter it conveys a different meaning and if it is a recruitment by transfer, as we have clarified above conveys a different concept altogether. The latter is a mode of selection/recruitment to a service.

15. Transfer in relation to service simply means a change of a place of employment within an organisation. Such transfer being to a similar post in the same cadre and therefore obviously such a transfer does not result in the termination of his lien in the parent cadre but recruitment by transfer is a different service concept altogether. It is a method of recruitment to a service, in the instant case to a different category in the same service initially and thereafter to a different service altogether. Once an employee undergoes a transfer by way of a recruitment to a different cadre or to a different service, the employee loses his lien in the parent cadre/service. In that process, there is an induction to a new cadre and sometimes with a different type of duty. Such induction has distinct consequence on the career of the employee different from what would have been the normal course had he continued in the parent service. Thus the recruitment by transfer terminates the lien of an employee in



the parent cadre/service whereas transfer simpliciter to a similar post in the same cadre results only in change of place of employment and therefore there is no termination of lien (see V. Jagannadha Rao v. State of A.P. [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 and B. Thirumal v. Ananda Sivakumar [B. Thirumal v Ananda Sivakumar, (2014) 16 SCC 593].”

The said decision furnishes a complete answer to all the objections raised by the respondents. Once the petitioner was appointed as Municipal Commissioner, he becomes a member of Tamil Nadu Municipal Commissioners Subordinate Service. Therefore, relieving him from the said post and reverting him to Secretariat is clearly illegal. The order impugned in this writ petition is set aside.

12.This writ petition is allowed accordingly.”

6.Applying the ratio set out in the above order, the order impugned in this writ petition is set aside. This writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

30.06.2023

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