



W.A.(MD) Nos.932 & 1484 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
13.09.2023	26.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.(MD) Nos.932 & 1484 of 2023
and
C.M.P.(MD) Nos.7770 & 11368 of 2023**

W.A.(MD) No.932 of 2023:

- 1.The Government of Tamil Nadu
rep.by Additional Chief Secretary
Municipal Administration and
Water Supply Department
Fort St.George
Chennai-600 009
- 2.The Director of Municipal Administration
No.778, Urban Administrative Building
Santhome High Road
Chennai-600 028



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3.The Regional Director of
Municipal Administration
Melakkal Main Road
Kochadai, Madurai-625 016

... Appellants

-vs-

M.Sakthivel

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 21.04.2023, passed in W.P.(MD) No.7882 of 2023, on the file of this Court.

For Appellants : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.T.Villavan Kothai
Additional Government Pleader

For Respondent : Mr.M.Saravanan

W.A.(MD) No.1484 of 2023:

1.The State of Tamil Nadu
rep.by Additional Chief
Secretary to Government
Municipal Administration and
Water Supply Department
Secretariat, Fort St.George
Chennai-600 009



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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
-vs-

... Appellants

K.Punithan

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 30.06.2023, passed in W.P.(MD) No.13586 of 2023, on the file of this Court.

For Appellants : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.T.Villavan Kothai
Additional Government Pleader

For Respondent : Mr.S.Srinivasa Raghavan



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COMMON JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

For the sake of convenience, the parties are referred to as per the ranking in the writ petitions.

2. W.A.(MD) No.932 of 2023:

2.1.W.A.(MD)No.932of 2023 is directed against the order of the learned Single Judge, dated 21.04.2023, made in W.P.(MD) No.7882 of 2023.

2.2. By the said order, the learned Single Judge allowed the writ petition filed by the writ petitioner Sakthivel for issuance of a writ of certiorarified mandamus to quash the Government Order passed by the first respondent in G.O.(Pa) No.155, Municipal Administration and Water Supply (Na Pa.1) Department, dated 27.03.2023, and the consequential order of the second respondent dated 30.03.2023.



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3. W.A.(MD) No.1484 of 2023:

3.1. Yet another writ petition is filed by the writ petitioner – K.Punithan in W.P.(MD) No.13586 of 2023 to quash the identical Government Order in G.O.(2D) No.51, Municipal Administration and Water Supply (ME.1) Department, dated 02.06.2023 passed by the first respondent and the consequential order dated 02.06.2023, passed by the second respondent and following the order passed in the writ petition in W.P.(MD) No.7882 of 2023, the Learned Single Judge quashed the orders and allowed the writ petition.

3.2. These two appeals arise out of the said orders passed by the learned Single Judge and as such, are taken up together and are being disposed of by this common Judgment.

4. Brief facts of the case in common:

4.1. There exists a post of Municipal Commissioner Grade-II in the Tamil Nadu Municipal Subordinate Service. Recruitment to the said post is governed by the Special Rules framed in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India known as Tamil Nadu Municipal Commissioners' Subordinate Services Rules.



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4.2. As per the same, recruitment to the post of Municipal Commissioner Grade-II has to be made by way of direct recruitment from among the persons, who have served as Manager of all Municipal Offices or as Accountant and Revenue Officer; and from open market; and by recruitment by transfer.

4.3. It is useful to extract hereunder Rule 2 of the Special Rules:

“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



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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>



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(18) Eighteenth Vacancy	Assistant Section Officer of Secretariat
(19) Nineteenth Vacancy	Graduate in Open Market
(20) Twentieth Vacancy	Municipal employee in the prescribed 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.”

4.4. While so, as far as the case of the writ petitioner – M.Sakthivel is concerned, *vide* G.O.(3D) No.7, Municipal Administration Water Supply (ME-I) Department, dated 16.04.2021, the Government approved the estimate of vacancies for the post of Municipal Commissioner Grade-II as six for the year 2020-2021 and apportioned those vacancies to various categories as prescribed in Rule 2 of the Special Rules. Thereafter, *vide* letter of the Government dated 28.04.2021, the Commissioner of Municipal Administration was requested to furnish the list of eligible candidates in the category of Superintendent so as to appoint them by way of “transfer” and in the category of Municipal employees by direct recruitment for appointment to the post of Municipal Commissioner Grade-II for the year 2020-2021 and willingness



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from the qualified Assistant Section Officers of all the Departments , Secretariat as on the crucial date of 15.03.2020 was called for by an U.O.Note of the Municipal Administration and Water Supply (ME-I) Department, 28.04.2021.

4.5. Accordingly, after calling for willingness, by a letter dated 09.07.2021, the Director of Municipal Administration forwarded the list of eligible candidates from the categories of Assistant Section Officer and Superintendent, Office of the Director of Municipal Administration, for appointment to the post of Municipal Commissioner Grade-II for the year 2020-2021.

4.6. A Selection Committee was, thereafter, constituted, which selected the list of eligible candidates from among the list forwarded by the above communication and by the communication dated 09.07.2021, the Director of Municipal Administration forwarded the list of candidates to be appointed as Municipal Commissioner Grade-II after obtaining concurrence from the Tamil Nadu Public Service Commission.



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4.7. Thereafter, the Government, after examination of the list, issued G.O.(3D) No.12, Municipal Administration & Water Supply (ME.1) Department, dated 06.09.2021, approved the list of four eligible candidates from the category of Municipal employees by direct recruitment and from the categories of Assistant Section Officer of Secretariat, Superintendent of Directorate of Municipal Administration by recruitment by transfer fit for appointment as Municipal Commissioner Grade-II for the year 2020-2021. The name of the writ petitioner – Sakthivel finds place in serial No.3 of the said list.

4.8. However, in paragraph No.6 of the said Government Order, it is mentioned that the incumbents are temporarily appointed under Section 17(1) of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 (for brevity, “Tamil Nadu Act 14 of 2016”), by recruitment by transfer and by direct recruitment. It is also mentioned that the appointments are purely temporary and the individuals shall not claim seniority in view of the temporary appointment.



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4.9. It is mentioned in Paragraph No.7 of the said Government Order that the inclusion of the candidates from the categories of Municipal employees in the above appointment as Municipal Commissioner Grade-II is purely provisional subject to obtaining the post-facto concurrence from the Tamil Nadu Public Service Commission.

4.10. Pursuant thereto, posting order was issued by the Director of Municipal Administration to the writ petitioner - M.Sakthivel on 15.09.2021 and he was appointed in Punjaipuliampatti Municipality in the existing vacancy.

4.11. As far as the writ petitioner – K.Punithan is concerned, since there were number of vacancies in Municipal Commissioner Grade-II and since the elections were approaching and the Municipal Commissioners were to act as the Returning Officers, the Government initiated the proposal to fill up the vacancies. By adopting the similar process, the Director of Municipal Administration by U.O.Notes dated 09.11.2021 and 17.11.2021 forwarded the list of eligible candidates from among the Municipal employees



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of Class-I and Class-IA of the Tamil Nadu Municipal General Service after being selected and recommended by the Selection Committee for appointment to the post of Municipal Commissioner Grade-II by direct recruitment and the list of eligible candidates from the categories of Superintendents of the Office of the Director of Municipal Administration, Executive Officer of Selection Grade Town Panchayat and Assistant Section Officer of Secretariat for appointment as Municipal Commissioner Grade-II by recruitment by way of transfer for the year 2021-2022. Accordingly, *vide* G.O.(3D) No.14, Municipal Administration & Water Supply (ME.1) Department, dated 20.11.2021, a total number of 20 persons were appointed.

4.12. Paragraph Nos.7 and 8 of the said Government Order, which contain the conditions of appointment, are extracted hereunder for ready reference:

“7.The Government hereby appoints the incumbents mentioned at para 6 above as Municipal Commissioner Grade-II temporarily, under section 17(1) of Tamil Nadu Government Servant (Conditions of Service) Act, 2016 by recruitment by transfer and by direct recruitment, subject to following conditions:



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- a. *If, the Tamil Nadu Public Service Commission sponsor any candidates before the adjustment of vacancies, the junior most incumbents will be reverted back to their previous post.*
- b. *Further vacancies shall not be apportioned to the above said 4 categories i.e., Municipal Employees, Executive Officer of Town Panchayats, Superintendents of office of the Director of Municipal Administration and Assistant Section Officers of Secretariat until the turn allotted to them are exhausted due to adjustment from other category.*
- c. *The individuals shall not claim any seniority preference in view of this temporary appointment.*
- d. *The individuals shall not claim any right in view of this temporary appointment.*

8.The Government also order that the inclusion of the candidates from the category of Municipal Employees in the above appointment as Municipal Commissioner Grade-II is purely provisional, subject to obtaining post-facto concurrence from the Tamil Nadu Public Service Commission.”



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4.13. The writ petitioner – K.Punithan's name finds place in Serial No.3. Accordingly, he was appointed as Municipal Commissioner Grade-II in Periyakulam Municipality *vide* order of the Director of Municipal Administration, dated 20.11.2021.

4.14. While so, the writ petitioner – M.Sakthivel was issued with a charge memorandum, under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, dated 23.01.2023, containing eight charges. Thereafter, by Government Order in G.O.(Pa) No.155, Municipal Administration and Water Supply (Na Pa.1) Department, dated 27.03.2023, the first respondent – Government ordered repatriation of the writ petitioner – M.Sakthivel to his original Department as Assistant Section Officer under Municipal Administration and Water Supply Department, on the ground that when the incumbent has been appointed as Municipal Commissioner and during his probation since a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, has been issued, being unsatisfied with his performance, in exercise of the powers under Explanation-II of Section 31(3) of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016, by discharging the probationer from service.



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A consequential order dated 30.03.2023 was also passed by the Director of Municipal Administration directing the said M.Sakthivel to be relieved from service.

4.15. Similarly, in the case of the writ petitioner – K.Punithan, a charge memorandum, dated 23.05.2023, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued containing eight charges. Thereafter, on the very same grounds, by G.O.(2D) No.51, Municipal Administration and Water Supply (ME.1) Department, dated 02.06.2023, the writ petitioner – K.Punithan was reverted back to the Secretariat as Assistant Assistant Section Officer.

4.16. In both cases, the individuals filed writ petitions challenging the orders of repatriation passed against them.

5. Findings of the learned Single Judge:

5.1. The learned Single Judge considered the case of the parties. After framing a question as to whether the appointment of the writ petitioners was temporary in nature under Section 17(1) of Tamil Nadu Act 14 of 2016,



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the learned Single Judge answered the same that the appointment of the writ petitioners was not temporary in nature as it was a regular appointment as per Rule 2 of the Special Rules.

5.2. Secondly, the learned Single Judge considered whether the writ petitioners could be considered as probationers. After considering the Sections 28(1) and 68 of the Tamil Nadu Act 14 of 2016 and Rule 7 of the Special Rules, the learned Single Judge held that there was no question of placing the candidates on probation, since their appointment was by way of transfer. Thereafter, by following the dictum of the Honourable Supreme Court of India in the case of **Palure Bhaskar Rao and others vs. P.Ramaseshaiah and others**, reported in **(2017) 5 SCC 783**, which differentiated between “administrative transfer” and “transfer as a mode of recruitment”, allowed the writ petitions. Aggrieved by the same, the present writ appeals are filed by the Government.

6. Submissions:

6.1. Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondent – Department, taking this Court through the



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Government Orders of appointment would submit that it can be seen that the appointment orders specifically stated that the appointments of the writ petitioners are temporary. Once the appointments are made temporary and it was made crystal clear in the appointment orders that it will not confer any right on the appointees, then the Government had every right to repatriate the writ petitioners to their original position.

6.2. Further, the learned Additional Advocate General would contend that a reading of Sections 17 and 28 of the Tamil Nadu Act 14 of 2016 it would be clear that if the temporary appointees are subsequently continued in the same Department, it goes without saying that they shall be considered as probationers and therefore, when the writ petitioners were only probationers and their probation not having been declared yet and when their performance was found not satisfactory, especially when they were involved in misconduct, without prejudice to proceed against them under the relevant Services Rules by way of charge memorandum issued against them, the Government had every right to discharge the probationers. Once the probationers can be discharged, since the writ petitioners were appointed from the existing services, they have been duly repatriated to their parent



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Department. Therefore, he would submit that the learned Single Judge is erred in allowing the writ petitions.

6.3. The learned Additional Advocate General would also submit that the learned Single Judge ought not to have exercised his discretion in view of the serious charges, which are alleged against the writ petitioners, especially when the post of Municipal Commissioner being sensitive in nature.

6.4. Per contra, Mr.D.Saravanan and Mr.S.Srinivasa Ragavan, learned counsel appearing for the respective writ petitioners, would submit that this is a case where the vacancies are regular in nature. The vacancies were filled up as per the Special Rules especially Rule 2 of the Special Rules, which is extracted above. The regular Selection Committee had selected the candidates from the list of eligible candidates, which is made ready by the Director of Municipal Administration Department and thereafter, the Government duly appointed them by recruitment by way of transfer to the post of Municipal Commissioner Grade-II. As such, there was no question of repatriating the writ petitioners as if they were in deputation. The appointment of the writ petitioners cannot be called as temporary. They have



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been appointed by way of recruitment on transfer basis and therefore, as per Rule 7 of the Special Rules, they were not under probation. As a matter of fact, by their orders of appointment, they were never placed on probation. Therefore, they cannot be treated as probationers.

6.5. The learned counsels also relied upon the Judgment of the Honourable Supreme Court of India in the case of **Palure Bhaskar Rao** (cited supra), more specifically paragraph Nos.14 and 15 of the said decision.

7. Findings:

We have considered the rival submissions made on either side and perused the material records of the case and we are of the view that the orders impugned in the writ petitions are illegal and unsustainable for the following reasons :

(i) The impugned orders proceed on the basis as if the writ petitioners were probationers. From the very Government Orders appointing the writ petitioners it is clear that they were appointed on recruitment by transfer. In this regard, it is useful to extract Paragraph Nos.14 and 15 of the Judgment of the



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Honourable Supreme Court of India in the case of **Palure Bhaskar**

Rao (cited supra):

“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



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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].”

(emphasis supplied)

Thus, it can be seen that recruitment by transfer is different from change of place of employment within the organisation. It is to a different post and the employee would loose his lien in the original post. It amounts to an induction into a new cadre and as such, there is no question of any temporary appointment by way of transfer.



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(ii) Even otherwise, whether the appointment is temporary or not cannot be determined by the merely terming the appointment as temporary. It should be determined by reading the entire order of appointment and process in total. It can be seen in the instant case that the vacancies are regular vacancies. The estimation was done as per rota-quota basis by considering as if it is a regular appointment. Thereafter, willingness was called for as if it is a regular appointment. After receiving willingness, a Selection Committee was constituted and the candidates were selected. Such selected candidates were sponsored and thereafter, appointed by the Government. The appointment is termed as “temporary” only because the Government chose to precede the appointment before the concurrence from the Tamil Nadu Public Service Commission. Therefore, the appointment of the writ petitioners is called temporary only in that sense, because if the concurrence of the Tamil Nadu Public Service Commission is not obtained, then the appointments may have to be cancelled. Except for the same, it can be treated that the appointment was regular in



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nature. It is not the case of the Government that Tamil Nadu Public Service Commission has not granted its approval for the appointment of the writ petitioners. Therefore, it is not a temporary appointment in the sense of stop gap arrangement as envisaged under Section 17(1) of the Tamil Nadu Act 14 of 2016, but a regular appointment by way of recruitment by transfer. In this regard, useful reference can be made to the Judgment of the Hon'ble Supreme Court of India, in **State of U.P. v. M.J. Siddiqui (Dr), (1980) 3 SCC174**, more particularly paragraph No. 11, which reads as under :

“11.The mere use of the term “appointment in a temporary vacancy” by itself would not conclude the matter or lead to the irresistible inference that the appointment was not made in a substantive capacity because even a substantive appointment could be made to a purely temporary vacancy. In order, therefore, to determine the nature of the appointment, we have to look into the heart and substance of the matter, the surrounding circumstances, the mode, the manner and the terms of appointment and other relevant factors.”

(emphasis supplied)



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(iii) Once the writ petitioners are appointed only by way of recruitment by transfer, as per Rule 7 of the Special Rules, they are not placed on probation. It is useful to extract hereunder Rule 7 of the Special Rules:

“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.”

Both the writ petitioners were appointed only by way of transfer and not by way of direct recruitment. As such, they are not placed on probation. As a matter of fact, the orders of appointment also do not place them on probation. Therefore, they cannot be considered as probationers at all.

(iv) In this connection, it is the contention of the learned Additional Advocate General that once the writ petitioners are temporarily appointed expecting the approval by the Tamil Nadu



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Public Service Commission and appointed into Municipal Service and thereafter, continued on regular basis by virtue of Section 28 of the Act 14 of 2016, they have to be treated as probationers. For ready reference, Section 28 of the Act 14 of 2016 is extracted hereunder:

“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:



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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.”

(v) From the reading of the above provision, it can be seen that if a person is appointed temporarily either under Section 17(1) or Section 17(2) of the Tamil Nadu Act 14 of 2016 and thereafter, if the same person is appointed to the said post by way of direct recruitment, then his probation shall commence either from the date of his temporary appointment or from such subsequent appointment. However, in the instant case, the appointment of the writ petitioners is a regular appointment under



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Rule 2 of the Special Rules. It is not made as an emergency exercise considering that the vacancy could not be filled by way of regular process and neither the vacancy was the short term vacancy. There was also no subsequent appointment and in any event, the same was not a direct recruitment. Therefore, when Section 17 of the Tamil Nadu Act 14 of 2016 categorically lays down that only the candidates, who are appointed by way of direct recruitment alone, shall be probationers, then there was no question of treating the writ petitioners as probations.

(vi) As a matter of fact, Section 68 of the Act 14 of 2016 also 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. ”

A perusal of the above would make it clear that the Special Rules will prevail over the provisions of the Tamil Nadu Act 14 of 2016 in case there is any inconsistency. Thus, in any view of the matter, the impugned orders of repatriation are unsustainable. Thus,



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viewing from any angle, the orders impugned in the writ petitions cannot be sustained. Hence, no exception whatsoever can be made to the findings and conclusions of the learned Single Judge.

8. Result:

Accordingly, finding no merits, the writ appeals stand dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.]

[D.B.C., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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JUDGMENT
IN
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