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W.P.(MD)No.18236 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.18236 of 2019

and

W.M.P.(MD)No. 14679 of 2019

Karthikeyan

... Petitioner

vs.

1.The Secretary to Government,
Department of Municipal Administration &
Water Supply,
Fort St. George,
Chennai-600 002.

2.The Commissioner Municipal Administration,
Urban Administration Building,
Raja Annamalaipuram,
MRC Nagar,
Chennai-28.

3.The Commissioner,
Puliyangudi Municipality,
Tirunelveli District.

... Respondents



W.P.(MD)No.18236 of 2019

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records relating to the impugned order issued in Na.Ka.No. 2808/2018/C1, dated 16.08.2019 by the 3rd respondent and quash the same as illegal and consequently direct the respondents to retain the petitioner as Field Assistant at the 3rd respondent Office.

For Petitioner : M/s.S.Chellapandian

For R-1 & R-2 : Mr.P.Thambidurai
Government Advocate

For R-3 : Mr.M.Rajarajan,

ORDER

This writ petition is filed for issuance of a *Writ of Certiorarified Mandamus*, to quash the impugned order, dated 16.08.2019.

2. The petitioner joined in the 3rd respondent municipal service as Sanitary Worker. The Field Assistant post can be recruited



W.P.(MD)No.18236 of 2019

WEB COPY

either by direct recruitment or by promotion by transfer from the same or any other municipality, under Rule 4 of Tamil Nadu Municipal Public Health Service Regulations, 1970. The Municipality cannot recruit any fresh person through direct recruitment, if it incurs expenditure by way of salary over and above 49%. Therefore, the existing worker can be promoted to the said post. However, the existing sanitary workers were not having sufficient qualification to be promoted as Field Assistant. Therefore, the Government has come out with a scheme to send all the sanitary workers for training for 45 days. The petitioner has completed the said training and he is fully qualified to be promoted as Field Assistant. Subsequently, the petitioner was promoted as Field Assistant, vide proceedings, dated 28.02.2019. But, subsequently, through the impugned order, dated 16.08.2019, the respondents have cancelled the promotion of the petitioner. Aggrieved over the same, the present writ petition is filed.



WEB COPY



W.P.(MD)No.18236 of 2019

3. At the time of admission, this Court has granted an interim stay. Based on the interim stay, the petitioner is continuing in the said post.

4. The 3rd respondent has filed a counter affidavit stating that the Government has come forward to formulate a scheme to grant training to the Sanitary Workers. Thereafter, the Government has issued a combined seniority list of persons who had completed training. Moreover, prior to this communication, the Government has already issued circular, dated 01.08.2019, wherein it has been directed that the municipalities cannot promote any Sanitary Workers to the post of Field Assistant, since there was a process to prepare a combined seniority list from all municipalities. Therefore, the appointment of the petitioner is illegal, since there are several other seniors in the seniority list. Overlooking all the seniors, the petitioner was appointed, hence, the



W.P.(MD)No.18236 of 2019

WEB COPY

impugned order was passed cancelling the promotion. Therefore, the 3rd respondent prayed to dismiss the writ petition.

5. Heard M/s.S.Chellapandian, learned Counsel appearing for the petitioner, Mr.P.Thambidurai, learned Government Advocate appearing for the respondents 1 & 2 and Mr.M.Rajarajan, learned Counsel appearing for 3rd respondent and perused the records placed before this Court.

6. Under Rule 4 of Tamil Nadu Municipal Public Health Service Regulations, 1970, the post of Field Assistant will come under “All other categories”. Under Sub Clause 2 in the said category, it is stated that the promotion shall be granted by way of transfer from the **same municipality**. If any vacancy is available in other municipality, then promotion can be granted from any other municipality. If the



W.P.(MD)No.18236 of 2019

WEB COPY

promotion ought to be granted within the same municipality, then the appropriate authority is the Commissioner of the said Municipality. If the promotion ought to be granted to some other municipality, then the appropriate authority is the Commissioner of Municipal Administration and Water Supply (in short Commissioner of MAWS). This would be evident from the Circular, dated 10.04.2007 of the Commissioner of MAWS. Even the circular also directs the municipality to promote the person within their own municipality without getting any permission from the Commissioner MAWS. The said circular is extracted here under:

The respondents were following this Circular and had granted promotion to several persons. Also, in the present case the respondents had followed the said Circular and had granted promotion to the petitioner. Since the petitioner was granted promotion within the same municipality, the appropriate authority is the 3rd respondent i.e. Commissioner of



W.P.(MD)No.18236 of 2019

சுருதி:
செய்தி அருமை
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அருமை அருமை
(அருமை அருமை அருமை)

வார்டு:	மாண்புமிகு-செய்து கலாநாயகர்-நாடாட்சி எனக் கலாநாயகர் உதவிமார் மாண்புமிகு இயக்குநர்-மாண்புமிகு ஆலமயர் கதத் துறைமுக மருத்துவர்-செய்து கலாநாயகர்
மாண்புமிகு:	செய்து கலாநாயகர்-நாடாட்சி ஆலமயர் கதத் துறைமுக 1905/03/08 தாள் B.11.06
	2. முதலமைச்சர், இலக் கலாநாயகர், கதத் துறைமுகம், நாடாட்சி விவரம்
	3. இலக் கலாநாயகர், கதத் துறைமுகம், நாடாட்சி விவரம்
	4. மாண்புமிகு-செய்து கலாநாயகர் கதத் துறைமுக 1905/03/08, தாள் 1.2.07
	5. ஆலமயர் கதத் துறைமுக தாள் 1905/03/08, தாள் 21.2.07
	6. நாடாட்சி இலக் கலாநாயகர் கதத் துறைமுக, கதத் துறைமுக தாள் 1905/03/08, தாள் 3.1.07

[illegible]

செய்து பணிபுத்திர மராமதி ஆகலாப்போ பொது அதிகாரி, எனவே அரசு விதிப்பதற்குரிய செலவுகளை மேற்கொண்டு பொதுப் பெற்றும் கொள்ளவும், ஒரு மராமதிக்கென்று ஒரு மராமதிக்கு பரிசீலி பெற்ற மராமதி க்குப் பின்பு பொதுப் செலவு இடக்கூடிய வரிகளும் செலவிடப்படக்கூடியது. இவ்வாறுவந்ததற்கென்று மராமதி ஆகலாப்போ இவ்வாறுவந்ததற்கு அதுபடி அளவு விலைகள் கோரிய பெற்றும்படி அதுவாசுதர் வரிகளாகிய செலவுக் கொள்ளப்படுகிறது.

ஆம் வெயிட்ஸா
நாஸ்டி டீவாஸ் ஆதாயப்படுத்தா

தலைவர்: பரவலாகிய நான். கூடுதல் தாமதம். நன்றி. நான் இப்போது ஆலோசனைகளைக் கொடுத்தேன். நான் இப்போது ஆலோசனைகளைக் கொடுத்தேன். நான் இப்போது ஆலோசனைகளைக் கொடுத்தேன்.

சுயம்சாஸனிப்பாளர்



W.P.(MD)No.18236 of 2019

WEB COPY

Puliyangudi Municipality and he has rightly granted promotion to the petitioner on 28.02.2019 and the petitioner joined the promoted post on 09.03.2019. In fact, the respondents have categorically directed that since the Commissioner is the appointing authority, the Commissioner shall pass the promotion order within their municipalities.

7. However, the learned Counsel for the 3rd respondent refuted such plea and submitted that since the regulation prescribes transfer to any other municipality as well, then the appropriate authority is the Commissioner MAWS and the Commissioner of the respective municipality is not having any power. This Court is of the considered opinion that such an argument is totally against the Rules and also against their own circular. Since the rules specifically states that “promotion in the same municipality” or “promotion from any other municipality”. If it is within the municipality, Commissioner of that Municipality is the authority and if it is outside the municipality, the



W.P.(MD)No.18236 of 2019

WEB COPY

Commissioner of MAWS is the authority.

8. The next contention of the respondents is that the earlier Circular is no longer in existence, since the respondents have issued subsequent circular dated 01.08.2019. In the subsequent circular it is stated that vide proceedings dated 16.04.2019 the temporary seniority list of Field Assistants was circulated to all the municipalities and steps are being taken to finalize the seniority list. While that being so, some of the municipalities are attempting to appoint the Field Assistant, hence through this Circular all the municipalities were specifically restrained from granting appointment order to the Field Assistant, if granted shall be cancelled. Until further orders the post shall not be appointed. Hence, the respondents submitted when the Commissioner (MAWS) has restrained to appointment anybody through the subsequent circular the appointment of the petitioner is illegal. The relevant portion of the



WEB COPY



W.P.(MD)No.18236 of 2019

circular is extracted hereunder:



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W.P.(MD)No.18236 of 2019

நகராட்சி திர்வக ஆணையரவை,
கோவை-28.

சுற்றுலா

தகவன் B/63/2019/சு1

தா:01/09/2019

பொருள்: சுற்றுலா - தகவன் நகராட்சி பொது கழகப்பணி -
காப்பணி உதவியாளர் - நகராட்சியில் காலியாக உள்ள
காப்பணி உதவியாளர் பணிக்குத்தான் பூர்த்தி செய்ய -
நகராட்சி.
பார்வை இம்மனுவை தகவன் B/63/2019/சு1 தா:15.4.2020.

பள்ளியில் கட்டிடம் இம்மனுவை சுற்றுலா மூலம் காப்பணி
உதவியாளர்களின் பணிக்கு பட்டியல் அளவற்று நகராட்சியிலுக்கும் அனுப்பப்பட்டது.
மேற்படி பணிக்கு பட்டியலின் இறுதி பட்டியல் தான் பெயர் பட்டியலைக் கொடுக்கப்பட்டு
வருகிறது.

இந்தியத்தில் காப்பணி உதவியாளர்கள் நகராட்சி திர்வக ஆணையரவையின்
பரிந்துரையின்மூலம் பணி உயரில் பணிபுரைய செய்ப்படுவதாக அறிவிக்கப்படுகிறது.

மேற்படி காப்பணி உதவியாளர்கள் பணிபுரையும் ஏதேனும் செய்ப்படுகிறதின்
அதனை உடனடியாக எடுத்து செய்யுமாறு அறிவிக்கப்படுகிறது. இந்தியாவில் மேற்படி
காப்பணிபுரையதற்கின் பணி தியானம் குறித்து நகராட்சி திர்வக ஆணையரவையின்
பட்டியல்களில் உள்ளதால் மறு உத்திரவு வரும் வகையில் மேற்படி பணிபுரைய
பட்டியல்களைய திருத்தி கட்டிவைமாறு அளவற்று நகராட்சி ஆணையர்களை கேட்டுக்
கொள்ளப்படுகிறது.

ஒம்- இரயுத்தொரு ஆணைக்கள்,
நகராட்சி திர்வக ஆணையருக்காக.

மேலுடன்
அளவற்று நகராட்சி ஆணையர்களை
தகவல்
அளவற்று நகராட்சி திர்வக பண்டித இயக்குனர்கள்

// ஆணையர் அனுப்பப்படுகிறது

சுற்றுலா திர்வக
15/9/19



W.P.(MD)No.18236 of 2019

WEB COPY

9. On perusing the subsequent circular it is seen that the circular banning to grant promotion was issued on 01.08.2019, but the petitioner was promoted on 28.02.2019 that is prior to the banning. Therefore, this Court is of the considered opinion that the subsequent circular cannot be relied on to deny promotion.

10. Further more, the seniority list is only a combined seniority list, from the said list the Commissioner (MAWS) has power to grant promotion to other municipalities. But the concerned municipality has power to prepare its own seniority and should take its own seniority list and grant promotion. In other words, the Commissioner of municipality is the appointing authority to grant promotion to such post, to that extent, they have to take seniority list within their own municipality. If there is no place within their municipality and if there is



W.P.(MD)No.18236 of 2019

WEB COPY

any needy place outside, the Commissioner (MAWS) has power to grant promotion from the combined seniority list. In such circumstances, they can rely on the combined seniority list and take the appropriate senior person and grant promotion. Therefore, the contention of the respondents is not acceptable on this angle also.

II. The promotion granted to the petitioner is as per rule and more specifically as per the circular, dated 10.04.2007. Hence, the promotion of the petitioner is legally valid and the impugned order cancelling promotion is quashed. The respondents are directed to allow the petitioner to continue in the promoted post and the petitioner is entitled to consequential benefits. Based on the interim order, the petitioner is continuing in the said post. The respondents are restrained from disturbing the petitioner.



WEB COPY



W.P.(MD)No.18236 of 2019

12. For the above said reasons, the writ petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

16.06.2023

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W.P.(MD)No.18236 of 2019

To

- 1.The Secretary to Government,
Department of Municipal Administration &
Water Supply,
Fort St. George,
Chennai-600 002.
- 2.The Commissioner Municipal Administration,
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WEB COPY



W.P.(MD)No.18236 of 2019

S.SRIMATHY, J

ksa

W.P.(MD)No.18236 of 2019

16.06.2023