



W.P.(MD).Nos.4214 of 2018 and 14515 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.4214 of 2018 and 14515 of 2016

and

W.M.P.(MD).Nos.4354 and 4355 of 2018

W.P.(MD).Nos.4214 of 2018:

P.Mohan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of Municipal Administration and Water Supply,
Fort.St.George,
Chennai – 9.

2.The Commissioner,
Madurai Corporation,
Corporation Buildings,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter No.5057/Ma.Na.4/2012-6 dated 09.12.2013 on the file of the Responent no.1 and consequent impugned order in Letter No.Ma.Ni.27/24407/2015 dated 25.07.2016 on the file of the Respondent no.2 and consequent the Impugned order in Letter No.Ma.Ni.27/028896/2005 dated nil.02.2018 on the file of Respondent No.2 and quash



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the same as illegal and consequently for a direction, directing the respondents to provide promotion to the petitioner in the post of Records Clerk with effect from 22.07.2002 and further to provide the next promotion to the petitioner in the post of Conservancy Inspector with effect from 03.08.2005 with consequential monetary benefits within the time period stipulated by this Court.

For Petitioner : Mr.G.Karthik,
For M/s.Lajapathi Roy and Associates.

For R-1 : Mr.P.Thambidurai,
Government Advocate.

For R-2 : Mr.R.Murali

W.P.(MD).No.14515 of 2016:

P.Mohan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of Municipal Administration,
Fort.St.George,
Chennai – 9.

2.The Commissioner,
Madurai Corporation,
Corporation Buildings,
Madurai.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned order in Ma.Ni.27/24407/2015 dated 25.07.2016 on the file of the Respondent No.2 and quash the same as illegal and consequently for a direction, directing the Respondents to provide promotion to the Petitioner in the Post of Record Clerk with effect from 22.07.2002 and consequently to provide promotion to the Petitioner in the post of Conservancy Inspector with effect from 03.08.2005 within the time period stipulated by this Court.

For Petitioner : Mr.G.Karthik,
For M/s.Lajapathi Roy and Associates.

For R-1 : Mr.P.Thambidurai,
Government Advocate.

For R-2 : Mr.T.S.Mohamed Mohideen

COMMON ORDER

This Writ Petition in W.P.(MD).Nos.4214 of 2018 is filed challenging the order dated 09.12.2013 passed by the first respondent and consequent orders of the second respondent dated 25.07.2016 and nil.02.2018 and consequently directing the respondents to provide promotion to the petitioner in the post of Records Clerk with effect from 22.07.2002 and further to provide the next



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promotion to the petitioner in the post of Conservancy Inspector with effect from 03.08.2005 with consequential monetary benefits.

2. The petitioner was temporarily appointed as Section Writer in the year 1986 and later on regularized as Office Assistant on 22.03.1996. The petitioner along with 10 other persons had filed a Writ Petition in W.P.No.14997 of 1991 seeking regularization in the post of Record Clerk and this Court vide order dated 18.04.2000 had held that out of 11 petitioners, 9 petitioners were absorbed as Record Clerk and 2 persons were not absorbed, the petitioner herein is one among the 2 persons, who were not absorbed. Hence the Court granted liberty to those 2 persons to submit their representation and the respondent corporation was directed to consider and pass orders in accordance to law. After the said order, the petitioner was regularized in the post of Office Assistant on 22.03.1996 due to the reason that the petitioner has not completed SSLC. The contention of the petitioner is that several similarly placed persons who have not completed SSLC were given appointment to the post of Record Clerk on condition that they should complete the SSLC within 3 years. Thereafter, the petitioner submitted several representations seeking parity with the above stated persons and sought for appointment to the post of Record Clerk in the year 2000, but the same was not considered. In the meanwhile, the



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petitioner has completed SSLC on 22.07.2002. Hence, the petitioner along with another person filed Writ Petition in W.P.No.44809 of 2002 seeking absorption to the post of Record Clerk and this Court vide order dated 05.11.2012 held that on considering the current factual position, the first petitioner is directed to submit one more representation for promotion. Thereafter, the respondents shall consider and pass orders.

3. The contention of the petitioner is that on 18.01.2002, the second respondent has recorded in the grievance day register that the petitioner will be appointed in the post of Record Clerk, when the vacancy arises. Further on 14.11.2002, the second respondent has issued an order stating that the petitioner will be considered for promotion to the post of Record Clerk only on the basis of seniority and the petitioner was kept in Serial No.126 and as per the seniority list, the persons upto Serial No.84 was promoted as Record Clerk. For the past 14 years, the second respondent has failed to promote the petitioner in the post of Record Clerk. In the year 2006, instead of promoting the petitioner as Record Clerk, the second respondent has attempted to promote the petitioner in the post of Sanitary Supervisor which is an equivalent post to Record Clerk by proceedings dated 31.10.2006, but the same was cancelled by the first respondent vide letter dated 09.12.2013. Though the petitioner is



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entitled to be promoted as Record Clerk, the second respondent without issuing promotion to the said post, has attempted to appoint the petitioner as Sanitary Supervisor, which was not approved by the first respondent. The further contention of the petitioner is that several juniors were promoted as Record Clerk vide proceedings dated 29.01.2015. In the said order, it is stated that in view of the Resolution No.183, dated 06.07.2005, a decision was taken to ratify the appointments of the juniors in the post of Conservancy Inspectors relaxing the educational qualification. Subsequently, several juniors who were employed as Unskilled workers were also promoted as Record Clerk in the year 2015 without considering the petitioner's case. Since the Writ Petition in W.P.No.44809 of 2002 was pending, the petitioner could not get promotion and left with no other option, the petitioner again submitted a representation to the respondents. On 25.11.2015, the second respondent has issued a proceeding in which it was stated that the petitioner's claim for promotion to the post of Record Clerk will be considered after placing the same before the Appointment Committee. But the second respondent has arbitrarily issued the impugned order dated 25.07.2016 in which it has been erroneously stated that there are 26 employees who are senior to the petitioner in the list for consideration to the Record Clerk promotion. The further contention of the petitioner is that it is entirely false and self-contradictory, as the petitioner is stated to be in the



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seniority list in the year 2002 itself. Therefore, the contention of the petitioner is that the impugned order is inconsistent with the earlier proceedings. Hence, the petitioner is before this Court.

4. Earlier the petitioner had filed W.P.(MD)No.14515 of 2016 challenging the same impugned order dated 25.07.2016. Pending writ petition the respondents have demoted the petitioner through the order dated 00.02.2018, aggrieved over the petitioner filed W.P.(MD)No.3670 of 2018 and the same was dismissed with liberty to challenge the first impugned order dated 09.12.2013 passe in Letter No.5057/Ma-Na.4/2012-6, then the consequential proceedings in Ma.Ni.27/24407/2015 dated 25.07.2016 and then the order passed in Letter No.Ma.Ni.27/028896/2005 dated nil.02.2018. Hence the petitioner had filed present writ petition in W.P.(MD)No.4214 of 2018. Hence both the Writ Petitions are taken up together and common order is passed.

5. The respondents have filed a detailed counter stating that the post of Conservancy Supervisor comes under Group V of Corporation General Subordinate Service. Under Group V, the following posts are available:

Category 1	:	Record Assistant
Category 2	:	Head Office Assistant



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Category 3 : Conservancy Supervisor

6. As per the Service Rules, the post of Record Clerk has to be filled by promotion from the Class IV employees of Basic Services. For promotion to the post of Record Assistant, the qualification is must have passed in 10th Standard / Matriculation Examination and must have worked for 5 years in the post of Corporation Basis Services. Admittedly, various categories of posts are available under Class IV of Basic Service and subject to seniority and qualification all are eligible to be promoted to the post of Record Assistant. The Corporation promoted 11 persons as Record Clerk in the year 2015 subject to qualification and seniority. The petitioner is junior to them and the same will not affect the right of the petitioner. The petitioner is eligible to be promoted as Record Clerk only after completing 5 years and after passing 10th Standard. There are other persons with qualifications and seniority are available in Class IV Basic Service of Corporation over and above the petitioner. Further the post of Tax Collector and Junior Assistant come under Group III of Corporation General Subordinate Service Rules. The post of Tax Collector has to be filled up by transfer from Junior Assistant Cum Typist. In order to become a Junior Assistant, the qualification is that the person must have passed in Higher Secondary Exam and Type Writing skill in English and Tamil with Senior



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Grade. Hence, a person without qualification cannot become a Junior Assistant and from that post only anyone can be posted as Tax Collector. Therefore, the claim of the petitioner can be considered as and when the seniority arises.

7. After hearing the rival submissions of both the parties, this Court has perused the affidavit of the petitioner as well as the counter filed by the respondents. A specific contention was raised by the petitioner is that through Resolution No.183, dated 06.07.2005, a decision was taken by the respondents to ratify the appointments of the juniors in the post of Conservancy Inspectors by relaxing the educational qualification. Only after passing such resolution, the seniority list which was prepared vide proceedings dated 14.11.2002 was disturbed. If the respondents had followed the said seniority list without the Resolution No.183, the present issue would not have arisen. In the seniority list, the petitioner was kept under Serial No.126. Based on the Seniority List, until 86 persons was promoted as Record Clerk. Since the respondents failed to follow the said seniority list, the petitioner is still in the list without any promotion, but his juniors were over riding the petitioner.

8. Therefore, this Court is of the considered opinion that the respondents should follow the seniority list dated 04.11.2002, there cannot be any deviation



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from the said senior list. If any person is granted any promotion de hors the seniority list, then they will not have any right to sustain in the said post. The respondents are directed to reconsider the petitioner case and grant promotion to the petitioner. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.06.2023

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

To

1. The Principal Secretary,
The State of Tamil Nadu,
Department of Municipal Administration,
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2. The Commissioner,
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Corporation Buildings, Madurai.



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S.SRIMATHY, J.

Nsr

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