



W.P.(MD).No.5770 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.5770 of 2018

and

W.M.P.(MD)Nos.5655 and 5656 of 2018

A.Lakshmi

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its Principal Secretary
to Government,
Municipal Administration & Water Supply
(ME.1) Department,
Secretariat, Chennai.

2.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai-9.

3.The Commissioner,
Office of the Madurai Corporation Office,
Madurai, Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings எண்.மநி. 10/038217/14, dated 07.03.2018 and to quash the same as illegal in so far as the petitioner is concerned.



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For Petitioner : Mr.Mohammed Imran
for M/s.Ajmal Associates
For R1 and 2 : Mr.R.Suresh Kumar
Additional Government Pleader
For R3 : Mr.T.S.Mohamed Mohideen

ORDER

This Writ Petition is filed for writ of Certiorari to quash the impugned order dated 07.03.2018 passed by the 3rd respondent in his proceedings எண்.10நி.10/038217/14 as illegal in so far as the petitioner is concerned.

2. The brief facts of the case are that the petitioner was initially appointed as Section Writer at Madurai Corporation in the year 1988 on temporary basis. In order to regularize the petitioner's service, the petitioner had filed a writ petition in the year 1991. Pending the said writ petition, the petitioner was absorbed by the Madurai Corporation as Record Clerk on 23.03.1996. The 3rd respondent through proceedings dated 06.03.2015 promoted the petitioner as Junior Assistant cum Typist in the vacancy caused on account of the leave of the Junior Assistant, on condition that she should have passed English and Tamil Typewriting of Government Technical Examination any one in Senior



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Grade and other in Junior Grade. While the petitioner was working as Junior Assistant, the 3rd respondent issued a notice dated 09.05.2016, directing the petitioner to produce the Typewriting pass certificate failing which further action will be taken. The petitioner submitted an explanation on 01.06.2016 stating that the petitioner was working as Junior Assistant and hence, the petitioner is not required to possess the qualification of Typist. On receipt of the explanation, the 3rd respondent issued memo dated 06.07.2016, informed that since the petitioner was appointed prior to 26.09.1996, the petitioner should possess the qualification prescribed under the old rules. In response to the memo dated 06.07.2016, the petitioner submitted an explanation on 28.07.2016 stating that the maximum time limit to possess the qualification is 5 years as per the existing rule and therefore, she should be given more time. As there was no action in pursuant to his explanation, she submitted another explanation dated 10.11.2017. Thereafter, the 3rd respondent in his impugned proceedings, dated 07.03.2018, has reverted the petitioner to the post of Record Clerk on the ground that the petitioner did not possess the Typewriting qualification as per the conditions stipulated in the order of promotion dated 06.03.2015.



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3. The contention of the petitioner is that the post of Junior Assistant cum Typist was earlier available in Madurai Corporation. However, subsequently, by virtue of G.O.Ms.No.174 P & AR Department dated 08.09.2000, the post of Junior Assistant cum Typist was bifurcated into that of Junior Assistant and Typist. On the basis of the option of the individual concerned, the candidate may be posted either as Junior Assistant or as Typist. It is an admitted fact that the petitioner was promoted as Junior Assistant cum Typist in the vacancy of Junior Assistant. All along the petitioner was working as Junior Assistant and has not discharged the work of Typist. In view of the above, the possession of the qualification of Typist is absolutely not required, since the petitioner is holding the post of Junior Assistant. Further, in view of the Saving Clause contemplated under the Tamil Nadu Municipal Corporation Service Rules, in respect of the first level promotion, the employee is protected and by virtue of the same, the petitioner is not required to possess the qualification of Typist, since it is the first level promotion after enacting the new Act. Even if it is accepted, as per the respondents, the petitioner should be granted time to complete the qualification of Typist and the Government has also granted extended time to complete the qualification. But the respondents have not



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granted the same. Hence, the petitioner is before this Court challenging the impugned order, dated 07.03.2018. At the time of admission, this Court has granted an order of interim stay, vide order, dated 26.03.2018 in W.M.P. (MD)No.5656 of 2018.

4. The 3rd respondent has filed a counter affidavit stating that the petitioner was appointed as Record Clerk on 23.03.1996 and was promoted as Junior Assistant. As per G.O.Ms.No.237, Municipal Administration Water Supply Department, dated 26.09.1996, the person who has to be promoted as Junior Assistant must possess a certificate of pass in Higher Secondary School Education. The promotion was provided on condition that within the period of probation, i.e., within 2 years of promotion, the petitioner should pass the typewriting. But the petitioner has not completed the required educational qualification and technical qualification that is pass in Typewriting. Hence the petitioner has been reverted to the post of Record Clerk on 07.03.2018. Till date, the petitioner has not qualified the required qualification. The counter affidavit further states that as per the Madurai Corporation Service Rules dated 01.10.1996, there is no separate post as Junior Assistant and Typist separately,



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both has got merged as Junior Assistant cum Typist. So, the petitioner must possess the educational and typewriting qualification. As per the New Rules the following are the qualifications:

- i) Must have passed Higher Secondary School Examination.
- ii) Must have passed English and Tamil Typewriting of Government Technical Examination any one in Senior Grade and the other in Junior Grade; and
- iii) Must have passed the foundational training described for the Corporation Service Course before completion of probation.

The petitioner has passed only 10th standard but she must have passed Higher Secondary School Examination and she was promoted in the year 2015. By that time the New Rules was in force. The Deputy Director Local Fund Audit through his proceedings dated 09.02.2018 had specifically referred to above educational qualifications. The persons who don't possess the required educational qualification have to be reverted and their pay has to be revised and excess payment to be recovered.



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5. The counter affidavit also states that it is a case of the petitioner that as per G.O.Ms.No.174 dated 08.09.2000, the post of Junior Assistant cum Typist was bifurcated into Junior Assistant and Typist. In this respect a clarification has been given by the Commissioner, Municipal Administration that as per Tamil Nadu Municipal Corporation General Subordinate Service Rule/ the qualification prescribed for the post of Junior Assistant cum Typist is pass in Higher Secondary School Education and pass in English and Tamil typewriting of Government Technical Examination and must have passed Foundational Training prescribed for the Corporation Service Rule before completion of Probation. Hence, pass in Higher Secondary Examination and typewriting skill is very essential for the post of Junior Assistant Cum Typist for the extensive use of computer and therefore, general relaxation is not agreeable. Therefore, the 3rd respondent submitted that the order impugned is sustainable as per law and prayed to dismiss the writ petition.

6.Heard Mr.Mohammed Imran, learned Counsel appearing for the petitioner, Mr.R.Suresh Kumar, learned Additional Government Pleader



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appearing for respondents 1 and 2 and Mr.T.S.Mohamed Mohideen, learned Counsel appearing for 3rd respondent and perused the records.

7. The contention of the respondents is that as per the Madurai Corporation Service Rules, dated 01.10.1996, there is no separate post called Junior Assistant and Typist, both are merged as Junior Assistant cum Typist. If this contention is accepted, the Madurai Corporation Service Rules would have come into effect from 01.10.1996. However, subsequently, as per G.O.Ms.No. 174 P & AR Department dated 08.09.2000, the post of Junior Assistant cum Typist was bifurcated as Junior Assistant and Typist. Therefore, the petitioner contended that once the post is bifurcated, the qualification prescribed for Typist cannot be imposed for Junior Assistant. But the respondents refuted the contention of the petitioner and submitted that in this regard the Commissioner of Municipal Administration has issued a clarification that as per Tamil Nadu Municipal Corporations General Subordinate Service Rules, the qualification prescribed is pass in Higher Secondary Examination and also to possess Typewriting. The Commissioner of Municipal Administration cannot issue any clarification which would be against the Government order. When the



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Government has bifurcated two posts then the qualification prescribed for Typist cannot be prescribed for the post of Junior Assistant.

8. As rightly pointed out by the petitioner, the petitioner was appointed in the post of Junior Assistant and not Typist. Once the said two posts were bifurcated in G.O.Ms.No.174 P & AR Department dated 08.09.2000, the respondents cannot claim that the petitioner is not possessing Typist qualification. After bifurcation, qualification is not necessary. Moreover, the petitioner was promoted to the vacant post of Junior Assistant and not the vacant post of Typist. The petitioner has never discharged the work of Typist.

9. Therefore, this Court is of the considered opinion that the reversion of the petitioner through the impugned order cannot be sustained. Moreover, the petitioner has also stated that if further the respondents are insisting the qualification of Typewriting, the respondents ought to grant some more time, atleast few years of time for completing such qualification. Therefore, this Court is directing the respondents to take appropriate policy decision. If still the respondents are insisting of typewriting qualification, the respondents shall



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grant time for the petitioner to complete the typewriting qualification and to acquire the required qualification within a reasonable time. Hence, the impugned order is quashed. The respondents are directed to retain the petitioner in Junior Assistant post and pay the applicable benefits to the said post.

10. In view of the above, this Writ Petition is allowed in above terms. 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
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- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Municipal Administration & Water Supply
(ME.1) Department,
Secretariat, Chennai.
- 2.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai-9.



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