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W.P.No.8693 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

CORAM

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P No.8693 of 2018 and
W.M.P.No.10612 of 2018

Mrs.S.Annalakshmi

...Petitioner

Vs.

1.The Commissioner
Greater Chennai Corporation
Rippon Buildings,
Chennai-600 003.

2.The Assistant Commissioner,
General Department,
Greater Chennai Corporation,
Rippon Buildings,
Chennai-600 003

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, praying to call for the records from the office of the 2nd respondent leading to the passing of the order in proceedings No.G.D.C.No.E1/33500/2017 dated 25.01.2018 and quash the same and direct the respondents to give all the service and other benefits to the petitioner.

For Petitioner

: Mr.R.Singaravelan
Senior Counsel
for M/S.R.Ramanlaal



W.P.No.8693 of 2015

For Respondents : Mr.S.Gopinathan
Standing Counsel for GCC

ORDER

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The petitioner herein was initially appointed as an Assistant Engineer in the Municipal Administration Department and posted as such in Ramanathapuram Municipality and her services were also regularized on completion of probation period. Thereafter, the petitioner made a request for one way transfer from Ramanathapuram Municipality to the 1st respondent corporation. The said request was considered and accordingly, G.O.Ms.No.565, Department of Municipal Administration and Water Supply dated 03.09.2015 came to be issued transferring the petitioner to 1st respondent corporation subject to certain conditions. One of such conditions is that the petitioner will be considered as junior most employee in her service cadre after transfer to the 1st respondent corporation. The petitioner, having accepted the said transfer joined in the services in the 1st respondent corporation and has been working as such. In terms of the conditions imposed in the order of transfer issued in G.O.Ms.No.565, dated 03.09.2015, the petitioner was treated as junior most employee in the cadre of Assistant Engineer in the 1st respondent corporation as on date of joining in the said corporation i.e., 22.09.2015.



2. While so, the 1st respondent corporation has initiated proceedings for filling up the post of Assistant Executive Engineer which is a promotional post to the post of Assistant Engineer. The case of the petitioner was considered but the claim of the petitioner for promotion to the post of Assistant Executive Engineer was rejected on the ground that in terms of the G.O.Ms.No.565, dated 03.09.2015 under which the petitioner was transferred to the 1st respondent corporation, she has to be treated as Junior most and the services of the petitioner in the corporation shall be taken into consideration only from the date of her joining in the 1st respondent corporation. Aggrieved by the said order, the petitioner approached this Court by filing this writ petition. The basis for such stand of the respondent corporation is the condition that was imposed while transferring the petitioner to the respondent corporation under G.O.Ms.No.565, Department of Municipal Administration and Water Supply dated 03.09.2015.

3. From the perusal of the said Government Order, it is noticed that the petitioner was transferred to the respondent corporation on her own request and subject to the acceptance of conditions imposed therein. The said conditions imposed in G.O.Ms.No.565 dated 03.09.2015 only mandates that the petitioner



will be considered as Junior most employee in her service cadre after transfer to the Chennai Corporation. Thus, the said condition only takes away the entire service rendered by the petitioner prior to date of her joining in the respondent corporation only for the purpose of claiming seniority over the Assistant Engineers who were already working in the Chennai corporation as on the date of the petitioner joining in the said corporation. Except depriving the petitioner from claiming the seniority over the Assistant Engineers who are already working as on the date of the joining in the respondent corporation, there is no other condition that was imposed on the petitioner while transferring her to the respondent corporation. In the instant case, the petitioner is not claiming any seniority over the Assistant Engineers who were working in the Chennai corporation as on the date of petitioner joining in the chennai corporation. It is only when the case of the petitioner came up for consideration for promotion to the post of Assistant Executive Engineer, in her own turn, the service particulars of the petitioner were submitted by the Zonal Officer, Zone7-Ambattur, Greater Chennai Corporation to the Assistant Commissioner(Public Administration and main) through letter in Na.Ka.No.A1/5014/17 dated 31.07.2017 and thereupon, the case of the petitioner was considered for promotion and the same was



rejected by passing the impugned order.

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4. In the impugned order dated 25.01.2018, it is stated that as per the service rules of the Chennai Corporation Engineer Service Rules, in order to claim promotion to the post of Assistant Executive Engineer, one should have completed five years of service in the post of Assistant Engineer from the date of joining in the Greater Chennai Corporation. As the petitioner joined in the Chennai Corporation only on 08.10.2015 in the post of Assistant Engineer and therefore, she has not completed the requisite service of five years in the cadre of Assistant Engineer. Therefore, the petitioner was found ineligible for promotion to the post of Assistant Executive Engineer and her claim was rejected by passing the impugned order. It is not on the ground that the petitioner has not come up within the zone of consideration, her claim was rejected by the respondents. In that circumstance, the only question requires to be considered by this Court is whether the petitioner is entitled to count her services, experience gained by her in the cadre of Assistant Engineer prior to the date of her joining in the respondent corporation or not.



5. As already noted above, it is pursuant to the request made by the petitioner for transfer to the respondent corporation, the case of the petitioner was considered and accordingly, she was transferred to the respondent corporation by issuing G.O.Ms.No.565 dated 03.09.2015, on conditions as already noted above. None of the conditions deprives the petitioner from claiming benefit of past service that was rendered by the petitioner prior to the date of her joining in the respondent corporation, for the purpose of experience, fixation of pay, other service benefits such as pension, grant of selection grade etc., The only restriction that was imposed is to treat the petitioner as junior most Assistant Engineer in the respondent corporation as on the date of her joining i.e.,08.10.2015. It is also an admitted fact that the petitioner was allowed all other benefits including the fixation of pay etc., by treating the entire service rendered by the petitioner in the cadre of Assistant Engineer after she was appointed as such on 21.06.2007. If the intention of the G.O.Ms.No.565 dated 03.09.2015 is to deprive the petitioner the entire past service rendered by her prior to the date of her joining in the respondent corporation, the condition should have been to treat the date of joining of the petitioner in the respondent corporation as date of her first appointment. But that is not the case on hand.



Further, the case of the petitioner was not considered as an exceptional case but it was considered only pursuant to the guidelines issued by the Government of Tamil Nadu, Municipal Administration and Water Supply Department vide letter No. 27274/ma.no.5/96.1 dated 08.07.1996 which facilitates for one way transfer from Municipalities to the Municipal Corporation including the respondent corporation. Therefore, any contention that is put forth to say that petitioner is not entitled to avail the benefit of service rendered by her prior to her date of joining in the respondent corporation cannot stand to legal scrutiny. In the light of the above, this Court is left with no other option except to arrive at a conclusion that the impugned order is a result of sheer misconception, misunderstanding of the condition imposed in G.O.Ms.No.565 dated 03.09.2015 by the respondent corporation only.

6. In the absence of any order preventing the petitioner from availing the benefit of the service rendered by her in the cadre of Assistant Engineer prior to her date of joining in the respondent corporation for the purpose of experience or for the purpose of satisfying the qualification criteria for the post of Assistant Executive Engineer, the petitioner cannot be deprived of the said service



rendered by her. No doubt, the rule prescribing qualification criteria for the post of Assistant Executive Engineer requires the Assistant Engineers to complete five years of service in the Chennai Corporation from the date of their joining. The said rule is framed for governing the post in the Chennai Corporation and therefore, necessarily, the said rules do not take into its purview in the exceptional case like the case on hand. The petitioner was initially appointed in the Municipal Administration Department and then thereafter came to the respondent's corporation on transfer. Therefore, date of joining referred to in rule in the Madras Corporation Engineer Service Rules dealing with criteria for promotion to the post of Assistant Executive Engineer, shall not be the date of joining of the petitioner in the respondent corporation but the same shall be date of joining of the petitioner in the cadre of Assistant Engineer in the Municipal Administration Department. Therefore, the respondents instead of applying the said rule with due application of mind, in a mechanical manner, rejected the claim of the petitioner.

7. In the light of the above circumstances, in the considered view of this Court, the impugned order is wholly unsustainable and the same is liable to be set aside and the same is accordingly set aside. Accordingly, the writ petition is



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allowed. Further, the respondents are directed to re-consider the case of the petitioner for promotion to the post of Assistant Executive Engineer without reference to requirements of completing five years of service as Assistant Engineer from the date of her joining in the respondent corporation and pass appropriate orders, if she is otherwise eligible for such promotion and extend all the benefits from the date on which the petitioner was entitled for promotion. The entire exercise as directed above shall be completed by the respondent corporation as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2024

Index : Yes/No
Neutral Citation : Yes/No
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MUMMINENI SUDHEER KUMAR, J.

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