



W.P.No.8235 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.03.2024

Pronounced on : 23.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.8235 of 2024 and
WMP.Nos.9194 & 9196 of 2024

A.Lakshmanan

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 600 009
- 2.The Director of Municipal Administration,
No.75, Santhome High Road,
MRC Nagar, Raja Annamalaipuram
Chennai 600 028
- 3.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore 641 001

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the first respondent in letter No.3896/MC7/2023-4, MAWS Department dated 12.03.2024 and to quash the same and consequently to direct the first respondent to elevate the petitioner to the post of City Engineer in the cadre of Chief Engineer in Coimbatore City Municipal Corporation from 20.10.2022 with all monetary and service benefits, within a reasonable period as may



W.P.No.8235 of 2024

be fixed by this Court as the Principle of 'No work No pay' shall not be applicable to the case of the petitioner.

For Petitioner : Mr.T.Ranganathan

For Respondents
For R1 & 2 : Mrs.R.L.Karthika,
Government Advocate

ORDER

The writ petition has been filed challenging the order issued by the first respondent in letter No.3896/MC7/2023-4, MAWS Department dated 12.03.2024 and to quash the same and consequently to direct the first respondent to elevate the petitioner to the post of City Engineer in the cadre of Chief Engineer in Coimbatore City Municipal Corporation from 20.10.2022 with all monetary and service benefits, within a reasonable period as may be fixed by this Court as the Principle of 'No work No pay' shall not be applicable to the case of the petitioner.

2. The case of the petitioner is that the petitioner is working as City Engineer in the Coimbatore City Municipal Corporation. The 1st Respondent has deliberately transferred the petitioner from Coimbatore City Municipal Corporation to Madurai City Municipal Corporation and



W.P.No.8235 of 2024

subsequently to Tirunelveli City Municipal Corporation and now he is working in Tiruppur City Municipal Corporation. All these transfers are *per-se* illegal, impermissible under the Rules and also under the Law. According to Rule 38 of the Tamil Nadu Municipal Corporation Service Rules, 1996, each Corporation is a separate unit for transfer, promotion. etc. which has already been settled by this Hon'ble High Court Madras. The 1st respondent has however mentioned in the order that he was "posted on deputation" which is also not permissible under the Law, which has already been settled by the this Court in W.P.No.7278 of 2014 dated 06.06.2024. During his service, the Government have issued orders in G.O.(Ms) No.152, MAWS Department dated 20.10.2022 to re-organise the Municipal Corporations and thereby the post of City Engineer held by the petitioner in Coimbatore City Municipal Corporation has been upgraded to the cadre of Chief Engineer. But the 1st and 2nd respondents have denied automatic elevation of the petitioner apparently for extraneous considerations.

2.1 This Court in W.P.No.8559 of 2023 has directed to consider the representation of the Petitioner for elevation as Chief Engineer in the



W.P.No.8235 of 2024

Coimbatore City Municipal Corporation. Since the 1st and 2nd respondents have not considered the orders of this Court Madras, he has filed Contempt Petition No.466 of 2024 before this Court. On 20.03.2024, when the Contempt Petition was heard by this Court, the 1st Respondent has produced the impugned order issued in Letter No.3896/MC7/2023-4, MAWS Department dated 12.03.2024 after the delay of one year and this Court directed the petitioner to challenge the same separately. Therefore, the petitioner has challenged the said order in this writ petition.

3. The learned counsel appearing for the petitioner submitted that only after filing writ petitions by the petitioner, the 1st respondent has registered the FIR in the year 2016 and filed the charge sheet on 11.07.2022. The same was filed before the court only on 27.03.2023 and the charge sheet was served on the petitioner on 26.06.2023 in CC No.5/2023. Therefore, the elevation of the petitioner as Chief Engineer in the Coimbatore City Municipal Corporation as on 20.10.2022 cannot be deprived as already settled by this Court in the judgment in the case of



W.P.No.8235 of 2024

G.Usha Rani Vs. Secretary to Government, Revenue Department

rendered in W.P.No.4473 of 2005 dated 03.04.2006, wherein this Court has categorically held as follows:

"When once on a crucial date the Petitioner was entitled for promotion, even any subsequent punishment cannot take away such right of promotion even though it is true that any order could be passed subsequently, even by demoting the person on completion of disciplinary proceedings and that would not mean that the petitioner is not entitled for promotion."

4. Heard, the learned counsel appearing on either side.

5. On perusal of records and on submissions of the learned counsel appearing on either side, revealed that the following reasons have been assigned in the impugned order for deferring to consider the petitioner for promotion to the post of City Engineer in the cadre of Superintending Engineer and Chief Engineer:

"Sanction of Prosecution was accorded against for the substantiated allegation vide G.O.(Ms) No.59,



W.P.No.8235 of 2024

Municipal Administration and Water Supply (ME.4) Department,, dated 23.08.2021. Accordingly charge sheet has been filed by the Director of Vigilance and Anti Corruption on 11.07.2022 before the Hon'ble Special Court under the provision of Prevention of Corruption Act, and the criminal case Spl.C.No.5/2023 is under trial before the Special Court.

6. The learned counsel for the petitioner specifically contended that charge sheet was filed only on 27.03.2023 after nearly six months from the crucial date for considering the petitioner for promotion to the post of City Engineer in the cadre of Superintending Engineer.

7. However, this Court already dealt with the similar issue in respect of the same petitioner and dismissed the writ petitions in WP.Nos.15004 & 11817 of 2023 observing as follows:

“4.1 Though the petitioner had more than three years of experience both in the post of City Engineer / Executive Engineer, as against the petitioner, sanction of prosecution was accorded vide GO.Ms.No.59



W.P.No.8235 of 2024

Municipal Administration and Water Supply (ME4) Department dated 23.08.2021 and charge sheet was filed on 11.07.2022 and the same has been taken cognizance by the Special Court in Spl.CC.No.5 of 2023 for the charges under Sections 13(1)(a) r/w 13(1)(d) of the Prevention of Corruption Act and Section 109 of IPC. The same is pending for trial. Therefore, the petitioner was not considered for promotion to the post of City Engineer in the cadre of Superintending Engineer.

5. Insofar as WP.No.15004 of 2023 is concerned, the petitioner is challenging the order of promotion of the fourth respondent herein to the post of Chief Engineer in the Coimbatore City Municipal Corporation as per the amendment of the Tamilnadu Urban Local Bodies Act, 2022 (Tamilnadu Act 35 of 2022) and framed the Tamilnadu Urban Local Bodies Rules, 2023 and the same was given effect to from 13.04.2023. Therefore, Tamilnadu Municipal Corporation General Service Rules, 1996, Tamilnadu Municipal Corporation Engineering Service Rules, 1996 and the Tamilnadu Municipal Corporation Public Health Service Rules, 1996 have ceased to be in force



WEB COPY



W.P.No.8235 of 2024

with effect from 13.04.2023. That apart, the disciplinary proceedings has been initiated as against the petitioner by the charge memo dated 06.07.2023 under Rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules, 1955 which is under challenge in WP.No.23226 of 2023. The primary criteria for promotion to the post of Superintending Engineer is clear annual confidential report for the past five years including seniority. Despite the petitioner's seniority, the case of the petitioner cannot be considered for promotion due to pendency of the criminal case and also departmental proceedings. It is also curious to note that after completion of investigation, investigation agency filed final report as early as on 11.07.2022. Though it was taken cognizance in the year 2023, on the crucial date for including the petitioner's name in the panel for promotion to the post of Superintending Engineer, charge sheet has been laid in the criminal case. As per the rules, once charge sheeted, the petitioner cannot be considered for promotion. Therefore, the writ petitions in WP.Nos.15004 & 11817 of 2023 are liable to be dismissed.”

8. Therefore, this Court finds no infirmity or illegality in the



W.P.No.8235 of 2024

WEB COPY

order impugned in this writ petition. As such, this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

23.04.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
lok



WEB COPY



W.P.No.8235 of 2024

G.K.ILANTHIRAIYAN, J.

lok

To

- 1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 600 009
- 2.The Director of Municipal Administration,
No.75, Santhome High Road,
MRC Nagar, Raja Annamalaipuram
Chennai 600 028
- 3.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore 641 001

W.P.No.8235 of 2024

23.04.2024