



WEB COPY



W.P.No.8789 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.8789 of 2015

1. D.D.Pandian (Deceased)
2. V.Rani
3. D.P.Manimozhi
4. P.Bakkiyalakshmi

(P2 to P4 are substituted as Lrs of deceased P1 as per Order dated 01.10.2024 in W.M.P.No.24700 of 2024)

...Petitioner

vs.

The State of Tamil Nadu
represented by its Principal Secretary
Municipal Administration and Water Supply Department,
Fort.St.George,
Chennai – 600 009

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance Certiorarified Mandamus, calling for the records relating to the order passed by the respondent in Letter No.22693/Ma.Na.5/2014-6 dated 26.02.2015 which was served on the petitioner on 02.03.2015 through the Commissioner of Corporation, Salem and quash the same thereby direct the respondent to give notional promotion to the petitioner as Junior Assistant from 27.05.1985 notionally and pay all attended service and monetary benefits with interest.



WEB COPY



W.P.No.8789 of 2015

For Petitioners : Mr.A.R.Nixon
For Respondent : Mr.M.S.Prem Kumar
Government Advocate

ORDER

The first petitioner herein was initially appointed as Urban Malaria Head Mazdoor in Salem Municipality on 27.07.1976 and thereafter, he was promoted as Head Mazdoor on 17.07.1979. While working as such, the petitioner made a claim for being appointed to the post of Junior Assistant. In order to avoid disqualification for want of possessing minimum educational qualification, the petitioner appeared for Group-IV examination conducted by Tamil Nadu Public Service Commission (*hereinafter referred to as TNPSC*) in the year 1982 in terms of Rule 12(a) (ii) of Tamil Nadu State and Subordinate Service Rules and emerged as a successful candidate by virtue of the results published by the TNPSC on 01.03.1985. Thereafter, the petitioner made a request for appointment/promotion to the post of Junior Assistant in Salem Municipality which was upgraded as Salem Corporation. The claim of the petitioner for the post of Junior Assistant was rejected on the ground that the post of Junior Assistant can be filled only from the categories of Record Clerks and Tax Collectors, but not from the post of Head Mazdoor. Aggrieved by the same, the petitioner preferred an appeal before the Director of Municipal Administration, Chepauk, and the said appeal was rejected by an order



W.P.No.8789 of 2015

dated 27.05.1986.

WEB COPY

2. Aggrieved by the said order dated 27.05.1986 rejecting the claim of the petitioner for promotion to the post of Junior Assistant, the petitioner approached this Court by filing W.P.No.12567 of 1987. The said writ petition was disposed of by the learned Single Judge of this Court by an order dated 08.11.1996, holding that the petitioner was eligible for being appointed to the post of Junior Assistant by virtue of Group-IV examination passed by the petitioner in terms of Rule 12(a)(ii) of the Tamil Nadu State and Subordinate Service Rules and directed the respondent to consider the claim of the petitioner. Yet another aspect that was gone into by this Court in the said writ petition was the claim of the Municipality that the petitioner was working in the Health Department in the Salem Municipality, cannot be considered against the post of Junior Assistant category and other categories of the Salem Municipality was negated. Meanwhile, a charge memo dated 24.08.1998 came to be issued against the petitioner and he was placed under suspension. The said disciplinary proceeding continued till the year 1999 and came to an end by imposing punishment of stoppage of increment for a period of five years and the claim of the petitioner was not considered for promotion in view of the currency of punishment for five years. Thereafter, the claim of the petitioner was considered for promotion in terms of the order dated 08.11.1996 passed by this Court referred



W.P.No.8789 of 2015

above and the same was rejected by the respondent stating that the claim of the petitioner cannot be considered for promotion to the post of Junior Assistant, as the post of Head Mazdoor held by the petitioner is not in the feeder categories to the post of Junior Assistant. Aggrieved by the said order, the petitioner had once again approached this court by filing the present petition.

3. The respondent filed a counter affidavit contending that the case of the petitioner cannot be considered for promotion to the post of Junior Assistant as he is not in the feeder category and also on the ground that the petitioner has suffered punishment in the year 1999, which was in operation till the year 2004 besides various other reasons.

4. Mr.A.R.Nixon, learned counsel appearing for the petitioner has strenuously contend that by virtue of the fact that the petitioner has completed Group-IV examination conducted by TNPSC in terms of Rule 12(a)(ii) of Tamil Nadu State and Subordinate Service Rules, the petitioner is eligible for being appointed for the post of Junior assistant and therefore, the respondent cannot reject the claim of the petitioner on the ground that he is not in the feeder category. He further contended that by virtue of passing in the Group-IV examination conducted by TNPSC, he has acquired the right of being appointed for the post of Junior Assistant. He also



W.P.No.8789 of 2015

further contended that by virtue of his appointment as Head Mazdoor in Urban Malaria Scheme Department in the Salem Municipality, his name was removed from the employment exchange and thereby, his case was not considered for being appointed for the post of Junior Assistant by way of direct recruitment. The learned counsel further contended that by virtue of the order passed by this Court in W.P.No.12567 of 1987 dated 08.11.1996, the petitioner is entitled to be promoted to the post of Junior Assistant. According to the learned counsel for the petitioner, the said order passed by this Court would confer an accrued right on the petitioner to get promotion to the post of Junior Assistant and it is not open to the respondent to reject the claim of the petitioner on the ground that he is not eligible.

5. On the other hand, the learned Government Advocate appearing for the respondent Municipality reiterated the contentions raised in the counter affidavit, especially the contention that the post of Head Mazdoor held by the petitioner does not come under the feeder category for the post of Junior Assistant.

6. This court has carefully considered the submissions made by either side and also perused the entire materials available on record.

7. On through perusal and consideration of the materials and submissions,



W.P.No.8789 of 2015

WEB COPY

this Court is unable to agree with the contention of the learned counsel for the petitioner that by virtue of passed in the Group-IV examination conducted by TNPSC, the petitioner has got a right for being appointed to the post of Junior Assistant. On a careful perusal of Rule 12(a)(ii) of TN State and Subordinate Service Rules read with Rule 10 of Tamil Nadu Ministerial Service Rules (Part-II), it is clear that by virtue of pass in Group-IV examination conducted by TNPSC, the petitioner at most can only get over the disqualification or ineligible for want of possessing the requisite educational qualification prescribed under the TN State and Subordinate Service Rules or Ministerial Service Rules governing the post of Junior Assistant. Such a passing of an examination cannot necessarily be said to confer a right to the petitioner for being appointed to the post of Junior Assistant. Once, the petitioner possesses all the qualifications that are required for being appointed or promoted to the post of Junior Assistant, his case requires to be considered in accordance with law and the rules governing the post of Junior Assistant.

8. It is the specific contention of the respondents that the post of Junior Assistant can be fulfilled in either by direct recruitment or by promotion from the categories of Record Clerks or Tax Collectors. It is also the case of the respondent that the post of Head Mazdoor is not in the feeder category for the post of Junior Assistant, and therefore, the claim of the petitioner cannot be considered for being



W.P.No.8789 of 2015

appointed to the post of Junior Assistant by way of promotion. As against the specific contention in the counter affidavit as well as in the impugned order, nothing has been brought to the notice of this Court to show that the post of Head Mazdoor held by the petitioner is also included in the feeder category to the post of Junior Assistant. In the absence of the post of Head Mazdoor being included in the feeder category to the post of Junior Assistant, the question of considering the case of the petitioner for being appointed to the post of Junior Assistant by promotion does not arise. In this case, merely because the petitioner possesses all the eligibility criteria for being appointed to the post of Junior Assistant, does not mean that the respondent is under obligation to appoint him to the post of Junior Assistant. It is only in case the petitioner is in the feeder category, the question to consider his case for promotion to the post of Supervisor would arise. The petitioner who worked as Head Mazdoor may be entitled for promotion in his own line in terms of the rules governing the post of Head Mazdoor and further promotional post. As seen from the materials on record, the case of the petitioner was already considered for promotion to the post of Sanitary Supervisor and he was accordingly promoted and got retirement from service on 30.10.2012 in the post of Sanitary Supervisor. In these circumstances, the entire claim made by the petitioner for being appointed to the post of Junior Assistant on the ground that he has already requires all the educational qualifications is not sustainable and the same is liable to be rejected.



W.P.No.8789 of 2015

WEB COPY

9. It is also total misconception that in the light of the order passed by this Court dated 08.11.1996 in W.P.No.12567 of 1987, the respondent cannot reject the claim of the petitioner for being appointed to the post of Junior Assistant. As the said order is only to the extent of declaring that the petitioner is eligible for being appointed to the post of Junior Assistant with regard to aspect that the petitioner who is working in the Health Department of Salem Municipality can also be considered against the post of Junior Assistant existing in other department. But, in such consideration is only in case if the petitioner fulfil other criteria such as being included in the feeder category and coming within zone of the consideration, etc. Therefore, this court does not find any error or illegality in the impugned order passed by the respondents nor there is any merit in the claim of the petitioner.

10. Accordingly, this writ petition is dismissed. Connected Miscellaneous Petition shall stand closed. No costs.

13.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Cases : Yes/No
mac



WEB COPY



W.P.No.8789 of 2015

To

The Principal Secretary, Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort.St.George,
Chennai – 600 009



WEB COPY



W.P.No.8789 of 2015

MUMMINENI SUDHEER KUMAR, J.

mac

W.P.No.8789of 2015

13.11.2024