



W.A.No.1227 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.06.2024

Pronounced On : 31 .07.2024

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P. DHANABAL

W.A.No.1227 of 2023

and

C.M.P.No.12412 of 2023

The Commissioner
Ariyankuppam Commune Panchayat
Ariyankuppam, Puducherry-605 007

... Appellant/Petitioner

Versus

The Secretary
Ariyankuppam Commune Panchayat
workers Union,
Puducherry-605 004

... Respondent/Respondent.

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, as against
the order dated 13.08.2021 passed in W.P.No.3249 of 2020.

For appellant : Mr.J.Kumaran, Addl.Govt.Pleader (Pondy)

For respondent : Mr.M.Gnanasekar



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J U D G M E N T

Per J.NISHA BANU, J.

The Commissioner, Ariyankuppam Commune Pancayat, Puducherry, has come to this court challenging the order of the learned Single Judge passed in W.P.10156 of 2023 dated 03.04.2023.

2. The grounds raised in this writ appeal is that the learned Single Judge, dismissed the writ petition filed by the Panchayat, for delay and laches. The judgment cited by the learned Single Judge, in the case of ***Chennai Metropolitan Water Supply and Sewerage Board Vs. T.T.Murali Babu*** reported in ***(2014) 4 SCC 108*** has not been scrutinized properly. The writ petitioner-panchayat brought the entire facts pertaining to the I.D.(T).No.04/2015 to the attention of Director, Local Administration Department in respect of relaxation of necessary rules to oblige the award of the Labour Court-cum-Tribunal and brought all the facts again to the



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Designated Officer, Council of the Ariyankuppam Commune Panchayat for approval and after obtaining his approval on 29.12.2022, the matter was again referred to the Director (LA) for further course of action and that only after the request of the appellant, the request was rejected on 04.01.2023, thereafter the appellant/writ petitioner approached this court with writ petition and therefore, summarily dismissing the writ petition on the grounds of delay is erroneous.

3. The learned counsel for the appellant-panchayat would submit that to relax the recruitment rules and promoting the employee [Union Member-Rajendran] as plumber in the Ariyankuppam Commune Panchayat in compliance to the impugned award, is not legally permissible. The appellant is not competent to relax the recruitment rules. The learned counsel further submitted that in excess of jurisdiction, the Industrial Tribunal has passed the Award. Further the employee did not possess the requisite technical qualification. The learned counsel for the appellant relied on following decisions in support of their contentions:-

(1) A.Umarani Vs. Registrar, Cooperative Societies [AIR 2004 SCC 4504].

(2) J&K Public Service Commission Vs. Dr. Narinder Mohan

[1994 SCC (2)630].

The learned counsel would submit that it was held in the above decisions that rule of relaxation cannot be exercised in matters of recruitment.



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4. The learned counsel for the respondent-Secretary, Workers Union would submit that the Tribunal has rightly passed the award with a direction to the Commissioner, Panchayat to promote the employee to the post of plumber by relaxing the Recruitment Rules and the learned Single Judge, after going through the entire facts of the case and Award, confirmed the award and dismissed the writ petition and therefore, the impugned order needs no interference.

5. Heard both sides and perused the award and the impugned order passed by the learned Single Judge.

6. The facts of the case would go to show that the employee had been in service from 1993 in the appellant Commune Panchayat and his service was regularized on 21.03.2002. The employee-Rajendran had made an application seeking promotion to the Commune Panchayat on 30.01.2012 and to the Union on 10.02.2012. The Union has raised an Industrial Dispute on 27.02.2012 before the Labour Officer (Conciliation) and the Union has made several communications to the Labour Officer (Conciliation) and also to Secretary to Government. It is transpired from the records that the office orders of the respondent Commune Panchayat dated 27.07.2009, 17.02.2010 and 12.02.2015



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under Ex.P.13 and Ex.P.15 would reveal the fact that workman Rajendran was directed to do the plumber work from 2009 and the said Rajejdran has discharged the plumber work from the date of his appointment as a helper and as a plumber.

7. Before the Labour Court, R.W.1 on the side of Commune Panchayat deposed that the allegation made against the respondent commune panchayat was that they have relaxed the recruitment rules for 31 workers and the said workers were appointed as permanent workers after the relaxation of recruitment rules are false and further deposed that all the workers were appointed on daily rated service and they were absorbed in the permanent post in the same category as per approval and order by the department of Local Administration and the respondent-employee is one among them and that they are not empowered to relax the recruitment rules for appointment, transfer or grant promotion and all the procedures were adopted by Local Administrative department and the proposal was sent to the department. The Labour court found that it was not disputed by the employer-commune Panchayat that the employee had been in service as daily rated sanitary worker from the year 1993 and thereafter his service was confirmed on 21.03.2002 and then, he was a permanent worker and doing the duty of plumber. It is also pointed out by the



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Labour court that from the year 2012, the employee respondent was worked as Assistant to the Plumber and he was directed to do the Assistant Plumber Work under an office order dated 27.07.2009 and that Kathalingam and Manickasamy who were in service as plumbers have been retired from service and thereafter the workman was directed to do the plumber work independently under an office order dated 17.02.2010.

8. The Labour court pointed out that after retirement of Kathalingam and Manickasamy, plumber post was vacant; then the work was allotted to 4 workers including the employee-Rajendran. Out of 4 workers, two workers namely Narayanan and Rathinavelu were not in service and only the employee-Rajendran is doing the plumber work and he is maintaining 36 water tanks and 22 pump houses and the same is admitted by the witness R.W.1. Hence, considering the fact that employee-Rajendran had been in service for about 18 years from 1993 and he alone is handling the plumbing work after the retirement of the plumbers Kathalingam and Manickasamy, the Labour court held that he had to be given promotion by relaxing the recruitment rules. The Labour court also observed that there is no such order of the Government refusing to relax the recruitment rules. The Labour court also found that based on experience of employee-Rajendran, granting promotion is justified.



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9. The sum and substance of the Labour court award is that promotion to the post of plumber by relaxing the recruitment rules is based on the fact situation that the employee was a permanent worker and doing the duty of plumber. The employee-Rajendran had been in service for about 18 years from 1993 and he alone is handling the plumbing work after the retirement of the plumbers. Therefore, relaxing the recruitment rules is found justified. The appellant after taking note of the recruitment rules for promotion, shall relax the recruitment rules and give promotion to the employee Rajendran.

10. In the result, the order passed by the learned Single Judge, in W.P.No.10156 of 2023 dated 03.04.2023 is confirmed. This writ appeal, sans merits and accordingly, dismissed. No costs. Consequently, connected CMP is closed.

(J.N.B, J.) (P.D.B, J.)

31 .07.2024

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**J. NISHA BANU, J.
and
P.DHANABAL,J.**

nvsri

To

1.The Commissioner

Ariyankuppam Commune Panchayat
Ariyankuppam, Puducherry-605 007

2.The Secretary

Ministry of Commerce and Industry
Department of Commerce
Udyog Bhawan
New Delhi 110 107

3.The Executive Director

The Plastics Export Promotion Council
Crystal Tower
Gundivali Road
No.3, Off Sir M.V.Road
Andheri East
Mumbai 400 069

Judgment in
W.A.No.1227 of 2023

31.07.2024