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W.P.No.25459 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.25459 of 2023

and

W.M.P.Nos.24852 and 24853 of 2023

R.Muthukumar

... Petitioner

..Vs..

1. The State of Tamil Nadu,  
Represented by its Principal Secretary to Government,  
Municipal Administration and Water Supply Department,  
Secretariat, Fort. St.George, Chennai.
2. The Director of Municipal Administration,  
Raja Annamalaipuram, Chennai.
3. The Commissioner,  
Coimbatore City Municipal Corporation, Coimbatore.
4. I.Nazar
5. P.Vimala
6. R.Ezhil
7. S.Yoga Chitra
8. S.R.Savitha
9. S.P.Ravi Kannan
10. N.Sakthivel
11. P.Ganesan

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India,



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to issue Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings dated 19.05.2023 in Na. Ka. No.6947/2022/MC1 of the third respondent herein, quash the same and consequently direct the respondents 1 to 3 herein to forthwith promote the petitioner to the post of Assistant Executive Engineer in Coimbatore City Corporation.

For Petitioner : Mrs. A.L.Ganthimathi,  
Senior Counsel  
for Mr.L.Palani Muthu

For Respondents : Mr.C.Selvaraj,  
Additional Government Pleader  
(for R1 & R2)

Mr.D.R.Arunkumar (for R3)

Mr.T.Ranganathan (for R4, R6 to R8,  
R10 & R11)

### **ORDER**

This Writ Petition has been filed to quash the proceedings dated 19.05.2023 in Na. Ka. No.6947/2022/MC1 passed by the third respondent herein and consequently direct the respondents 1 to 3 herein to forthwith promote the petitioner to the post of Assistant Executive Engineer in Coimbatore City Corporation.



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2. The case of the petitioner is that he joined in the Coimbatore Corporation as Skilled Assistant. Subsequently, he was promoted as Assistant Engineer on 26.11.2015. Further, by proceedings dated 03.08.2018, the petitioner was called upon to do the services at Saravanampatti Water Supply Services in addition to the work already allotted to him. From the date of his joining service till 19.12.2021, he was working in the Ward Offices of the Coimbatore Corporation. Thereafter, by proceedings dated 30.12.2021 of the second respondent, while, the petitioner was working in Ward Office and also water supply services in Saravanampatti, he was called upon to work in the Main Office, Engineering Department and since then, he was working as such for the period of more than one year i.e. from 20.12.2021 to 17.02.2023.

2.1. Further, on 04.01.2023, the petitioner made a representation that the panel submitted by the third respondent to the second respondent of the existing Assistant Engineers including the name of the petitioner for the purpose of promotion and appointment to the post of Assistant Executive Engineer is apparently in violation of the eligibility criteria as prescribed under the aforesaid rules. The petitioner has been included after



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the persons who have not even been worked in the Main Office, Engineering Department which is required qualification as per the Tamil Nadu Municipal Corporation Engineering and Water Supply Service Rules. Thereafter, the petitioner made another representation dated 19.01.2023 to the third respondent. However, on 21.01.2023, the petitioner was transferred from the Engineering Department to the Central Zone and placed in the Main Office, Engineering Department. On the same day, the third respondent passed orders stating that as per the G.O.77, MAWS dated 13.05.1998, 36 Junior Engineers/Assistant Engineer posts have been created in the Coimbatore Corporation and one Junior Engineer/Assistant Engineer for two wards and as such, the eligibility criteria with regard to the service in the Main Office was not able to be followed and therefore, as per the orders in G.O.Ms.No.152, dated 20.10.2022, the seniority list has been sent for the purpose of promotion to the post of Assistant Executive Engineer and hence, the petitioner's requisition was rejected.

2.2. On 07.03.2023, the petitioner made an appeal before the third respondent followed by a reminder on 10.04.2023. Thereafter, on 19.05.2023, the third respondent rejected the appeal filed by the petitioner



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stating that no Assistant Engineer post has been sanctioned in the Main Office, Engineering Department and therefore, no employee was able to be deputed to the same and on administrative reasons, the petitioner alone was allotted to the Main Office and therefore, the rule with regard to the condition that the Assistant Engineer/Junior Engineer of the Corporation Main Office should have been worked for a period of not less than one year in the Engineering Department of the Corporation Main Office and for a period of not less than 3 years in the Ward Offices for the purpose of promotion cannot be adhered. Therefore, exemption has been granted to the other employees and hence, the petitioner was included in Sl.No.17 as per the Seniority and no advantage can be given to the petitioner since he had worked in the Ward Office and in the Main Office, Engineering Department. Hence, the petitioner has filed this Writ Petition challenging the impugned order dated 19.05.2023.

3. The learned counsel for the third respondent submitted that this Writ Petition is not maintainable and liable to be dismissed *in limine*. He submitted that the panel of the existing Assistant Engineers including the name of the petitioner for the purpose of promotion and appointment to the post of Assistant Executive Engineer is not in violation of the



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eligibility criteria as per the prescribed rules. The petitioner has failed to see the work done by the fellow engineers. The Government of Tamil Nadu by G.O.Ms.No.77, Municipal Administration and Water Supply Department dated 13.05.1998, sanctioned a strength of 36 Junior/Assistant Engineer posts in the Coimbatore Corporation and one Junior/Assistant Engineer deployed for two wards.

3.1. After the delimitation and merging of the Municipalities and Town Panchayats with the Coimbatore City Municipal Corporation on 26.10.2011, erstwhile 72 wards of the Corporation were reduced to 60 wards and added 40 wards from the erstwhile Municipalities and Town Panchayats to sum up with a total of 100 wards. In the absence of adequate engineers strength to execute the various scheme works, regular water supply within the city, deploying the Junior/Assistant Engineer to the Main Office could not be maintained. Meanwhile, the new proposal for the post of Assistant Executive Engineer has been forwarded to the second respondent based on the G.O.Ms.No.152, Municipal Administration and Water Supply Department dated 20.10.2022 and in accordance with Tamil Nadu Urban Local Bodies Rules, 2023. The petitioner's request was rejected by applying law of natural justice. As



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there was no Assistant Engineer post sanctioned for the Main Office, Engineering Section, none other than the petitioner was able to get a chance to work in the Main Office. Further, the petitioner has worked in the Main Office due to Administrative Reasons. As per the proposal, for the next promotion to the post of Assistant Executive Engineer, the petitioner has been rightly placed at Sl.No.17 in the seniority list. The other seniors who could not get the opportunity to serve in the Main Office cannot be just ignored because they did not serve in the Main Office, Engineering Department, as there is no sanctioned post of Assistant Engineer in the Main Office of Coimbatore Corporation.

3.2. Further, the Tamil Nadu Urban Local Bodies Rules, 2023 came into force on 13.04.2023. The said rule applies to all the Town Panchayats, Municipal Councils and Municipal Corporation in the State. Rule 204 in the Tamil Nadu Municipal Service (Special Rules) in the Tamil Nadu Urban Local Bodies Rules, 2023, specifies about the method of appointment and qualifications of the Assistant Executive Engineer, which is tabulated as follows:-



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| Sl. No. | Name of the Post             | Method of Appointment                                                                                                                                                                                                                                               | Qualifications                                                                                                                                                                                                                                                                                                                                                                                     |
|---------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.      | Assistant Executive Engineer | By recruitment by transfer from among the holders of the post of Assistant Engineer (Civil) or Assistant Engineer (Mechanical) in the Tamil Nadu Municipal Corporation Service, the Tamil Nadu Municipal Council Service and the Tamil Nadu Town Panchayat Service. | (1) Must possess a B.E. Degree in Civil or Mechanical Engineering or any other qualification recognized as equivalent thereto awarded by recognized University or Institution;<br>(2) Must have rendered service as Assistant Engineer for a period of not less than five years; and<br>(3) Must have passed the Account Test for Public Works Department Subordinate Officers Part I and Part II. |

The Tamil Nadu Urban Local Bodies Rules, 2023 was introduced repealing the Tamil Nadu Municipal Corporation Engineering and Water Supply Service Rules, 1996. Therefore, based on the formation of the new rules and keeping in mind the appointment and qualification of Assistant Executive Engineer as in Rule 204, the proceedings dated 19.05.2023 was passed. The petitioner cannot rely upon the appointment and qualification conditions mentioned in the repealed Tamil Nadu Municipal Corporation Engineering and Water Supply Service Rules, 1996 as that is not legally enforceable.



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4. The learned counsel for the fourth, sixth to eighth, tenth and eleventh respondents submitted that the petitioner is admittedly junior to fourth to eleventh respondents working as Assistant Engineer in Coimbatore City Municipal Corporation. The petitioner has erroneously presumed that he is the only person available in Coimbatore City Municipal Corporation satisfying the conditions of service as prescribed under Tamil Nadu Municipal Corporation Engineering and Water Supply Services Rules, 1976 issued in G.O. Ms. No. 237, MAWS Department dated 26.09.1996. Satisfying the 1 year service in the Engineering Department of the Corporation's Main Office, as prescribed under Rule 4 of the above said rules, is an un-enforceable condition, as there is no such post in Coimbatore City Municipal Corporation Main Office as admittedly accepted by the first to third respondents in all the promotions made earlier in Coimbatore City Municipal Corporation as Assistant Executive Engineer. The Petitioner, who is a B.E., (Civil) Degree Holder, and he cannot be considered for the post of Technical Assistant Grade II and the qualifications prescribed under the Rules are as follows:-

|                              |      |                                                                                                                                          |
|------------------------------|------|------------------------------------------------------------------------------------------------------------------------------------------|
| Skilled Assistant Grade II : | (i)  | Must have passed X Std Examination and shall possess ITI Trade Certificate from an Institute recognized by the Government of Tamil Nadu. |
|                              | (ii) | Must have passed the Departmental Test                                                                                                   |



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|                              |     |                                                                                                                                          |
|------------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------------|
| Skilled Assistant Grade II : | (i) | Must have passed X Std Examination and shall possess ITI Trade Certificate from an Institute recognized by the Government of Tamil Nadu. |
|                              |     | prescribed for the Corporation Service before completion of Probation.                                                                   |

Therefore, the initial appointment of the Petitioner itself is in violation of the statutes. It is well settled by the Hon'ble Supreme Court of India in *State of Karnataka Vs. Umadevi* [(2006) 4 SCC 1] that the Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme. The date of appointment as Assistant Engineer and promotion as Assistant Executive Engineer of the petitioner and the fourth to eleventh respondents in the cadre of Assistant Engineer is tabulated as under:-

| <b>S. No.</b> | <b>Names</b>                          | <b>Date of appointment as Assistant Engineer</b> | <b>Promoted as Assistant Executive Engineer</b> |
|---------------|---------------------------------------|--------------------------------------------------|-------------------------------------------------|
| 1             | I. Nazar (4 <sup>th</sup> respondent) | 30.04.2007                                       | -                                               |



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| <b>S. No.</b> | <b>Names</b>                                 | <b>Date of appointment as Assistant Engineer</b> | <b>Promoted as Assistant Executive Engineer</b> |
|---------------|----------------------------------------------|--------------------------------------------------|-------------------------------------------------|
| 2             | P. Vimala (5 <sup>th</sup> respondent)       | 15.11.2007                                       | -                                               |
| 3             | R. Ezhil (6 <sup>th</sup> respondent)        | 25.01.2008                                       | 22.09.2023                                      |
| 4             | A. Yogachitra (7 <sup>th</sup> respondent)   | 25.01.2008                                       | 22.09.2023                                      |
| 5             | SR. Savitha (8 <sup>th</sup> respondent)     | 28.01.2008                                       | -                                               |
| 6             | SP. Ravi Kannan (9 <sup>th</sup> respondent) | 25.01.2008                                       | -                                               |
| 7             | N. Sakthivel (10 <sup>th</sup> respondent)   | 17.04.2012                                       | -                                               |
| 8             | P. Ganesan (11 <sup>th</sup> respondent)     | 25.04.2013                                       | -                                               |
| 9             | R. Muthukumar (Petitioner)                   | 26.11.2015                                       | -                                               |

5. Further, the petitioner has suppressed the fact that his irregular and illegal initial appointment as Skilled Assistant, Grade-II, in the Coimbatore City Municipal Corporation, which is already under challenge in various Writ Petitions filed by the employees directly appointed as Technical Assistants and waiting for further promotions as Assistant Engineer, inspite of the fact that they are all B.E. Degree (Civil) Holders. Further, his promotion as Assistant Engineer by level jump from the post of Skilled Assistant Grade-II to the post of Assistant Engineer without working as Skilled Assistant Grade-I and Technical Assistant is also illegal. He has also suppressed the fact that the appointment of the petitioner along with others have been challenged in W.P.No.13085 of 2020 before this Court by one S.M.Hari Prasad, Technical Assistant, B.E.



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(Civil) Degree holder appointed on compassionate ground even though there were vacancies in the category of Assistant Engineer, when the said individual was deliberately appointed as Technical Assistant, possessing First Class B.E.Civil Degree and also belonging to Schedule Caste (Arunthadhiyar Community). The said writ petition is still pending before this Court. Further, the petitioner along with 7 others have filed another writ petition in W.P. No. 19806 of 2008 for appointment as Junior Engineer and Assistant Engineer from the post of Skilled Assistant Grade-II. In the said writ petition, the Commissioner, Coimbatore City Municipal Corporation has recorded before this Court that the State Government in G.O.(Ms) No.42, MAWS Department dated 30.03.2000, issued guidelines that for filling up of the post of Junior Engineer, the persons who are working as Skilled Assistant Grade-I with 5 years experience will have to be made as Technical Assistant and those who have completed 5 years in the post of the Technical Assistant will be considered for Junior Engineer. In view of the same, the said writ petition is dismissed by order dated 26.07.2012. Therefore, when the initial appointment of the petitioner itself is not in accordance with Service Rules, the claim of the petitioner over and above the respondents 4 to 11 for appointment as Assistant Executive Engineer is *per se* illegal and liable to be set aside *in limine*.



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6. It is further submitted that when there is no such post in the Main Office as admittedly accepted by the first, second and third respondents in various Government orders, while promoting T.Gnanavel, R.Sasipriya, V.Veeraraghavan and K.Sakunthala as Assistant Executive Engineers in G.O.(D) No. 281 MAWS Department dated 26.07.2011 and also in the counter affidavit filed before this Court, specifically mentioning that the condition of 1 year service as Assistant Engineer in the Main Office under Rule 4 of the Tamil Nadu Municipal Corporation Engineering and Water Supply Service Rules has been relaxed in favour of the individuals, since there is no post of Assistant Engineer in Coimbatore City Municipal Corporation's Main Office. Similarly, the said condition of service inadvertently incorporated in the above said rules by the Government without a post in the main office has been relaxed to all the individuals who were promoted as Assistant Executive Engineer in Coimbatore City Municipal Corporation. Hence, the question of working as Assistant Engineer in the Main Office of the Coimbatore Corporation is not a pre-requisite condition for promotion as Assistant Executive Engineer.



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7. It is further submitted that the contention of the petitioner that for promotion as Assistant Executive Engineer, one must have worked as “Assistant Engineer/Junior Engineer for not less than 1 years period in the Engineering Department of the Corporation Main Office” is factually an incorrect statement as there is no such post in Coimbatore City Municipal Corporation Main Office. Hence, there is no justified reason for the petitioner to claim over and above the respondents 4 to 11 for promotion as Assistant Executive Engineer. The Commissioner, Coimbatore City Municipal Corporation has already submitted a panel of existing Assistant Engineers/Junior Engineers including the name of the petitioner to consider for promotion as Assistant Executive Engineer, even though it is not necessary because the appointing authority for the post of Assistant Executive Engineer is Coimbatore City Municipal Corporation Council subject to the confirmation by the Government as and under Section 106(2)(b) of the Coimbatore City Municipal Corporation Act, 1981 that “for appointment to any post included in Class-II shall be made by the Council and shall subject to confirmation of the Government”. The claim of the petitioner that even the said panel of Assistant Engineers/Junior Engineers prepared and sent by the third respondent to the second respondent is apparently in violation of the eligibility criteria as prescribed



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under the Rules is not correct for the reason stated above, since the said condition of service is not an enforceable condition when there is no such available in the Coimbatore City Municipal Corporation Main Office. Therefore, the claim of the petitioner is baseless, legally unsustainable under the Law.

8. It is further submitted that the reference made by the petitioner regarding the orders issued in G.O.(Ms). 77 MAWS Department dated 13.05.1998 and also G.O.Ms. No.152 MAWS Department dated 20.10.2022 have no reference to his claim of seniority over and above the respondents 4 to 11. The third respondent has properly prepared the seniority list in Memorandum Na.Ka.10013/2019/MCC dated 09.11.2019, according to which the petitioner was in Serial No.20, admittedly junior to the respondents 4 to 11. This seniority list has already been confirmed by the third respondent. Hence, the panel prepared by the third respondent based on the said settled seniority list dated 09.11.2019 and sent to the second respondent is perfect and legally valid under the Law. The claim of seniority and promotion as Assistant Executive Engineer by the petitioner over and above the respondents 4 to 11 is only a fictitious claim, without any basis and therefore, the third respondent has rejected the claim of the



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petitioner in the proceedings dated 19.05.2023, which is challenged in this writ petition. In the absence of the Assistant Engineer post in the Corporation Main Office, the Government have instead of amending the Rule properly, have relaxed the said condition of Service to all the Assistant Engineer/Junior Engineer promoted as Assistant Executive Engineer, in all 20 Municipal Corporations.

9. In response to the contention of the learned counsel for the third respondent that the new method of appointment and qualification for the post of Assistant Executive Engineer is introduced in the Tamil Nadu Urban Local Bodies Rules, 2023, the learned counsel for the petitioner submitted that the said Rules came into force only on 13.04.2023, but the petitioner has made a representation dated 04.01.2023 stating that the seniority panel of the existing Assistant Engineers for the purpose of promotion and appointment to the post of Assistant Executive Engineer submitted by the third respondent to the second respondent is apparently in violation of the eligibility criteria prescribed under the Tamil Nadu Municipal Corporation Service Rules, 1996, which was in effect at that point of time.



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10. Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the first and second respondent, the learned counsel for the third respondent and the learned counsel for the fourth, sixth to eighth, tenth and eleventh respondents and perused the materials placed on record, apart from the pleadings of the parties.

11. Insofar as the grievance of the petitioner that he has been included in the seniority list after the persons who have not even been worked in the Main Office, Engineering Department which is required qualification as per the Tamil Nadu Municipal Corporation Engineering and Water Supply Service Rules, it is made clear that the petitioner has worked in the Main Office only due to administrative reasons and as there is no sanctioned post of Assistant Engineer in the Main Office, the post of Assistant Executive Engineer had been filled up only after the aforesaid qualification is relaxed by the Government.

20. With regard to the contentions of the learned counsel for the fourth, sixth to eighth, tenth and eleventh respondents that

(i) the writ petition in W.P.No.13085 of 2020 has been filed before



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this Court by one S.M.Hari Prasad challenging the appointment of the petitioner;

(ii) the petitioner along with 7 others have filed another writ petition in W.P. No. 19806 of 2008 for appointment as Junior Engineer and Assistant Engineer from the post of Skilled Assistant Grade-II; and

(iii) the promotion of the petitioner to the post of Assistant Engineer by level jump from the post of Skilled Assistant Grade-II to the post of Assistant Engineer without working as Skilled Assistant Grade-I and Technical Assistant is illegal,

the petitioner has failed to demonstrate before this Court that they are false contentions. In such circumstances, the claim made by the petitioner, who lacks *bonafide*, cannot be countenanced.

21. In view of the foregoing discussion, there does not appear to be any infirmity in the impugned order passed by the third respondent requiring interference by this Court.

22. In the result, the Writ Petition is dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.



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Index : Yes/No  
Internet : Yes/No  
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To

1. The Principal Secretary to Government,  
The State of Tamil Nadu,  
Municipal Administration and Water Supply Department,  
Secretariat, Fort. St.George, Chennai.
2. The Director of Municipal Administration,  
Raja Annamalaipuram, Chennai.
3. The Commissioner,  
Coimbatore City Municipal Corporation, Coimbatore.



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**V.BHAVANI SUBBAROYAN,J.**

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