



W.P.(MD)No.19691 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.19691 of 2020

and

W.M.P.(MD)Nos.16411 and 16415 of 2020

M.Valli

... Petitioner

Vs.

1.The Commissioner,
O/o the Commissioner of Municipal Administration,
No.75, Santhome National Highways,
Raja Annamalaipuram,
Chennai.

2.The Regional Director of Municipal Administration,
O/o. Regional Director of Municipal Administration,
Kochadai,
Madurai.

3.The Commissioner,
Sivagangai Municipality,
Sivagangai.

4.Ganesan

... Respondents

PRAYER : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice in Na.Ka.No.2077/2018/C1 dated 25.11.2020



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and consequential impugned order in Na.Ka.No.2077/2018/C1 dated 25.11.2020 on the file of the respondent no.3 and quash the same as illegal and consequently direct the respondents no.1 to 3 to promote the petitioner for the post of Sanitary Supervisor with the respondent No.3 Municipality with consequential benefits within the stipulated period of time.

For Petitioner : Mr.T.Thirumurugan
For Respondents 1 to 3 : Mr.J.Lawrence
Standing Counsel

ORDER

This Writ Petition has been filed to quash the impugned notice in Na.Ka.No.2077/2018/C1 dated 25.11.2020 and consequential impugned order in Na.Ka.No.2077/2018/C1 dated 25.11.2020 on the file of the respondent no.3 and to direct the respondents 1 to 3 to promote the petitioner for the post of Sanitary Supervisor with the respondent No.3 Municipality with consequential benefits.

2.The brief facts, which are necessary for the disposal of this Writ Petition is as follows:-

(i)The petitioner joined with the third respondent office as a Sanitary Worker. While so, one Mr.Vijaya Kumar, who was working as a Sanitary Supervisor had submitted his voluntary retirement with the third respondent office as a result of which, the said post became vacant. On 13.10.2020, the



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third respondent had issued a seniority list for the promotion of Sanitary Supervisor post and the petitioner's name has been placed in the third rank among the 23 employees. The third respondent had stated that the persons who were not mentioned in the seniority list can also submit their application for promotion within three days. The petitioner has also given her application by following the said order dated 13.10.2020 for promotion. Earlier she had already given representations in person on various dates on 01.03.2018, 24.08.2020, 09.10.2020 and 24.10.2020.

(ii) In the meanwhile, one Mr. Thangaraj and Mrs. Aryanachi, who were in the seniority list in the place of 1 and 2 had given their respective relinquish letters on 14.10.2020 and 15.10.2020 to be promoted to the post of Sanitary Supervisor, thereby facilitating the petitioner to be promoted to the said post. While so, the petitioner's original transfer certificate was found missing and hence, on 07.11.2020, she lodged an online complaint regarding the missing certificate and the said complaint was under process. In the meanwhile, on 17.11.2020, the third respondent office had served a memo and signed as dated 06.11.2020, requiring the petitioner to produce the transfer certificate within three days for considering her case for promotion. Subsequently, on 17.11.2020 morning itself, the petitioner had produced the photo copy of a transfer



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certificate in the third respondent office. The petitioner apprehended that some other person may be promoted in the said post, since the memo dated 06.11.2020 was served to her only on 17.11.2020 and it had been stated to produce the transfer certificate within three days. Hence on 18.11.2020, she made a detailed representation to the respondents explaining the entire facts and sought to promote her as Sanitary Supervisor on the basis of the xerox copy of the transfer certificate and not to promote any other person except her requesting time to produce the original copy of the transfer certificate. In this regard, she also filed a petition in W.P.(MD)No.16977 of 2020.

(iii) While so, on 19.11.2020 the third respondent issued an order in Na.Ka.No.2077/2020/C1 stating that already on 06.11.2020, memo has been issued requiring the petitioner to produce her original school certificate and since she has not submitted the same, she is directed to produce the original school certificate within three days or otherwise her name would be cancelled from the list of seniority. While so, on 23.11.2020, the petitioner received a certificate from the Headmaster of the government high secondary School, at Sivagangai, stating that there had been a fire accident in the said school on 01.06.1997, as a result of which the entire documents were destroyed and hence, they could not trace out the certificates pertaining to the petitioner's



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studies. However, on comparing her xerox copy of transfer certificate, they provided with a certificate as if the petitioner studied in the school during 1985-1986 in the 9th standard and had discontinued. Thereafter, when the petitioner produced the certificate to the third respondent, the same was not accepted. In the meanwhile, when the writ petition in W.P.(MD)No.16977 of 2020 came up for hearing on 27.11.2020, it was submitted by the learned counsel for the third respondent that promotion has already been given to the fourth respondent. Following which, on the same day on 27.11.2020, the petitioner received the impugned order dated 25.11.2020 in Na.Ka.No. 2077/2018/C1 informing her that her claim for promotion has been rejected on the ground that she failed to produce the original certificates within three days.

(iv)In the meanwhile, vide impugned order dated 25.11.2020, the fourth respondent was promoted as Sanitary Supervisor with effect from 25.11.2020 forenoon. Thus, challenging the impugned order in Na.Ka.No.2077/2018/C1 dated 25.11.2020 and the consequential impugned order dated 25.11.2020 promoting the fourth respondent, which had been passed by the third respondent this petition came to be filed.



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3.The learned counsel for the petitioner vehemently contended that the petitioner had promptly informed the respondents as early as on 18.11.2020 by means of a detailed representation stating that her original transfer certificate has gone missing and had sought a reasonable time for producing the original certificates before the third respondent. However, without giving her with a reasonable time to produce the same, in a hasty manner, the third respondent immediately on the next day, that is, on 19.11.2020, required the petitioner to produce the original certificates within three days. By the time, when the petitioner managed to receive a certificate from the school concerned on 23.11.2020 and produced the same, the same was not accepted by the third respondent and the third respondent in a predetermined style had issued the impugned order rejecting the petitioner's claim for promotion thereby, promoting the fourth respondent to the post of Sanitary Supervisor with effect from 25.11.2024 forenoon. Both the impugned orders are vitiated by *malefide* and pressed for allowing the Writ Petition.

4.The third respondent has filed a counter affidavit and the learned standing counsel appearing for the third respondent submitted that when a vacancy for the post of Sanitary Supervisor had arisen in the third respondent Municipality, a seniority list of Sanitary Workers fit for promotion to the post



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of Sanitary Supervisor was arrived at and the petitioner was duly placed in the third rank in the aforesaid list. That apart, all the eligible persons were instructed to submit their applications along with necessary particulars to be considered for the said promotional post of Sanitary Supervisor. Since the senior most candidates, namely, Mr.Thangaraj and Mrs.Aryanachi in the said seniority list had opted out of promotion, the petitioner who was ranked in serial No.3 in the aforesaid seniority list, was specifically directed to furnish a school transfer certificate so as to enable, the third respondent to verify her educational qualification as early as on 06.11.2020. Yet another reminder was also issued to her requiring to furnish the original school transfer certificate within 3 days from the date of receipt of the said proceeding vide proceedings of the third respondent dated 09.11.2020. It is only because the petitioner failed to produce the required documents, the fourth respondent who stood next to the petitioner was considered for the promotion and was duly promoted as Sanitary Supervisor by the impugned proceedings of the respondent dated 25.11.2020. The impugned order has been passed properly by all means and the same is valid and deserves to be upheld and pressed for dismissal of the Writ Petition.

5.Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondents 1 to 3 and carefully perused the available materials



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6.The petitioner having made an application seeking promotion to the post of Sanitary Supervisor, found her original transfer certificate to be missing and had lodged an online complaint regarding the missing of the said certificate on 07.11.2020. However, an official communication dated 06.11.2020 was served on her only on 17.11.2020 by the third respondent office requiring her to produce the original transfer certificate within three days from the date of the said communication. However, the petitioner submitted the photo copy of her transfer certificate on the same date to the third respondent office, that is, on 17.11.2020. Since the official communication of the third respondent dated 06.11.2020, came to be served on her only on 17.11.2020 requiring her to produce the original transfer certificate within three days from the date of the said communication, the petitioner on 18.11.2020 had promptly made a detailed written representation explaining the missing of her transfer certificate seeking reasonable time for her to produce the same. However, negating the same, the third respondent office obviously in a hasty manner on 19.11.2020 issued yet another official communication, requiring her to produce the original school certificate within three days, failing which her name would be deleted from the list of seniority. Hence, the petitioner had filed a Writ Petition which was



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numbered as W.P.(MD)No.16977 of 2020 before this Court on 24.11.2020.

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7.In the meanwhile, she had received a certificate from the school concerned on 23.11.2023 and she also submitted the same before the third respondent school. However, the third respondent refused to accept the same and on 27.11.2020, the petitioner received the impugned order dated 25.11.2020, stating that her claim for promotion has been rejected on the ground that, she failed to produce her original certificates within the stipulated period of three days and subsequently, yet another consequential impugned order was also passed on 25.11.2020, promoting the fourth respondent as Sanitary Supervisor with effect from 25.11.2020 forenoon.

8.It is pertinent to mention here that both the impugned notice and impugned order dated 25.11.2020 came to be signed by the third respondent on a public holiday announced by the Government of Tamil Nadu by G.O.Ms.No. 596 dated 24.11.2020 on account of Nivar Cyclone. The facts and circumstances of this case would fairly establish that the third respondent in a haste proceeded to pass the impugned order on a public holiday that is on 25.11.2020, cancelling rejecting the petitioner's claim for promotion to the post of Sanitary Supervisor and promoting the junior of the petitioner that is the



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fourth respondent, to the post of Sanitary Supervisor on a public holiday with effect from 25.11.2020 forenoon by signing the impugned order of promotion on the public holiday that is on 25.11.2020 for oblique reasons. Though the respondents have duly filed a counter explaining that in the G.O., with respect to the cyclone warning in G.O.Ms.No.596 dated 24.11.2020, it has been categorically stated that on 25.11.2020 being declared as public holiday, the Government has held that all essential services shall function as usual. Hence, explaining that as far as sanitary works are concerned, the said services are essential services and hence, all the Sanitary Workers were made to attend their respective duties considering the national calamity and contended that there is no illegality or irregularity in issuing the impugned order dated 25.11.2020.

9.However, this Court is of the considered view that though the services of Sanitary Workers are essential, the question of consideration of the claim of promotion will not fall under essential services and in view of the same, this Court find that the impugned orders passed by the third respondent on a public holiday on 25.01.2020, in a haste manner without accepting the petitioner's certificate and rejecting her claim as irregular and illegal. In view of the same, the impugned orders are hereby quashed and consequently the respondents 1 to 3 are directed to promote the petitioner to the post of Sanitary Supervisor with



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the third respondent Municipality with all consequential benefits within a period of four weeks from the date of receipt of copy of this order.

10. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

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No.75, Santhome National Highways,
Raja Annamalaipuram,
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2. The Regional Director of Municipal Administration,
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L.VICTORIA GOWRI, J.

Mrn

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