



W.P.Nos.13938 of 2010 & 18954 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 28.02.2025**

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

**W.P.Nos.13938 of 2010 & 18954 of 2012**

**and**

**M.P.Nos.2 of 2010 & 1 of 2012**

V.Murugan

... Petitioner in both WPs

Vs.

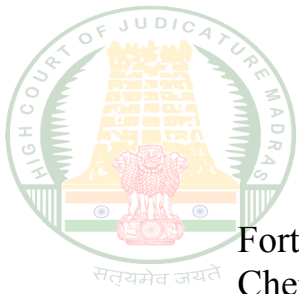
1.The Principal Secretary,  
Municipal Administration and Water Supply Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai – 600 009.  
[R1 deleted vide order dt. 11.04.2016 in M.P.No.1 of 2024  
in W.P.No.13938 of 2010]

2.The Commissioner of Municipal Administration,  
Ellilazham, Chepauk,  
Chennai – 600 005.

3.The Commissioner,  
Pollachi Municipality,  
Pollachi – 642 001,  
Coimbatore District.

4.P.Mahalingam ... Respondents in W.P.No.13938 of 2010

5.The Principal Secretary,  
Municipal Administration and Water Supply Department,  
Government of Tamil Nadu,



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Fort St. George,  
Chennai – 600 009.

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6.The Commissioner of Municipal Administration,  
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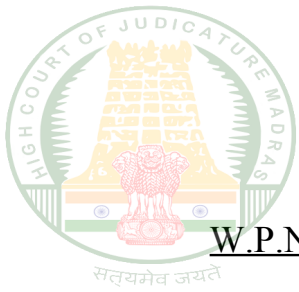
7.The Commissioner,  
Pollachi Municipality,  
Pollachi – 642 001,  
Coimbatore District.

8.P.Mahalingam

9.K.Sundarammal ... Respondents in W.P.No.18954 of 2012

**Prayer in W.P.No.13938 of 2010** : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pursuant to the order in Na.Ka.No.H1/9863/2009 dated 17.06.2010 on the file of the 3<sup>rd</sup> respondent, quash the same and consequently, direct the 3<sup>rd</sup> respondent to promote the petitioner to the post of driver.

**Prayer in W.P.No.18954 of 2012** : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pursuant to the order in Na.Ka.No.406/2012/H1 dated 11.04.2012 and consequential order in Na.Ka.No.3637/2012/E1 dated 16.04.2012 on the file of the 3<sup>rd</sup> respondent, quash the same and consequently, direct the 3<sup>rd</sup> respondent to promote the petitioner permanently without effecting his actual seniority.



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W.P.No.13938 of 2010

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For Petitioner : Mr.G.B.Seravanabhavan

For Respondents : Deleted vide order dt. 11.4.2016 in  
M.P.No.1 of 2014 in W.P.No.13938  
of 2010 [R1]

Mr.C.Selvaraj

Additional Government Pleader [R2]

Mr.J.Jayamalan

for M/s.S.Nedunchezhiyan [R3]

Mr.R.N.Amarnath [R4]

W.P.No.18954 of 2012

For Petitioner : Mr.G.B.Seravanabhavan

For Respondents : Mr.C.Selvaraj

Additional Government Pleader [R1 & R2]

Mr.J.Jayamalan

for M/s.S.Nedunchezhiyan [R3]

Mr.R.N.Amarnath [R4]

No appearance [R5]

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### **COMMON ORDER**

These two writ petitions are filed by the same petitioner, one questioning the promotion given to the 4<sup>th</sup> respondent herein and another refusing to accept the promotion given to the petitioner unless he is placed above the 4<sup>th</sup> respondent in seniority and given other benefits. The issue involved in both the writ petitions are one and the same, therefore, they are disposed of by way of this common order.



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2. The facts involved in these writ petitions are also same and the

relevant facts are as follows :-

The petitioner was working under the 3<sup>rd</sup> respondent Municipal Corporation since 16.08.1989 as water pipeline values operator on daily wages. Subsequently, he was made as permanent employee vide order dated 31.12.1999 and posted as Cleaner (Fountain). According to the petitioner, on 16.11.2005, he obtained Heavy Vehicle License and on the strength of the said license, he submitted an application dated 25.05.2006 to the department seeking promotion to the post of driver. Whiles, the 4<sup>th</sup> respondent herein was promoted as driver vide order dated 16.06.2010. Challenging the said order, the petitioner has filed a writ petition in W.P.No.13938 of 2010. Subsequently, the department vide order dated 11.04.2012 has appointed the petitioner herein as driver. Contending that the appointment of the 4<sup>th</sup> respondent on 17.06.2010 is illegal and that he should be given retrospective promotion and other benefits, the petitioner has filed another writ petition in W.P.No.18954 of 2012.

3. The 3<sup>rd</sup> respondent has filed a detailed counter affidavit in both the writ petitions. In W.P.No.13928 of 2010, the 3<sup>rd</sup> respondent has stated



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that there were already three lorry cleaners, who were working in the public health services. According to the 3<sup>rd</sup> respondent, the petitioner is working in the engineering section. The 3<sup>rd</sup> respondent contended that as per the service rules of the municipality, posts coming under the engineering section cannot be brought under the public health service posts. Moreover, the petitioner was only working as cleaner (Fountain) and he was not working as lorry cleaner. For the appointment of lorry driver, lorry cleaners will be given preference and there were also three more persons ahead of the petitioner, who are working as lorry cleaners. Therefore, the 3<sup>rd</sup> respondent justified the appointment of the 4<sup>th</sup> respondent as driver.

4. Though a rejoinder has been filed by the petitioner to the counter affidavit filed by the 3<sup>rd</sup> respondent, no document has been produced to show that driver from one service would be posted in another.

5. The 3<sup>rd</sup> respondent has filed counter affidavit in W.P.No.18954 of 2012 stating that when the turn of the petitioner came, he was appointed as driver, however, the petitioner refused to accept the



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promotion rather made a claim that he should be placed above the 4<sup>th</sup>

respondent in seniority and given other benefits.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. The petitioner cannot have the cake and eat it too. Initially, the petitioner was aggrieved that the 4<sup>th</sup> respondent was posted as driver. Challenging the same, he filed a writ petition. Pending writ petition, he was promoted as driver, the best that he aspired for. However, the petitioner was not satisfied with the offer; rather, he made a claim that he should be appointed as driver above the 4<sup>th</sup> respondent in seniority. The 3<sup>rd</sup> respondent has clearly stated in the counter affidavit that the petitioner was not working as lorry cleaner at the relevant point of time. Moreover, he belonged to engineering section. As per the relevant standing orders, the post of driver could be filled only from lorry cleaners and that too working in the same section. Either engineering section or public health services section. The appointment of 4<sup>th</sup> respondent as driver was made in public health services section. Admittedly, the petitioner was working in engineering section. Therefore, he was not



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eligible to be appointed in public health services section. To top it of, the petitioner was working only as cleaner (Fountain), by no stretch of imagination could be equatted with a lorry cleaner. On the relevant date, there were three persons working as lorry cleaners in public health service. Petitioner wants to jump the queue and be rewarded with appointment as driver. If the petitioner was directly appointed as driver, those three persons would be severely prejudiced and it would give a cause of action for them to challenge the petitioner's appointment. The nature of duties of that of a cleaner (Fountain) and lorry cleaner are totally different. Therefore, this Court finds that there is no illegality or irregularity in the appointment of the 4<sup>th</sup> respondent as driver and it was done only as per law.

8. The impugned order is dated 11.04.2012. Thirteen years has passed now. Since the petitioner has given a representation expressing his desire to continue in the post of Cleaner (Fountain), the Department would have filled up the post of driver by now. The act of the petitioner in giving a representation to continue to serve in the post of Cleaner (Fountain) is nothing but relinquishment.



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9. The petitioner has missed the bus and now, he cannot cry for the

split milk. No relief could be granted in these writ petitions.

10. For the reasons aforesaid, these Writ petitions are dismissed.

No costs. Consequently, the connected writ miscellaneous petitions are closed.

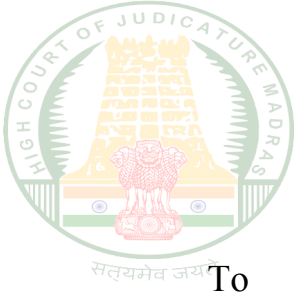
**28.02.2025**

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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**M.DHANDAPANI, J.**

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