

W.P.No.17786 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.17786 of 2015

K.Panneerselvam,
S/o.Kapali

... Petitioner

Vs.

1.The Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board,
Personnel and Administration (R&A) Department,
No.1, Pumping Station Road,
Chintadripet, Chennai – 600 002.

2.The General Manager,
Chennai Metropolitan Water Supply and
Sewerage Board,
Personnel and Administration (R&A) Department,
No.1, Pumping Station Road,
Chintadripet, Chennai – 600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the entire records which culminated in the Order in Memo No.CMWSSB/P&A/RA2/36672/2013 dated 12.05.2014 on the file of the second respondent, quash the same and



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consequently direct the respondents to include the name of the petitioner in the panel for promotion to the post of Assistant for the year 2012-2013 and to further direct the respondents to promote the petitioner on the basis of the regulation of the Board with all consequential service and monetary benefits.

For Petitioner : Mr.S.Pugaleanthi

For Respondents : Mr.Krishna Ravindran

ORDER

This is the 2nd round of litigation before this Court. In this Writ Petition, the petitioner has prayed for quashing entire records in the Order in Memo No.CMWSSB/P&A/RA2/36672/2013 dated 12.05.2014 on the file of the 2nd respondent and for a consequential direction to include the name of the petitioner in the panel for promotion to the post of Assistant for the year 2012-2013.

2. Earlier, the petitioner had approached this Court in W.P.No.25292 of 2013.

3. The petitioner had given a representation dated 08.07.2013 to the 2nd respondent to include his name for promotion.



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4. The said Writ Petition was disposed by this Court on 06.01.2014 with the following directions:-

***“5. Considering the facts and circumstances and after hearing the submissions of both sides and pursuing the material papers, I am of the opinion that this Court cannot give a positive direction to include the name of the petitioner in the panel for the promotion to the post of Assistant for the year 2012-2013. However, in the accompanying affidavit it has been stated that the petitioner has given a representation to the second respondent on 08.07.2013. Therefore, I am of the opinion it would be appropriate to direct the respondents to consider the said representation and pass appropriate orders. Accordingly, without going into the merits of the averments made in the affidavit and the representation, this Court directs the second respondent to consider the representation of the petitioner, dated 08.07.2013 and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.*”**

6. With the above observations, this writ petition is disposed of. No costs.”

5. The said Writ Petition was filed for a Mandamus, to direct the respondents to include the name of the petitioner in the panel for promotion to the post of Assistant for the year 2012-2013 and to further direct the respondents to promote the petitioner on the basis of the Regulation of the Board, in the light of the representation, dated 08.07.2013 of the petitioner.



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6. It is in this background, the 2nd respondent has passed the Impugned Order dated 12.05.2014 whereby the request of the petitioner for considering his name for promotion to the post of Assistant for the panel year 2012-2013 has been rejected.

7. The reasons forthcoming in the Impugned Order dated 12.05.2014 are as under:-

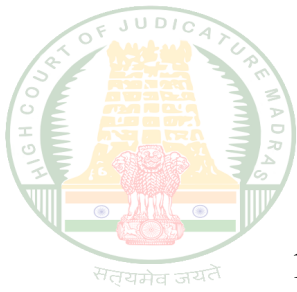
“10. Thiru K.Panneerselvam had been initially appointed as Junior Assistant by transfer from the post of Office Assistant. For appointment as Junior Assistant by transfer from the post of Office Assistant the qualification required is a Degree from a University. It is not stated as Degree / Post Graduate Degree. Evidently Thiru K.Panneerselvam had no required educational qualification of Degree from recognized University as per the Regulation-IV (14) of the Special Regulation of the Board.

11. The details of qualification acquired by Thiru K.Panneerselvam, Junior Assistant is hereunder:

Qualification	Month and Year passed	School / University where studied
S.S.L.C	March 2002	Private
M.A. (History)	May 2002	Open University
Plus 2	March 2012	Private

It has been found that Thiru K.Panneerselvam has not acquired any UG Degree recognized by the UGC, but straight away passed PG Degree in M.A. (History) from Open University.

12. The G.O.Ms.No.107, P&AR (M) Dept., dated



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18.08.2009, the Govt. have specifically ordered that for the purpose of Appointment / Promotion in public service, the incumbent should have passed Plus 2 examination, as a prerequisite if the Degree / PG Degree from the Open University has to be considered as an eligible qualification. In this case Thiru K.Panneerselvam has not passed Plus 2 and hence his P.G. Degree acquired through Open University System cannot be recognized for the purpose of his appointment. This renders his appointment as Junior Assistant questionable.

13. In view of the orders issued by the Government in respect of qualifications acquired through Open University System, all the incumbents who were appointed based on the Post Graduate Degree acquired through Open University System without acquiring basic qualification were not considered for further Appointments / Promotions including Thiru K.Panneerselvam. A panel of Junior Assistant fit for promotion to the post of Assistant was drawn for the year 2012-201 vide Proc.No.CMWSSB/P&A/STF/RA6/15295/2013, dated 17.05.2013. The names of the 9 Junior Assistants including Thiru K.Panneerselvam were passed over from that panel in view of the above Government orders under which they are not eligible for further promotion. This fact has already been communicated to the petitioner.

14. Though, Thiru K.Panneerselvam has acquired M.A. Degree, through Open University, it is the fact that he has not acquired basic Degree from any recognized University, which is a pre-requisite for consideration for appointment / promotion as per the Government Order. Hence the Board finds it not possible to accede to the request of Thiru K.Panneerselvam for promotion to the post of Assistant, for the simple reason that even his appointment as Junior Assistant suffers from a flaw that he had no required educational qualification of basic degree, as per the Rules, Supreme Court's order and Government Order. Hence, the request of Thiru K.Panneerselvam is rejected.”

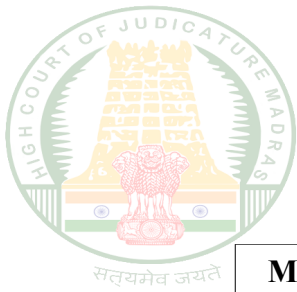


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8. In Paragraph 4 of the Impugned Order dated 12.05.2014 itself records the method of recruitment under the Special Regulations of the Board.

Paragraph 4 of the Impugned Order reads as under:-

Method of Recruitment	Name of the Post and Qualification		
	Record Assistant	Junior Assistant	Assistant
1) Direct	Must have passed 10 th Standard or its equivalent	Must possess a Degree of any University recognised by the UGC. Preference will be give to B.Com. Graduates or Company Secretary Graduates	No Direct Recruitment
2) Promotion	- Nil -	From Record Assistants subject to the conditions that they must possess i. Minimum General Qualification ii. Must have put in not less than 10 years service as Record Assistant iii. Must possess a Degree with 5 years of service as Record Assistant provided that the ratio of 1 : 4 shall be adopted between the promotees from Record Assistant and Direct Recruitment	Must have put in not less than 3 years of service as Junior Assistant and must have passed i. CMWSS Act, 1978 ii. CMWSSB Office Manual iii. CMWSSB Service Regulations



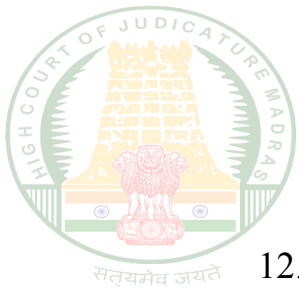
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Method of Recruitment	Name of the Post and Qualification		
3) By Transfer	Must have passed 8 th Standard. Must have completed 3 years of service as Office Assistant under the CMWSS Board Basic Servant	Persons employed in any category in Board's service can be transferred and appointed as Junior Assistant if they possess Degree qualification of any University recognized by UGC	No transfer

9. The facts of the case are that the petitioner was appointed as an Office Assistant on 18.01.1989 on compassionate grounds.

10. Since he did not have requisite qualification, he continued to work as an Office Assistant for over 18 years and was thus not promoted as a Record Assistant.

11. During the Interregnum, the petitioner completed S.S.L.C. in the year 2002. Thereafter, the petitioner obtained Master's Degree in the same year 2002, through Open University. The petitioner completed higher secondary (+2) in the year 2012. The petitioner has thereafter completed Bachelor's Degree in B.A. History in the year 2015.

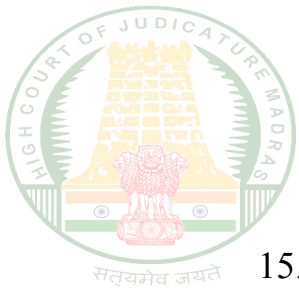


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12. During the Interregnum, the petitioner was promoted as a Junior Assistant in the year 2007. He was however not promoted to the next higher post i.e., the post of Assistant on the ground that the petitioner did not have requisite qualification and that the qualification that was held by the petitioner was from the Open University System in M.A. History.

13. It is the case of the respondents that the Government had issued G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department dated 18.08.2009 wherein, it has been stated that for the purpose of appointment / promotion in Public Service, the incumbent should have been passed plus 2 examination before possessing U.G. Degree through Open University.

14. It is further noticed that vide G.O.Ms.No.116, Public and Administrative Reforms (M) Department dated 18.08.2010, it was ordered that those who possess a P.G. Degree through Open University System without obtaining a basic degree cannot be considered as having possessed a P.G. Degree and therefore cannot be considered for appointment / promotion in Public Service.



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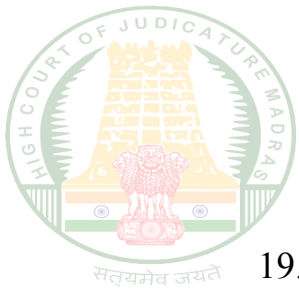
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15. It is therefore the contention of the respondents that the panel of Junior Assistant for promotion to the post of Assistant in the year 2012-2013 was drawn vide Proc.No.CMWSSB/P&A/STF/RA6/15295/2013 dated 17.05.2013.

16. In the panel, the name of the petitioner was not considered for promotion to the post of Junior Assistant as the petitioner had passed M.A. Degree without obtaining plus 2 and the basic U.G. Degree.

17. It is further case of the respondents that the reason was also communicated to the petitioner by the respondents in their communications/proceedings dated 17.05.2013 bearing Ref.No.CMWSSB/P&A/STF/RA6/15295/2013.

18. The Writ Petition is sought to be defended by the learned counsel for the respondents that the petitioner had *post facto* obtained a Degree in B.A. History in the year 2015 and was thereafter promoted as an Assistant in the year 2016 and is currently working as a Junior Account Officer from the year 2022 and therefore due to efflux of time and the subsequent promotions given to the petitioner, the Writ Petition has become infructuous.



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19. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

20. The facts are not in dispute. The petitioner was promoted to the post of Junior Assistant in the year 2007 directly after having considered long period of service rendered by the petitioner since 1989 in the light of the subsequent qualifications obtained by the petitioner in the year 2002.

21. In terms of the special regulations of the Board, the content of which has been extracted in Paragraph 4 of the Impugned Order which has also been reproduced above indicates that as far as the post of Assistant is concerned, a candidate / employee must have put in not less than 3 years of service as a Junior Assistant and must have passed the Departmental Examination.

22. If the petitioner had cleared the relevant Departmental Examination then the petitioner would have been eligible for promotion within 3 years from the date of being promoted as a Junior Assistant to the post of Assistant.



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23. The details as to when the petitioner had cleared those Departmental Examinations are not forthcoming either in the affidavit filed in support of the present Writ Petition or in the Counter Affidavit. However, the facts remain that the petitioner has been subsequently promoted as an Assistant in the year 2016 and thereafter as a Junior Account Officer in the year 2022.

24. It would imply that the petitioner has indeed cleared the Departmental Examinations, which entitled him to be promoted to the post of Assistant earlier. Therefore, if the petitioner had requisite qualification in the year when the panel was prepared for the Panel Year 2012-2013, he should have been promoted along with his other colleagues.

25. The fact that the petitioner has obtained B.A. History Degree from the Open University in the year 2015 is of no relevance to promotion to the post of Assistant.

26. The fact that the petitioner had obtained M.A. History Degree from Open University in the year 2002 is also of no relevance for promoting the



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petitioner as the only criteria is at Sl.No.2 to table in Paragraph 4 of the Impugned Order.

27. Therefore, this Writ Petition is disposed by directing the respondents to recast the seniority of the petitioner subject to the petitioner having satisfied the criteria specified in Column 4 to Sl.No.2 to Paragraph 4 of the Impugned Order which has been extracted above.

28. If the petitioner had requisite qualification in terms of Column 4 to Sl.No.2 to Paragraph 4 of the Impugned Order, the seniority of the petitioner will have to be recast and accordingly the petitioner will have to be given to the attendant benefits.

29. This exercise shall be carried out by the respondents within a period of 6 weeks from the date of receipt of a copy of this order.

30. This Writ Petition is disposed of with the above observations. No costs.

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Neutral Citation : Yes / No
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C.SARAVANAN, J.

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