



W.P. No. 22454 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.11.2025

PRONOUNCED : 21.11.2025

CORAM

THE HON'BLE Mr. JUSTICE T.VINOD KUMAR

W.P. No. 22454 of 2019

S.Ethiraj

...Petitioner

Vs.

1. The State of Tamil Nadu
Rep. By the Principal Secretary
Government of Tamil Nadu
Municipal Administration and Water Supply Department
Fort St. George, Chennai-9.

2. The Commissioner of Municipal Administration
No.75, Santhome High Road, Chennai – 600028.

3. The Director of Municipal Administration
No.75, Santhome High Road, Chennai-600028.

...Respondents

Prayer : This writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to quash the order passed by the 3rd respondent in proceedings Roc.No. 10673/2015/C1 dated 15.10.2015 and the consequential order passed by the 2nd respondent in proceedings Roc.No. 3746/2016/C1 dated 21.02.2017 as illegal and discriminatory and further direct the respondents to pay the petitioner's notional promotion, re-fixation of pay scale, arrears of salary and other retirement benefits with interest to the petitioner.

For Petitioner(s) : Mr.R.Karthikeyan



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For Respondent(s) : Mr.V.Veluchamy, AGP

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ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the records.

2.The case of the petitioner in brief is that while holding office as Municipal Commissioner Selection Grade on “working arrangement basis”, he was denied promotion to Special Grade on the ground that charges have been framed against him vide CMA Charge Memo Roc. No. 64498/07/OP3 dated 26.07.2008 and Roc. No. 62038/07/OP3 dated 11.10.2008 and were pending.

3. It is the further case of the petitioner that the respondents, by not disposing of the aforesaid proceedings in an expeditious manner and using the same as a ruse, have promoted his juniors to the Special Grade under G.O. No. [D] 474, MAWS Department, dated 06.11.2008.

4.The petitioner contends that as the disciplinary proceedings initiated against him were not adjudicated and no final orders were passed, he had approached this Court by filing a writ petition vide W.P. No. 24710 of 2013



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and this Court by order dated 05.09.2013 directed the respondents to dispose of

the disciplinary proceedings within a period of twelve weeks; that as the respondents did not comply with the said directions, he had initiated contempt proceedings in Cont. P. No. 2713 of 2014; that while the said contempt proceedings were pending before this Court, the respondents vide proceedings vide G.O. [D] No. 214, MAWS Dept. (ME-4) dated 24.03.2015 and G.O. [D] No. 410, MAWS dept. (ME-4) dated 10.11.2014 dropped the disciplinary proceedings initiated against the petitioner dated 26.07.2008 and 11.10.2008 respectively, after the lapse of 7 years.

5. The petitioner contends that on account of dropping of the aforesaid charges, he is entitled for being promoted to Special Grade, which promotion was denied to him earlier on the ground of pendency of the aforementioned disciplinary proceedings.

6. It is the further case of the petitioner that though during the pendency of the aforesaid disciplinary proceedings, he had attained the age of superannuation and retired from service as the respondents having permitted him to retire from service, on the aforesaid charges being dropped, he would become eligible for grant of notional promotion to Special Grade and



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consequently, would be entitled to revised pay fixation and revised pension.

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7. The petitioner further contended that on the respondents dropping charges framed against him, he had approached (the 2nd respondent) and submitted a representation dated 05.04.2015 seeking notional promotion, consequent pay fixation and revised pension; that thereafter, he had approached the 1st respondent and submitted a representation /application dated 30.06.2015 bringing to the notice of the said respondent about his seniority and requested for granting notional promotion so as to enable him to get his pay and the pensionary benefits revised.

8. The petitioner contends that in response to the aforesaid representation /application submitted by him, the 1st respondent by his letter No.2272/ME-1/2016-1 dated 22.02.2016 had stated that his representation has been sent to the 3rd respondent and the said respondent was requested to send the necessary proposal. However, no proposal was received from the office of the 3rd respondent.

9. It is further contended by the petitioner that in the meantime, the 2nd



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respondent by his letter / proceedings in Roc. No. 10673/2015/C1 dated

15.10.2015 rejected the claim of the petitioner for being granted notional promotion to Special Grade on the ground that his juniors were not actually promoted in real terms and were elevated to the higher post on the basis of working arrangement, so the question of revising the pay and pension of the petitioner on par with juniors does not arise.

10. It is the further case of the petitioner that thereafter he had made applications dated 31.09.2015 and 03.11.2015 under the provisions of the Right to Information Act seeking information as to whether his juniors who were elevated /promoted as Special Grade Municipal Commissioners and getting Special Grade pay from the date of the promotion; that pursuant to the aforesaid application, the 1st respondent by his reply / response dated 23.12.2015 stated that the person mentioned by the petitioner in his RTI application is getting Special Grade Commissioner pay scale from 10.11.2008.

11. The petitioner contends that as the information obtained by him under the RTI Act clearly shows that his juniors are intact promoted and were also paid higher salary in the pay scale of Special Grade Commissioner; that, since, the promotion was denied to the petitioner on the ground of pendency of



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charges; and that the said charges having been dropped, the petitioner is entitled for notional promotion and pay in the Special Grade cadre as Municipal Commissioner and the consequential revised pensionary benefits.

12.It is further contended by the petitioner that though the respondents by the impugned proceedings claim that his juniors in fact were not promoted to the higher post, but were elevated on working arrangement basis to the higher post and not allowed to draw the salary of higher post and as such, the petitioner is not entitled to notional promotion to get revised pay and pensionary benefits, the Government vide G.O. Ms. No. 34 dated 24.02.2015 had allowed the Municipal Commissioners who were elevated on working arrangement basis to the higher post to draw the salary corresponding to the higher post and also to revise the retirement benefit of the individuals based on the pay last drawn; and thus, the impugned proceedings by which the aforesaid benefit was denied to the petitioner is highly illegal, arbitrary and discriminatory.

13.In support of the aforesaid contentions, reliance is placed on the decision of the Hon'ble Apex Court in *Union of India -vs- K.V.Jankiraman*



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reported in **(1991) 4 Supreme Court Cases 109** and another decision of the Madurai Bench of Madras High Court in ***The Principal Secretary to Government, Chennai -vs- R.Krishnasamy*** [made in W.A. (MD) No. 358 and 360 of 2020 dated 29.07.2020].

14.Counter-affidavit on behalf of the 3rd respondent is filed.

15.The 3rd respondent by the counter-affidavit while denying the claim of the petitioner of his juniors being promoted to the Special Grade and the petitioner being denied the benefit of promotion on the ground of pendency of charges at the relevant point of time, contend that the juniors were appointed as higher grade on work arrangement basis and it is only under G.O. Ms. No. 34 dated 24.02.2015, the Government had permitted the Commissioner of Municipal Administration to revise the retirement benefits of the individuals based on the pay last drawn by those Municipal Commissioners who were elevated on working arrangement basis to the higher post and were subsequently allowed to draw the salary corresponding to the higher post.



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16.The respondent by the counter-affidavit further contended that if a Government servant name was deferred for inclusion in the panel for promotion to the higher post due to pendency of charges, but subsequently included in the same panel on exoneration of charge after the date of their retirement on superannuation, on appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other monetary terminal benefits.

17.The respondent by submitting as above, however, contend that the juniors of the petitioner were not originally promoted to the higher post, but were appointed on higher post on working arrangement basis and therefore, it is not possible to elevate the petitioner to higher grade as he had retired from service. Contending as above, the respondents pray for dismissal of the writ petition.

18.I have taken note of the respective contentions.

19. The sole issue that falls for consideration in the present writ petition is as to whether the petitioner, who was denied promotion as Special Grade



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Municipal Commissioner on account of pendency of charges, is entitled to revision of pay and pensionary benefits on par with his juniors who were promoted, on being discharged of all the charges levelled against him.

20.It is trite law that an employee who has been denied promotion on account of pendency of any disciplinary action or a criminal case, on getting discharged or acquitted would take the same position as it was before he was issued with charge memo or faced with criminal case.

21.The Apex Court in the case of ***Union of India and others Vs. K.V.Jankiraman and others*** reported in (1991) 4 SCC 109 has held as follows:-

“26.We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings.”

22.In the facts of the present case, the disciplinary proceedings were



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initiated against the petitioner under two separate Rocs in the year 2008, i.e.,

July and August 2008. On account of the aforesaid disciplinary proceedings against the petitioner, the respondents did not elevate the petitioner to Special Grade and in fact, elevated his juniors to Special Grade. Though the 3rd respondent by the counter-affidavit claimed that the juniors to the petitioner were not promoted, but were only elevated to the Special Grade Commissioner on working arrangement basis and were not entitled to draw salary in the said scale, the information obtained by the petitioner under RTI Act, shows to the contrary.

23. It may not be out of place to note that the counter-affidavit on behalf of the respondents is filed by the same person in respect of whom the petitioner had sought for information under the RTI Act as to whether he his drawing the pay scale in the Special Grade. The 3rd respondent by the counter-affidavit did not controvert the assertion made by the petitioner with regard to the aforesaid factual aspect.

24. The assertion made by the petitioner on oath, if not controverted, amounts to admission. Thus, the claim of the 3rd respondent by the counter-affidavit that it is only after issuance of G.O. No. 34 dated 24.02.2015, the



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Commissioners who were elevated to Special Grade on working arrangement basis were allowed to draw salary corresponding to higher post, thus, cannot be accepted as correct statement.

25. Further, a reading of G.O. No. 34 dated 24.02.2015 shows that the Government vide Letter dated 03.04.2008 directed the Commissioner Municipal Administration, the 2nd respondent herein, to treat the appointment of Municipal Commissioners in the higher post as under General Rule 10 of TNSSS Rules. Rule 10 of TNSSS Rules deals with temporary appointment. By G.O. No. 34 dated 24.02.2015, the Government while confirming the direction given under the Letter dated 03.04.2008 to treat the Commissioners elevated on working arrangement basis to the higher post as temporarily appointed, allowed granting of retirement benefits based on the last drawn pay in the higher post.

26. Though the petitioner was not elevated on working arrangement basis to the higher post, i.e., the Special Grade, on account of pendency of disciplinary proceedings at the relevant point of time and juniors to him having been elevated even though on working arrangement basis and as the said persons had drawn the pay and allowances as payable in the higher post, the petitioner who was denied the benefit of elevation even be it on temporary basis



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would be eligible to be considered for being granted the monetary benefit notionally, on dropping of the charges against him which in the facts of the present case had taken place on 10.11.2014.

27. Since, the 3rd respondent by the counter-affidavit filed did not dispute the right of the petitioner for being considered for promotion on dropping of charges and on the other hand rightly stated that that if name of a Government servant was deferred for inclusion in the panel for promotion to the higher post due to pendency of charges, but subsequently included in the same panel on exoneration of charge after the date of their retirement on superannuation, on appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other monetary terminal benefits, the claim by the impugned proceedings that the juniors to the petitioner were not originally promoted to the higher post but were appointed to the higher post on working arrangement basis only and were not drawing the pay scale in the higher post, cannot be countenanced.

28. Since, the proceedings of the Government dated 03.04.2008 as well as



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the information furnished to the petitioner under the RTI Act shows that the juniors to petitioner were allowed to draw pay scale of the higher post even though claimed as having been elevated on working arrangement basis, which term is not found in the TNSSS Rules, such elevation would have to be treated as temporary promotion under Rule 10 of the TNSSS Rules.

29. It is for the said reason, the Government in its letter dated 03.04.2008 had directed the 2nd respondent to treat the appointment of the Municipal Commissioner in the higher post under General Rule 10 of the TNSSS Rules and fix the pay of those individuals who were appointed in the elevated post under Fundamental Rule 22-B in their respective post.

30. Since, the petitioner was denied promotion /elevation on account of pendency of charges and the said charges having been dropped on 10.11.2014, the petitioner would take the position ante. The consequence of the above, would result in petitioner being eligible considered as for elevation /temporary promotion to the Special Grade at the relevant point of time, which would have entailed him to draw the pay scale of the higher post.



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31. However, the petitioner had retired from service, he would become eligible to retirement benefits on the basis of the last drawn pay. Though the respondents by the impugned proceedings had only claimed that the petitioner is not entitled for notional promotion having retired from service, however did not deal with the claim of the petitioner with regard to the notional pay fixation in the Special Grade and revision of pension benefits. Thus, for the said reason also, this Court is of the view that the said impugned order cannot be sustained.

32. Accordingly, the writ petition is allowed and the impugned orders are set aside and the respondents are directed to revise the pensionary benefits of the petitioner by treating the petitioner as eligible for temporary promotion/ elevation to the Special Grade on the date when his juniors were promoted. The respondents are further directed to undertake the aforesaid exercise of revision of pensionary benefits of the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No order as to costs.

21.11.2025

Index : Yes/No
Internet: Yest/No
Speaking or Non-speaking order
Maya



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To

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T.VINOD KUMAR, J.

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