
(2012) 06 MAD CK 0102

In the Madras High Court

Case No : Writ Petition No's. 10943 of 2008 and 18651 of 2008 and W.P. No. 591 of 2009 and M.P. No. 3 of 2008 in Writ Petition No. 10943 of 2008

A. Sethu Ravonth

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Madras Corporation Engineering Service Rules, 1969 — Rule 4

Citation : (2012) 06 MAD CK 0102

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V.S. Manimekalai in all Writ Petitions, for the Appellant; S. Gunmasekaran, GA (R1-R2) for Respondents 1 and 2 in all Writ Petitions, Mr. G. Elanchezhiyan in W.P. No. 10943/08 for R11, 13, 16, 20, 24 and 29, Mr. R. Parthiban for R14, 25, 27 and 28, Mr. P. Srinivas for R32 to 34, Mr. S. Ilamvaludhi for R23, Mr. K. Rajkumar for R15 and 17, Mr. T. Rajagopal for Mr. S. Vanchinathan for R3 in W.P. No. 18651/08 and Mr. K. Rajkumar for R4 and 5 in W.P. No. 591/2009, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru

1. All the three Writ Petitions were filed by the very same petitioner. In the 1st Writ Petition in W.P. No. 10943 of 2008, the petitioner sought to

set aside the order dated 23.7.2007 passed by the Commissioner of Municipal Administration and for a consequential direction to publish seniority

list of Assistant Executive Engineers and Executive Engineers in accordance with the Tamil Nadu Municipal Engineering Service Rules, 1997

granting retrospective benefits of pay, allowances and seniority recognising the seniority of the petitioner over the contesting respondents 3 to 34.

That Writ Petition was admitted on 29.04.2008. Pending the Writ Petition, in the

application for interim stay, it was recorded that any promotion will be subject to the result of the Writ Petition. The petitioner also filed M.P. No. 3 of 2008 seeking for a direction to the respondents 1 and 2 to fill up the posts of Superintending Engineer in Chennai, Coimbatore and Salem Corporations and the posts of City Engineer in Erode, Thirupur and Salem Corporation in the event of the posts being filled up from among the members of Tamil Nadu Municipal Engineering Service strictly in accordance with the seniority of Executive Engineers in the Tamil Nadu Municipal Engineering Service. Even during the pendency of that Writ Petition, the petitioner filed another Writ Petition being W.P. No. 18651 of 2008 challenging an order of the State Government in G.O.Ms. No. 242 Municipal Administration and Water Supply Department dated 09.06.2008 and after setting aside the same seeks for appropriate orders.

That Writ Petition was admitted on 4.8.2008. Pending the Writ Petition, interim stay was granted for a period of two weeks. Aggrieved by the interim order, the contesting 3rd respondent, namely N. Mahesan filed M.P. No. 3 of 2008 seeking to vacate the interim order. All the three applications were disposed of by a common order dated 25.8.2008. This Court made interim stay absolute and dismissed the vacate stay application. Both Writ Petitions were directed to be posted for final disposal.

2. Even while these Writ Petitions were pending, the petitioner came up with the third Writ Petition being W.P. No. 591 of 2009 seeking to challenge a Government Order in G.O.2D No. 154 Municipal Administration and Water Supply (M.N.4) Department dated 16.12.2008. That Writ Petition was admitted on 19.01.2009.

3. In the counter affidavit filed by the 2nd respondent in W.P. No. 10943 of 2008, it was stated that the petitioner is only a Diploma holder working as Executive Engineer in Cuddalore Municipality. It was stated that the promotion of the contesting respondents were made because of their absorption in the Municipal Corporation. According to Tamilnadu Municipal Corporation Service Rules, 1996, the service Rules pertaining to Municipal Corporations are separate and governed by the different Rules. It was also stated that under the ratio of 3:1 between the degree holders called Assistant Engineers and diploma holders called Junior Engineers, the promotions were given. This ratio has been upheld by the Supreme

Court vide its decision in Murugesan vs. State of Tamil Nadu and the issue cannot be altered. It is further stated that among the contesting

respondents, 32 were working under the respondents 1 and 2, namely the State Government and some of them were also retired from service and

some of them were absorbed in different Municipal Corporations. The petitioner also filed W.P. No. 8469 of 2006 challenging the panel prepared

by the State Government for the post of Executive Engineer as on 1.3.2006. It was also stated that the petitioner has no locus standi to file the

Writ Petition challenging the seniority and promotion of the 3rd respondent Venkatesh and the 4th respondent G. Kamaraj as they were not

working under the Tamil Nadu Municipal Engineering Service and they belong to different Corporation, namely Salem City Municipal Corporation

governed by Tamil Nadu Municipal Corporation Engineering Service Rules. Their appointment and promotion were treated as separate unit as per

the above Rules. It is also further stated that the seniority list of Assistant Engineers and Junior Engineers was already published in 1996 and the

promotion to the post of Assistant Executive Engineer was also issued on 14.01.1999. The petitioner cannot unsettle the settled issue on seniority.

4. In the counter affidavit filed in W.P. No. 18651 of 2008 filed by the 2nd respondent in paragraph Nos. 4 to 6, it was averred as follows:

4. I submit that the 3rd respondent, Thiru N. Mahesan is B.E (civil) Degree Holder and now working as Assistant Executive Engineer (Municipal

Engineer Grade-II) in the Alandur Municipality, Chennai-16 under Tamil Nadu Municipal Engineering Service Rules, 1997. During the year 1996

to 2001, while he was working as Junior Engineer, he had been deputed to the Chennai Corporation by promotion as Assistant Executive

Engineer, as per the provision under Rule 4 of the Madras Corporation Engineer Service Rules, 1969 based on the Govt. orders. In the

meanwhile, during the period 1988 to 1997 before the introduction of New Service Rules called "The Assistant Engineers and Junior Engineers in

the Tamil Nadu Municipal Engineering Service, were promoted as Assistant Executive Engineer following the ratio of 3:1 respectively as per

Government Order. So, the 3rd respondent made an appeal to the 2nd respondent that since he was acting as Assistant Executive Engineer in the

Chennai Corporation from 1996 to 2001, his name was not included in the 1998-99 year panel for promotion to the post of Assistant Executive

Engineer, in the Tamil Nadu Municipal Engineering Service. Hence he has requested to include his name below Thiru. Francis Selvaraj (Sl. No.

34) as the junior most Assistant Executive Engineer. But, his request was rejected by the 2nd respondent stating that acting Assistant Executive

Engineer in the Chennai Corporation cannot be considered in the Tamil Nadu Municipal Engineering Service in the same cadre.

5. I further submit that the 3rd respondent made an appeal to Government that even though his name had not been considered in the panel for the

post of Assistant Executive Engineer, his name may be considered in the panel prepared in the year 1998-99 for the post of Assistant

Engineer/Junior Engineers where he was fit for promotion as Assistant Executive Engineer based on the ratio of 3:1 as per the Government Orders.

This request was examined by the 1st respondent Government and passed an order in G.O.(D) No. 242, Municipal Administration and Water

Supply Department dated 9.6.2008 placing him as Sl. No. 14(a) in the seniority list of the Assistant Executive Engineers issued in the 2nd

respondent proceedings No. 4212/2006/F1: dated 11.10.2007 below Thiru S. Venkatesh (sl. no. 14) above Thiru R. Sundaramurthy (sl. no. 15)

following the ratio of 3:1 respectively in the post of Assistant Executive Engineer.

6. I further submit that the Government had issued orders in G.O(Rt) No. 1021, Municipal Administration and Water Supply Department dated

5.12.1988 that a ratio of 3:1 between the Degree and Diploma holders for promotion of Junior Engineer Grade-I and Municipal Engineer Grade

III as Assistant Executive Engineer. While introducing the new service rules called ""Tamil Nadu Municipal Engineering Service Rules, 1997"" the

similar ratio had been adopted between Assistant Engineer of Degree holder and Junior Engineer of Diploma holder with the ratio of 3:1

respectively for the appointment at the entry level. Hence the above Government Order mentioned in the petitioner's Government Order is

relevance.

It is stated that the contesting respondent N. Mahesan belong to Municipal Engineering Service and was considered for promotion to the post of

Executive Engineer in the appropriate place without considering his post in the deputation period and the petitioner cannot be said to be aggrieved

by the promotion in respect of the said Mahesan. The petitioner himself has been

promoted as Executive Engineer in the year 2007.

5. In this context, it is necessary to refer to the authorities cited by Mr. K. Rajkumar appearing for the contesting respondent in W.P. No. 591 of

2009. The learned counsel referred to the judgment of the Supreme Court in R.S. Makashi and Others Vs. I.M. Menon and Others, . It was held

in that judgment that in fixing the seniority, the Court cannot entertain a belated petition. In that case, the request for alteration was rejected, as it

was filed after 8 years. It was also stated that in respect of seniority and promotion matters, under the Rules framed by the State Government, it is

open to the Government to make objective policy decisions considering the factual circumstances and no rigid principle can be laid down and

therefore the Court cannot interfere with the Government decision unless it is held to be arbitrary and unreasonable.

6. He subsequently referred to the judgment of the Supreme Court in H.S. Vankani and Others Vs. State of Gujarat and Others, for contending

that once a seniority reached finality, it should not be unsettled at the instance of the junior in service.

7. The learned counsel also referred to the judgment of the Supreme Court in Rajendra Pratap Singh Yadav and others vs. State of Uttar Pradesh

and others reported in (2011) 7 SCC 743 and referred to the following passage found in paragraph 45:

45. We deem it appropriate to reiterate that in service jurisprudence there is immense seniority of a final seniority list. The seniority list once

published cannot be disturbed at the behest of a person who chose not to challenge it for four years. The sanctity of the seniority list must be

maintained unless there are very compelling reasons to do substantial justice. This is imperative to avoid avoidable litigation and unrest and chaos in

the services.

In the light of these legal precedents and the factual matrix stated by the respondents, there is no case made out to entertain all the three Writ

Petitions. Hence, all the three Writ Petitions stand dismissed. No costs. The connected Miscellaneous Petition is closed.