

(2007) 03 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 13437 of 2006 and W.P.M.P. No. 15008 of 2006

C. Muthukrishnan

APPELLANT

Vs

The Commissioner, Mathuranthagam Municipality and M.
Saravanan

RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:

Citation : (2007) 03 MAD CK 0027

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : K. Chandrasekaran, for the Appellant; K. Elangovan, for R1 and S. Gopinathan, for R2, for the Respondent

Judgement

M. Jeyapaul, J.—The writ petition is filed praying to issue a writ of certiorarified mandamus calling for the records of the first respondent

made in R.C.No. 47/97 E1 dated 27.3.2006, quash the same insofar it relates to the appointment of the second respondent as Sanitary Supervisor

with effect from 23.7.2006 and direct the first respondent to promote the petitioner to the post of Sanitary Supervisor with effect from 23.7.2006

with all backwages and attendant benefits.

2. The petitioner is working as Sanitary Worker in the first respondent Municipality for the past ten years. He belongs to category No. 17 as stated

in the Tamil Nadu Municipal (Non Centralized Regular) Public Health Establishment Regulations, 1976. Sanitary Supervisor is a promotional post

to be filled from amongst the Sanitary Workers and Watchmen. The petitioner has got qualification to be promoted to the cadre of Sanitary

Supervisor. In the seniority list dated 20.2.2006 in Rc.No. 2532/2005 A2, the petitioner's name finds place in the third place. The senior-most

person Mr. E. Mari was promoted to the post of Sanitary Supervisor. The person who stands next to him is one Mr. P. Kumar, who has already given up his promotion. The petitioner made a representation to the first respondent dated 11.6.2006. The first respondent gave a reply that there was no vacancy in the post of Sanitary Supervisor. To the shock and surprise of the petitioner, the impugned order was passed appointing the second respondent as Sanitary Supervisor. The second respondent was a Nominal Muster Roll employee in Engineering Section. His appointment by the impugned order is against the Regulations. With the above submissions, the petitioner seeks to quash the impugned order passed by the first respondent in Rc.No. 47/97 E1 dated 27.3.2006.

3. The first respondent would submit in the counter that as per G.O.(Ms.)No. 21 Municipal Administration and Water Supply (MC.3) Department

dated 23.2.2006, Non Muster Roll (NMR) employees can be appointed following the existing ratio and the conditions stipulated in the said G.O.

in the existing vacancies. As the second respondent stood first in the seniority list of NMRs dated 31.1.2006 maintained by the Municipality, he

was appointed to the post of Sanitary Supervisor, after filling up one post by promotion from the feeder cadre of Sanitary Workers. As per the

seniority list, one Mr.E.Mari, who was the senior-most Sanitary Worker in the seniority list, was promoted as Sanitary Supervisor. In the second

vacancy of Sanitary Supervisor, the second respondent was appointed following the norms and conditions stipulated in G.O.Ms.No. 21 Municipal

Administration and Water Supply (MC.3) Department dated 23.2.2006. The petitioner, who was third in the seniority list, is not entitled to get

promotion by overlooking the seniors. The second respondent was appointed as Sanitary Supervisor following the ratio of 3:1. One Mr. P.

Kumar, who stands second in the seniority list has not given any letter forgoing his promotion. There is no bar to appoint NMRs who are working

in the Engineering Section to the post of Sanitary Supervisor. With the above counter version, the first respondent, Mathuranthagam Municipality

prays to dismiss the writ petition.

4. Learned Counsel for the petitioner would submit that in the case of the petitioner, who is serving as Sanitary Worker, the Tamil Nadu Municipal

(Non Centralized Regular) Public Health Establishment Regulations, 1976 would

apply wherein no ratio for the promotion to the post of Sanitary

Supervisor is prescribed. The second respondent, who was serving as NMR in the Engineering Section, was appointed to the post of Sanitary

Supervisor without adhering to the aforesaid regulations with regard to the promotion to the cadre of Sanitary Supervisor. The post of Sanitary

Supervisors does not visualize direct recruitment. It can be filled up only through the feeder cadre. When an NMR had not served in any of the

feeder cadres, he cannot be appointed to the promotional post. Inasmuch as P. Kumar, the person who is ranked second in the seniority list

published by the first respondent has opted out of promotion, the petitioner should have been promoted as Sanitary Supervisor in the existing

vacancy.

5. Learned Counsel for the first respondent-Mathuranthagam Municipality would contend that G.O.(Ms.)No. 21 Municipal Administration and

Water Supply (MC.3) Department dated 23.2.2006 gives authority to the Municipal Corporation to appoint the NMRs, who are on daily wages,

in the vacant post and regularise their services in the regular post. Further, the ratio of 3:1 was adopted in appointing the NMRs to the post of

Sanitary Supervisor. The second respondent has already been appointed and has started serving as Sanitary Supervisor.

6. Para 5 of G.O.(Ms.)No. 21 Municipal Administration and Water Supply (MC.3) Department dated 23.2.2006 reads as follows:

They, accordingly, direct the appointing authorities viz., Municipal Commissioners, Grade-III Municipal Commissioners and Commissioners of

Municipal Corporations (Except Chennai) to appoint the employees on consolidated pay and NMRs on daily wages on their roll as on 1.10.1996

in respect of Municipalities and Municipal Corporations (except Chennai) and as on 31.12.1996 in respect of grade-III Municipalities in the vacant

posts and to regularise their services in the regular post, from the date of issue of this order, subject to the following conditions:

i) sanctioned posts should be available;

ii) persons should fulfill all educational and other qualifications; and

iii) establishment (pay and pension) expenditure of the Urban Local Body should not exceed 49% of revenue after filling up of posts.

Of course, the Government has permitted the Municipal corporations (except

Chennai) to appoint the NMR on daily wages on the roll of the Municipality as on 1.10.1996 in the vacant posts and to regularise their services in the regular post. The term ""vacant posts"" mentioned in the above G.O. does not refer the posts which are exclusively reserved for promotion from the feeder cadres. Admittedly, as per the seniority list published by the first respondent in Na.Ka.No. 2532/2005/A2 dated 20.2.2006, the petitioner herein is ranked third. There is no dispute to the fact that the petitioner has been serving as Sanitary Worker. One Mr.E.Mari, who stood first in the seniority list had already been promoted to the post of Sanitary Supervisor by the first respondent. The petitioner contended that P.Kumar, who stood second in the seniority list, has given up his promotion. this Court directed to obtain an affidavit from P.Kumar to the effect that he has given up the promotion to the cadre of Sanitary Supervisor. Accordingly, P.Kumar was present in open court and submitted an affidavit to the effect that he has given up the promotional post of Sanitary Supervisor. But, the fact remains that the first respondent has taken a stand that P.Kumar had never submitted any application forgoing his promotion. Therefore, the first respondent has to again bring to the notice of P.Kumar about the affidavit he has filed before the court in connection with this writ petition and solicit his stand in the matter of promotion to the post of Sanitary Supervisor.

7. As far as the petitioner who is serving as Sanitary Worker is concerned, Tamil Nadu Municipal (Non Centralized Regular) Public Health

Establishment Regulations, 1976 alone would apply as regards his appointment and promotion. On a careful perusal of the Constitution of Tamil

Nadu Municipal (Non Centralized Regular) Public Health Establishment Regulations, 1976, it is found that the Sanitary Supervisor has been

classified under category 11 and the Sanitary Workers viz., Sweepers, Scavengers, Totties, Cart Drivers, Drain Cleaners, Tank and Burial and

Burning Ground Watchman and all other Sanitary Workers including those employed for Anti Malaria, Anti Filaria, guinea worm and compost

schemes are ranked as 17th Category. As far as the method of recruitment, it is found that the post of Sanitary Supervisor which is a promotional

post can be filled up only from among Sanitary Workers and Watchmen. The above method of recruitment would clinchingly go to show that the

promotional post of Sanitary Supervisor does not recognize the mode of direct recruitment to the said position. Further, nowhere in the said

Regulations, the ratio of 3:1, as detailed in the counter and canvassed during the course of submission by the Learned Counsel for the respondent,

is found. The only feeder cadre to the post of Sanitary Supervisor is Sanitary Workers and Watchmen. No other person hailing from any other

cadre can claim such a promotional post of Sanitary Supervisor unless and until the said Regulation is suitably amended to accommodate the direct recruitment.

8. By the impugned order in Na.Ka.No. 47/97 E1 dated 27.3.2006, the second respondent who was working as NMR was appointed to the

post of Sanitary Supervisor. Neither the case of P.Kumar, the second person in the seniority list nor the case of the petitioner, who stands third in

the seniority list was considered by the first respondent. Of course, by the order in Na.Ka.No. 973/06/C1 dated 21.4.2006, Mari, who stands

first in the seniority list was promoted as Sanitary Supervisor in accordance with the Tamil Nadu Municipal (Non Centralized Regular) Public

Health Establishment Regulations, 1976. He has been rightly considered for promotion as he has fulfilled the eligible criteria for the promotion to

the post of Sanitary Supervisor. But, as far as the second respondent is concerned, the first respondent, completely throwing to wind the said

Regulations and referring to G.O.(Ms.) No. 21 Municipal Administration and Water Supply (MC.3) Department dated 23.2.2006, has chosen to

appoint the second respondent, who was an NMR, to the promotional post of Sanitary Supervisor. Of course, the second respondent will have to

be appointed in the vacant post meant for direct recruitment, but, the first respondent has wrongly considered him for the exclusive promotional

post against the spirit of the Tamil Nadu Municipal (Non Centralized Regular) Public Health Establishment Regulations, 1976. Therefore, the

impugned order passed by the first respondent in Na.Ka.47/97/E1 dated 27.3.2006 is liable to be quashed.

9. The petitioner has sought for a direction to the first respondent to promote the petitioner to the post of Sanitary Supervisor with effect from

23.7.2006 with all backwages and attendant benefits.

10. Though P. Kumar has filed an affidavit before this Court giving up his

promotion to the post of Sanitary Supervisor, the first respondent has taken a concrete stand that no such correspondence emanated from P. Kumar. Therefore, the first respondent has to obtain necessary letter from P. Kumar forgoing his promotion. The other eligible criteria as found in the Tamil Nadu Municipal (Non Centralized Regular) Public Health Establishment Regulations, 1976 will have to be adhered while promoting to the post of Sanitary Supervisor. Further, the first respondent has to see whether any disciplinary action is pending as against the petitioner herein. When the official records of the first respondent do not reflect Mr. P. Kumar's option out of promotion to the cadre of Sanitary Supervisor, the question of giving directing to the first respondent to promote the petitioner from 23.7.2006 with all backwages and other attendant benefits does not arise for consideration.

11. In view of the above, the order passed in Na.Ka.No. 47/97 E1 dated 27.3.2006 is quashed and the first respondent is directed to consider his promotion to the post of Sanitary Supervisor within the ambit of Tamil Nadu Municipal (Non Centralized Regular) Public Health Establishment Regulations, 1976 after Mr.P.Kumar, Sanitary Worker opts out of promotion and also to consider the appointment of the second respondent in any of the vacant positions meant for direct recruitment as directed in G.O.(Ms.) No. 21 Municipal Administration and Water Supply (MC.3) Department dated 23.2.2006.

12. The Writ Petition stands disposed of in the aforesaid terms. No costs. The connected Miscellaneous Petition is closed.