

(2002) 03 MAD CK 0212

In the Madras High Court

Case No : Writ Petition No. 475 of 1996 and W.M.P.No. 782 of 1996

D. Dhatchinamoorthy, M. Rosaly, A. Shanthi, S. Pathimamary, APPELLANT
J. Amul Rani, P. Padniammal, A. Rajeswari, M.R. Banumathy,
K. Vasanthi, A. Nagalakshmi and M. Agnes Fathima

Vs

The Commissioner Madurai Corporation Madurai, A. Suneri, RESPONDENT
S. Sukumaran, S. Panchavarnam, N. Jamaluthin and A.
Tamilarasi

Date of Decision : 28-03-2002

Acts Referred:

Citation : (2002) 03 MAD CK 0212

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : K. Suguna, for the Appellant; P. Srinivas and Sankaravelmurugan,
for Sampathkumar Associates, for the Respondent

Final Decision : Allowed

Judgement

1. All the petitioners herein are the employees of Madurai Corporation and are working as Office Assistants. They are in the regular establishment. Their short history is that they were working as Section Writers in the Madurai Corporation for good long 7 to 8 years. They were ousted from service in the year 1987 and they challenged the ouster by filing a writ petition. However, they did not succeed in the writ petition, but in the writ appeal this Court directed the services of these persons to be regularised. Though they were earlier working as Section Writers, since there was no vacancy in the said post, they were brought on regular establishment in the post of Office Assistants in the year 1990.

2. As compared to them, the respondents for the first time became Section Writers only in the year 1988 and that too not on the regular establishment, but as piece rated workers. Thus, they were not on the regular establishment of the Corporation in any capacity. The five respondents are now being sought to be promoted and appointed in the regular establishment as Record Clerks by the

impugned order dated 29.12.1995. It is this order granting promotion cum regular appointment in the post of Record Clerks to the respondents, which is challenged by the petitioners in this writ petition.

3. There is a short history to this promotion. It seems that one Muthuramalingam was working in the capacity as a Section Writer for good long 13 years, but he was not brought on the regular establishment and, therefore, he filed a writ petition in W.P.No.15630 of 1990. This Court allowed the petition and passed the following order:-

"It is suffice to direct the respondent Corporation to consider the regularisation of the service of the petitioner if there is permanent vacancy for the said post and consider him along with other persons similarly placed. It is made clear that the respondent Corporation can consider them on merits. If the petitioner is found suitable, the respondent Corporation is directed to absorb him on permanent basis."

4. It seems that probably at that time there was no vacancy and therefore the Commissioner, Corporation sought the permission of the Government vide his letter dated 11.5.1993 and 23.8.1993 to appoint the said Muthuramalingam as Office Assistant or Watchman though he possessed the qualification for holding the post of a Junior Assistant. While giving this permission, the Government also sought the cases of the persons who were similarly situated like Muthuramalingam, meaning a person who was continuing on the piece rate basis only. It seems the Commissioner supplied the names of the five respondents because admittedly the five respondents who were appointed only in the year 1988 were continuing as piece rate employees, while the petitioners whose writ appeal was allowed, had already been absorbed as Office Assistants in the regular establishment. Now, when the names of the persons who were continuing on the piece rate basis was invited by the Government, the Commissioner gave the names of the five respondents, in pursuance of which the Government passed an order on 28.6.1994 to adhere immediately to the orders of the High Court by appointing Muthuramalingam as Bill Collector in the existing permanent vacancy. The Government consequently directed Commissioner to appoint the five respondents in the "suitable post" according to their qualification. The Government also directed the relaxation of the age rule and the necessity to consult the employment exchange for appointment.

5. Taking the above order of the Government dated 28.6.1994 in its literal sense, the Commissioner straight away appointed the five respondents herein who were admittedly junior to the petitioners, in the post of Record Clerks, which is a promotional post for the post of Office Assistant. Perhaps, the Record Clerk posts were available at that time and taking the order literally, the Commissioner straight away passed the orders to put the juniors like the respondents in the promoted post of Record Clerks. That order is challenged in this petition by the petitioners.

6. Miss. Suguna, learned counsel for the petitioners pointed out that the Government had nowhere directed the Corporation to promote these five respondents who were not even on the regular establishment. She pointed out that compared to the respondents, all the petitioners were and have always been senior at every stage of their service. She pointed out that all the petitioners were languishing as the piece rate workers for more than seven years and therefore they were driven to this Court, and ultimately this Court directed their regularisation. Learned counsel argues, and in my opinion rightly, that merely because the petitioners came to be regularised in the year 1990 in pursuance of the order of the Division Bench of this Court, they did not lose their rights for being promoted in the regular channel and, therefore, even if the Government had directed the respondents to be put in "suitable posts" in regular establishment, the respondents could not have been put over the head of the petitioners, as the petitioners had, because of their seniority, a right to be promoted since it is an admitted position that the post of a Record Clerk is a promotional post from the post of Office Assistant. Learned Counsel insists that excepting one petitioner, all the other petitioners have passed matriculation and thus have the necessary qualifications for being promoted as Record Clerks.

7. As against this, the learned counsel for the Corporation has only relied on G.O.Ms.No.169 dated 28.6.1994. He says that since the Government had directed the five persons to be appointed in the suitable posts and since only the posts of Record Clerks were available then, the Corporation has proceeded to promote the respondents in the post of Record Clerks. The counter is almost to the same effect.

8. Though it is tried to be stated in the counter in para 8 that the seniority is being strictly adhered to, it is obvious that in these appointments seniority was not adhered to at all, because there could be no comparison between the respondents who were working on the piece rate basis with the petitioners who were having the regular appointment as Office Assistants. In fact, when we see the order dated 28.6.1994, it is nowhere directed by the Government to appoint the respondents in the promoted posts. They have been asked to be regularised in the suitable posts. Therefore, this did not mean that they were to be appointed in the suitable post at the cost of the petitioners, who because of their seniority and qualification had the right to be promoted or at least the right to be considered for promotion. It seems that the appointments made in pursuance of the impugned order dated 29.12.1995 are completely in breach of the principles of seniority. What could have been done by the Commissioner was to first promote the senior most five petitioners in the post of Record Clerk as per their qualifications and then in the vacant posts of Office Assistants, the respondents could have been accommodated. This was the course done earlier also in case of the petitioners as well as in case of Muthuramalingam. Instead of doing that, the Corporation seems to have given a direct jump to the respondents over and above the head of the petitioners in the post of Record Clerk and thereby the petitioners have immensely suffered. It is fairly admitted by the learned counsel

for the respondent Corporation that all the respondents were juniors to the petitioners and have been appointed as Section Writers only in the year 1988, whereas the petitioners were ousted much earlier to that in 1987 and their case was pending and ultimately the petitioners succeeded in getting the direction for their regularisation. Even if we consider the starting point of the petitioners' service to be 1990 since when they were regularly appointed, even then their case cannot be compared to the respondents as the respondents were never on the regular establishment till 1994 when suddenly the Corporation decided to promote them to the post of Record Clerk.

9. Therefore, the impugned order is obviously unjust and is quashed. The petition is allowed. Since the respondents have worked in the promoted posts, it will not be fair to ask them to return the salaries in the promoted posts. Now, such of the petitioners who are senior most and are having the necessary qualifications shall be promoted in their posts as Record Clerks and instead, the respondents shall be brought back and put in the post of Office Assistants. With this, the writ petition succeeds and the rule is made absolute. The Corporation shall pay the costs of Rs.2000/-. Consequently, connected W.M.P.No.782 of 1996 is closed.