

(1976) 06 MAD CK 0015
In the Madras High Court

K. Ramamurthy

APPELLANT

Vs

The Corporation of Madras and Another

RESPONDENT

Date of Decision : 29-06-1976

Acts Referred:

Citation : (1977) 1 MLJ 116

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The petitioner herein was recruited as Lower Division Clerk by the Corporation of Madras, the first respondent herein.

Subsequently, he was promoted as an Upper Division Clerk on 25th February, 1949 in the scale of pay Rs. 250--10--300--15--450. In the year

1964, the Corporation of Madras, prepared and published an establishment list as on 1st April, 1964. In that list, the petitioner has been shown as

No. 177.... The petitioner claims that he having put in more than 10 years of service as an Upper Division Clerk, is eligible for promotion as

Section Manager.

2. It appears that the Appointment Committee of the Corporation of Madras constituted u/s 93 (2) of the Madras City Municipal Corporation

Act, 1919 laid down certain criteria for the promotion of Lower Division Clerks to the post of Upper Division Clerks and placed the same before

the Council for its acceptance u/s 86 of the Act. In the same way, in the year 1967, the Appointment Committee had evolved" for the promotion

of Upper Division Clerks as Section Managers a formula that for purposes of promotion the ratio between, non-graduate Upper Division Clerks

and graduate Upper Division Clerks should be 4:1. But this formula was not,

however, placed before the Council and its approval obtained as required u/s 86 of the Act. However, the Commissioner, Corporation of Madras, has been making promotions to the post of Section Managers in the said ratio of 4 : 1 as between, the non-graduate Upper Division Clerks and the graduate Upper Division Clerks since then. One such order is the impugned order passed by him on 6th February, 1975 promoting; one N.S. Ranganathan a non-graduate and one D. Lakshmi, a graduate from the post of Upper Division Clerks to the post of Section Managers. The validity of this order has been impugned by the petitioner on the ground that the said appointment have been made on the basis of the ratio 4:1 fixed by the Appointment Committee and that but for the adoption of the said ratio, the petitioner as senior to the said Lakshmi the second respondent herein one of the persons promoted in the impugned order, would have been promoted as Section Manager in her place.

3. The contention of the petitioner as regards the fixation of ratio of 4 : 1 as between the non-graduate Upper Division Clerics and graduate Upper Division Clerics is that the said ratio has been fixed only by the Appointment Committee without the requisite sanction of the Council and therefore, it has no validity in law. Reference has been, made by the learned Counsel for the petitioner to Sections 86 and 93 of the Madras City Municipal Corporation Act, 1919 to substantiate his plea that in the case of employees in Class III (which comprises the Section Managers), the Council alone is authorised to make Rules or by-laws regarding the classification of service, methods of recruitment and conditions of service and pay and allowance and the discipline and conduct and that the Appointment Committee has no power to prescribe a ratio between the non-graduate Upper Division Clerks and graduate Upper Division Clerks for the purposes of promotion to the post of Section Managers.

4. The learned Counsel appears to be right in the said submission. Section 86 (1) (ii) says that in the case of employees included in Class III and Class IV, the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the members of that class are to be regulated by by-laws made by the Council in exercise of its powers u/s 349 which specifically enables the Council to make by-laws not inconsistent with the provisions of the Act or with any other law to provide

for all matters expressly required or allowed by the Act to be provided for by by-laws. Section 93 provides for the constitution of an Appointment Committee. But the Appointment Committee has not been, given the power to frame by-laws or regulations regarding the principles for recruitment or for promotion. The principles have to be laid down by the Council acting u/s 349 while the Appointment Committee makes selection on the basis of those principles and sends proposals to the Commissioner who is appointing authority.

5. In this case, admittedly, it is not disputed that the formula of 4 : 1 between the non-graduate Upper Division Clerks and graduate Upper Division Clerks in the matter of promotion was laid down by the Appointment Committee. But this was not placed before the Council for sanction. As already pointed out, all matters relating to the classification, recruitment, conditions of service, pay and allowances and disciplinary conduct have to go before the Council. Since the said ratio 4 : 1 prescribed by the Appointment Committee, did not have any sanction or approval of the Council as required u/s 86 of the Act, the said formula has no legal basis.

6. When specifically asked whether the formula had the approval or sanction of the Council at any time, the learned Counsel for the first respondent, the Corporation of Madras, submits that the matter was never placed before the Council and its sanction obtained. Therefore, the ratio of 4 : 1 formulated by the Appointment Committee is only in the stage of proposal or suggestion and it cannot have any validity in law.

7. The learned Counsel for the second respondent attacks the validity of the said formula of 4 : 1 on another ground as well. He submits that as per the Rule s prescribed for promotion to the post of Section Managers from Upper Division Clerks, only the graduates are qualified that non-graduates cannot at all seek promotion to the post of Section. Managers and that the ratio 4 : 1 fixed by the Committee contravenes the Rule s. In support of this submission, he refers to paragraphs 1015 and 1021 of the Madras Corporation Code. Paragraph 1015 provides that for promotion to the post of Section Managers and Head Clerks, a degree of the Madras University is essential. Paragraph 1021 of the Madras Corporation Code which deals with promotions in the indoor establishment, however proceeds on the basis that in addition to the graduates, non-graduates

who have put in not less than 10 years of approved service as Upper Division Clerks are also eligible for promotion. The contention of the learned

Counsel for the second respondent that only graduate Upper Division Clerks can seek promotion to the post of Section Managers cannot be

accepted. But it is unnecessary to go into the said submission of the learned Counsel for the second respondent in detail as the ratio of 4 : 1 has to

be held invalid in any event. Therefore, the formula laid down by the Appointment Committee fixing a ratio of 4 : 1 in the matter of promotion of

Section Managers from amongst the non-graduate Upper Division Clerks and graduate Upper Division Clerks is held to be bad for want of

sanction of the Council.

8. However, the relief claimed by the petitioner in the Writ petition is a Writ of certiorari to quash the order of the first respondent, dated 6th

February, 1975. According to the petitioner, this impugned order is based on the ratio of 4 : 1. But the impugned order does not indicate that it is

based on the said ratio; it merely appoints two individuals to the posts of Section Manager. It is not known whether this has been done in

pursuance of the ratio of 4 : 1 or whether it has been, done in pursuance of paragraph 1021 of the Madras Corporation Code which makes the

post of Section Managers a selection post. The Section Manager's post has been treated as a selection post in Paragraph 1021 of the Madras

Corporation Code and it says that persons of real merit, efficiency and capacity irrespective of the seniority are to be selected for such posts from

the qualified persons. Though the petitioner may be a person qualified for promotion, he being a non-graduate with 10 years service as Upper

Division Clerk he cannot claim promotion purely on the basis of seniority in view of the Rule relating to promotion contained in paragraph 1021 of

the Madras Corporation Code. It is not therefore possible for this Court to set aside the impugned order, dated 6th February, 1975. Now that the

ratio of 4 : 1 fixed by the Appointment Committee has been set aside, the petitioner and the second respondent have to work out their rights, if

any, before the first respondent.

9. The writ petition is ordered accordingly. There will be no order as to costs.