
(2014) 06 MAD CK 0099

In the Madras High Court

Case No : W.P. (MD) No. 6509 of 2008, W.P. (MD) No. 7542 of 2009 and M.P. No. 1 of 2014

P. Muthuramalingam

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0099

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Judgement

R. Mahadevan, J.—The case of the petitioner is that he was initially appointed in the year 1994 as a Daily wage sanitary worker. Pursuant to G.O.Ms.125, Municipal Administration and Water Supply Department, dated 27.05.1999, the petitioner approached this court for a direction to regularize the service and absorb him. Subsequently, the petitioner was appointed with time scale of pay as Revenue Assistant with effect from 23.02.2006, by order, dated 12.01.2007. However, the said order was cancelled by order, dated 01.02.2007, reverting the petitioner to the earlier post, but with time scale of pay. Again the petitioner was posted as Revenue Assistant. Thereafter, by proceedings, dated 20.07.2007, the fourth respondent reverted the petitioner to the post of cleaner, based on his educational qualification and subsequently when a vacancy arose in the year 2008, the petitioner contending that he has completed plus two made representations to appoint him either as Junior Assistant or Revenue Assistant. The request of the petitioner was rejected by the fourth respondent on the ground that the petitioner cannot be appointed as Junior Assistant or Revenue Assistant, as per provisions of the Tamil Nadu Municipalities Act and Rules. Aggrieved over the same, the petitioner has filed the Writ Petitions.

2. The Learned Counsel appearing for the petitioner would submit that the petitioner has been working from 1994 onwards and as per the Government Order, cited supra, the petitioner is entitled to be regularized and appointed to

the post of Junior Assistant or Revenue Assistant. Further, after considering his educational qualification, the petitioner was appointed as Revenue Assistant, based on the decision taken in the conciliation, comprising the secretary to the District Collector, Regional Director of Municipal Administration Department and the Commissioner of the Municipality. In view of the fact that the list of employees including that of the petitioner was already sent and approved by the members, who would constitute the committee, the impugned order reverting the petitioner is bad in law, as no opportunity was given to the petitioner. The learned counsel further contended that as per the Government Order, issued in G.O. Ms. 21 Municipal Administration and Water Supply Department, dated 02.03.1998, to fill up the vacancies, persons employed in one department can be promoted to other department, based on common seniority, and therefore, sought the quashing of the impugned proceedings.

3. The Learned Counsel appearing for the fourth respondent contended that the very regular appointment of the petitioner is only by the order dated 20.07.2007 and if the same is set aside, the petitioner would be terminated, and therefore, it is not wise for him to challenge the proceedings. The learned counsel further contended that since the earlier appointment of the petitioner was not made by the appointment committee viz. the Regional Director as per section 73 of the Municipalities Act, the same was cancelled and as there was no vacancy in the public department, the petitioner was appointed as a cleaner in the public department. The learned counsel further disputed the signature of the earlier order of the commissioner and after legal opinion, the order promoting the petitioner as Revenue Assistant was cancelled and he was reverted as cleaner. The learned counsel also contended that all along the petitioner had been receiving only daily wages even though time scale pay was fixed. The learned counsel further contended that once the petitioner has been appointed in the public health department, he cannot be considered for appointment or promotion to any post in general or public department, and therefore, sought the dismissal of the Writ Petitions.

4. The learned Additional Government Pleader appearing for the respondents 1 to 3 adopted the arguments of the learned counsel for the fourth respondent.

5. Heard all the parties and perused the records carefully.

6. It is not in dispute that the petitioner has been in service in the respondent - Municipality from 1994 onwards. It is also not in dispute that the petitioner is entitled to be regularized as per G.O. Ms. 125, Municipal Administration and Water Supply Department, dated 27.05.1999 and posted as per his educational qualification. As per the said Government Order, a common roll of daily wage employees was directed to be prepared. The said Government Order also permitted absorption of daily wage employees from other Municipalities implying that the present occupation in other department of the Municipality is irrelevant. After the directions of this Court and considering the Government Order, issued in G.O. Ms. 125, Municipal Administration and Water Supply Department, dated

27.05.1999, he was appointed as Revenue Assistant, on 12.01.2007, and reverted as Cleaner, on 01.02.2007. Again, he has been appointed as Revenue Assistant, based on the decision in the joint meeting. Even though the fourth respondent has denied the meeting and previous order of the erstwhile commissioner, the third respondent, who was present at the meeting, has not filed any counter, denying the meeting and the recruitment of the petitioner as Revenue Assistant. It is also pertinent to mention here that if the earlier order is not genuine, the municipality would have definitely taken action against the erring parties. The impugned order is also silent regarding the earlier orders and it only mentions that the list of persons indicated therein are appointed as per their educational qualification.

7. As per Paragraph No. 5 of the Government Order, issued in G.O. Ms. 21 Municipal Administration and Water Supply Department, dated 02.03.1998, the Municipal Commissioner is the appointing authority. In the present case, the Regional Director and the Municipal Commissioner was a party to the meeting, dated 02.04.2007, and the order of recruitment of the petitioner as Revenue Assistant was issued by the Municipal Commissioner. Therefore, the service of the petitioner can only be deemed to have been regularized, on 02.04.2007, with effect from 23.02.2006, because, as per G.O. Ms. 21 Municipal Administration and Water Supply Department, dated 02.03.1998, the services of the employees were directed to be regularized and time scale has to be fixed with effect from 23.02.2006. The claim of the respondents that the petitioner has been appointed as a cleaner only from 20.07.2007 and if the said order is quashed, he would be removed from service is unacceptable and incorrect, as the order, dated 20.07.2007, is not an order of recruitment and can only be termed as an order of reversion. Further, it is also evident that the petitioner was not given any opportunity before the order was passed. All the contentions now raised are also not part of the impugned order.

8. In view of the reasons stated above, the impugned order, dated 20.07.2007, is set aside and the petitioner is entitled to continue as Revenue Assistant. With regard to the proceedings dated 20.05.2008, the petitioner has joined duty as cleaner based on the order, dated 20.07.2007, under protest. Therefore, this Court feels that since the order, dated 20.07.2007, is set aside, there is no necessity to quash the proceedings dated 20.05.2008, as the same has become redundant.

9. Coming to the other Writ Petition in W.P. [MD]. No. 7502 of 2009, the petitioner, who joined the duty as cleaner, under protest, was promoted as Junior Assistant temporarily, by order, dated 01.06.2009, in the vacant post. However, the promotion was set aside by order, dated 29.07.2009, on the ground that there are no Service Rules to promote a cleaner in the Public Health Department to a Junior Assistant. Aggrieved, the present Writ Petition has been filed.

10. During the hearing, the counsel for the fourth respondent has fairly submitted that there has never been any audit objection against the appointment

of the petitioner and that the petitioner has put in unblemished service as Junior Assistant, but the order passed is in consonance with the recruitment rules.

11. In view of the fact that W.P. [MD]. No. 6504 of 2009 has been partly allowed setting aside the order, dated 20.07.2007, this Court feels that there is no necessity to go into the merits of the case of both parties and no orders are necessary in W.P. [MD]. No. 7502 of 2009.

12. In the result, W.P.[MD]. No. 6504 of 2009 is partly allowed setting aside the order, dated 20.07.2007, and the fourth respondent is directed to pass orders accordingly reinstating the petitioner as Revenue Assistant with all service and other benefits. W.P. [MD]. No 7502 of 2009 is closed. No costs.