
(2014) 11 MAD CK 0531

In the Madras High Court

Case No : Writ Appeal Nos. 451, 1011 and 1132 of 2012 and M.P. Nos. 1/2012, 2/2012 and 2/2012

State

APPELLANT

Vs

T.V. Palani

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0531

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Judgement

P.R. Shivakumar, J.

1. These writ appeals are filed against the common order dated 28.09.2011 made in W.P.Nos. 776, 777 and 778/2006. Original Application No. 44/2000 filed by the respondent herein/writ petitioner on the file of the erstwhile Tamil Nadu Administrative Tribunal with a prayer to call for the records relating to the proceedings of the second appellant in letter No. 36717/M.E.V(96-11) dated 23.11.1998, to quash the same and consequently to direct the appellants herein to treat period from 23.10.1998 compulsory wait and pay arrears of salary and other attendant benefits due to the writ petitioner, with interest at the rate of 18% per annum. O.A.No. 7992/2000 was filed by the respondent herein/writ petitioner on the file of the erstwhile Tamil Nadu Administrative Tribunal with a prayer to set aside the proceedings of the second appellant in G.O.(D) No. 601 Municipal Administration and Water Supply (ME-1) Department dated 23.10.2000 and consequently direct the appellants to post the petitioner in any Selection Grade Municipality. O.A.No. 45/2000 was filed by the respondent herein/writ petitioner on the file of the erstwhile Tamil Nadu Administrative Tribunal with a prayer to call for the records relating to the charge memo issued by the third appellant in his office proceedings R.O.C.No. 4418/98/CI dated 27.09.1999 and quash the same. On the abolition of the Tamil Nadu Administrative Tribunal, the above said original applications, namely O.A.Nos. 44/2000, 7992/2000 and

45/2000 came to be transferred to this court and re-numbered as W.P.Nos. 776/2006, 777/2006 and 778/2006 respectively.

2. The respondent/writ petitioner was initially appointed as Junior Assistant in the year 1962 in Town Panchayat Department. After several accelerated promotions, he was promoted as Municipal Commissioner Grade-III with effect from 28.05.1990 vide G.O.Ms.No. 466, Municipal Administration and Water Supply Department from the feeder category of Selection Grade Executive Officer in the Town Panchayat Office. The municipalities are classified in the ascending order as Grade-III, Grade-II, Grade-I, Selection Grade and Special Grade municipalities. The commissioners appointed to such municipalities are also graded as Grade-III, Grade-II, Grade-I, Selection Grade and Special Grade in the same order. Since 1989, no regular panel for promotion from the feeder category for promotion to the post of Grade-II Municipal Commissioner was issued and only ad hoc promotions were made. On 21.03.1995 inter se seniority in the cadre of Municipal Commissioners Grade-III was fixed and the seniority list was published. The respondent/writ petitioner was ranked at Sl.No. 3 in the said seniority list. By then he had qualified for regular promotion to the post of Municipal Commissioner Grade ? II by having passed the required departmental tests.

3. On the basis of the published seniority list, the respondent/writ petitioner was posted as Municipal Commissioner Grade ? I at Tambaram by order dated 12.05.1995, which is admittedly a Grade-I Municipality. Subsequently, the Government issued an order in G.O.(2D) No. 30 Municipal Administration and Water Supply Department dated 25.03.1996 posting the respondent/petitioner to a selection grade municipality, namely Alandur Municipality. However, by G.O.(D) No. 268, Municipal Administration and Water Supply Department dated 03.07.1996, the respondent/petitioner was posted as Commissioner of Pallavaram Municipality, a Grade-I Municipality by downgrading him from selection grade Commissioner to Commissioner- (Grade-I).

4. Challenging the said posting involving his down gradation , O.A.No. 4262/1996 came to be filed by him before the erstwhile Tamil Nadu Administrative Tribunal contending that while his juniors R.S.Ramasamy and R.Sathiamoorthy, who had not even passed the required departmental tests were posted as Commissioner of Selection Grade Municipalities, he was unjustifiably downgraded as Municipal Commissioner (Grade-I. Adding salt to the injury, he was again transferred to Pattukottai (Grade-I) Municipality by order dated 27.08.1996. Meanwhile, the Government issued a seniority list dated 26.08.1997 fixing the seniorities of the Municipal Commissioners Grade-III appointed through various sources from 1989 onwards and the petitioner was placed at the top of the list in Sl.No. 1. Even before that the respondent/writ petitioner made a representation to the Government on 18. 02.1997 for posting him in any one of the selection grade municipalities, but he was again transferred from Pattukottai Municipality to Aruppukottai Municipality (Grade-I) by order dated 27.08.1997. Again he made

representations to post him at a selection grade municipality on 29.11.1997, 04.03.1998 and 24.07.1998. However, his request was not heeded to and he was transferred to Vriddhachalam Municipality (Grade-I) by an order dated 08.06.1998. Thereafter, O.A.No. 4262/1996 was disposed of by the Tamil Nadu Administrative Tribunal by order dated 28.07.1998 directing the appellants to dispose of the representations of the respondent/writ petitioner on merits within a period of 12 weeks.

5. Disregarding the said order, the respondent/writ petitioner was again transferred from Vriddhachalam Municipality (Grade-I) to Panruti Municipality (Grade-I) by an order dated 28.10.1998. Simultaneously, the respondent/writ petitioner was also informed that orders for posting him in a selection grade municipality was awaited from the Government. As he had been informed that orders on his representation to post him as Commissioner of Selection Grade Municipality was awaited from the Government, he did not join duty at Panruti. Under the said circumstances, the Government, by order dated 23.11.1998, declined the request of the respondent/writ petitioner to post him as Commissioner of a selection grade municipality on the ground that two disciplinary proceedings were pending against him.

6. As against the said order of the government dated 23.11.1998, O.A.No. 44/2000, renumbered on transfer to this court as W.P.No. 44/2000, had been filed. Before transfer, the Tamil Nadu Administrative Tribunal, while admitting the original application, granted an interim direction on 06.01.2000 directing the third appellant to issue posting order in any of the vacancies in the selection grade municipalities. A few days prior to the said order of the Tribunal, one Panneerselvam was transferred from Kolachal Municipality and posted as Commissioner of Panruti Municipality (Grade-I) and the respondent/writ petitioner was not issued with further posting orders. When he was thus on compulsory wait, the third appellant issued a charge memo dated 27.09.1999 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules alleging unauthorised absence from 23.10.1998 till the date of the charge memo. For quashing the charge memo dated 27.09.1999, the respondent/writ petitioner filed O.A.No. 45/2000, re-numbered on transfer as W.P.No. 778/2000 and got interim stay of further proceedings. As the interim order of the Tribunal was not complied with, the respondent/writ petitioner moved a contempt application in C.A.No. 110/2000 before the Tamil Nadu Administrative Tribunal in which the Tribunal passed an order on 15.09.2000 directing the appellants 3 and 4 to issue appropriate posting orders to the respondent/writ petitioner considering his status as selection grade Municipal Commissioner. Again, contrary to the orders of the Tribunal, the Government passed an order on 19.10.2000 directing the third appellant to post the respondent/writ petitioner as Commissioner in a Grade-II municipality. Thereafter G.O.Ms.No. 601 Municipal Administration and Water Supply Department dated 23.10.2000 came to be issued posting the respondent/writ petitioner as Commissioner of Puliangudi Municipality, which is a Grade-II Municipality. Challenging the said order O.A.No. 7992/2000, converted

on transfer as W.P.No. 777/2000, came to be filed. Subsequently, the third appellant, by order dated 22.06.2001, posted the respondent/writ petitioner as Municipal Commissioner of Tirivottiyur, a Selection Grade Municipality and the petitioner joined duty there on 25.06.2001. He retired from service on 30.06.2001 on his attaining the age of superannuation and he was permitted to retire from service on 30.06.2001 without prejudice to the disciplinary proceedings pending against him.

7. Admittedly, from 1989, no regular panel for promotion to the category of Municipal Commissioners Grade-II was prepared and on working arrangement, the Municipal Commissioners Grade-III were posted as Municipal Commissioners Grade-1 and Selection Grade Municipal Commissioners pending regularisation. Though the said working arrangement is claimed by the appellants to be an internal arrangement due to administrative exigencies without causing any disturbance to seniority of Grade III Commissioners of Municipality, in effect, posting as Grade-II Commissioner, Grade- I Commissioner and Selection Grade Commissioner were considered to be equivalent to promotions and exactly the procedure for such postings are exactly the procedures followed for promotion. The same is reflected in the proceedings of the second appellant in Letter No. 36717/ME.I/96-11 dated 23.11.1998, wherein it has been mentioned that the contention of the respondent/writ petitioner that the pendency of the disciplinary case would not be a bar to his being posted as Senior Grade - II Municipal Commissioner was not correct because although those postings were made on working arrangement basis, the procedure followed was exactly as one for promotion.

8. In the case on hand, admittedly the respondent/writ petitioner was posted as Municipal Commissioner Grade-I at Tambaram in accordance with his seniority by order dated 12.05.1995 and then was posted as Selection Grade Commissioner of Alandur Municipality vide Order in G.O.(2D) No. 30, Municipal Administration and Water Supply Department dated 25.03.1996. While he was thus working as Selection Grade Commissioner at Alandur Municipality, he was downgraded to Grade-I Municipal Commissioner by posting him to Pallavaram Municipality by virtue of order in G.O.(D) No. 268, Municipal Administration and Water Supply Department dated 03.07.1996. However besides downgrading the respondent/petitioner from selection grade Municipal Commissioner to Grade-I Municipal Commissioner, his juniors Ramasamy and Sathiamoorthy were posted as Selection Grade Municipal Commissioners by order dated 15.07.1996. In the guise of making working arrangement, postings made to the higher post disregarding the seniority and downgrading the respondent/writ petitioner from selection grade Commissioner to Grade-I Municipal Commissioner, while the Government itself maintained that postings to the higher post in the categories of Municipal Commissioners were made virtually based on the very same procedure adopted for promotion. The appellants do not dispute the fact that after downgrading the respondent/writ petitioner from selection grade Municipal Commissioner to Grade-I Municipal Commissioner, his juniors Ramasamy and

Sathimoorthy, who had not even qualified themselves to be promoted as Grade - II Municipal Commissioners, were posted as selection grade municipal commissioners. It is also an admitted fact that there is a marginal difference in the scales of pay and allowances applicable to the categories of Municipal Commissioners. Therefore, the finding of the learned single Judge that the downgrading of the respondent/writ petitioner from selection grade Municipal Commissioner to Grade-I Municipal Commissioner while posting his juniors as selection grade Municipal Commissioners, would show favouritism and nepotism, cannot be found fault with.

9. When the respondent/writ petitioner made a representation for restoration of his position as selection grade Municipal Commissioner, the said request was rejected on the premise that 17(b) charges were pending against him. As rightly contended by the learned counsel for the respondent/writ petitioner, 17(b) charges came to be made against him subsequent to his down gradation from selection grade municipal commissioner to Grade-I Municipal Commissioner and the crucial date for deciding his eligibility/entitlement was 25.03.1996, the date on which he was first posted as selection grade Municipal Commissioner at Alandur or at least on the date of posting of his juniors as Selection Grade Municipal Commissioners, namely on 15.07.1996. The charge memo came to be issued in R.O.C.No. 4418/98/CI dated 27.09.1999. Such a charge memo that came to be issued after a number of years from the date of down gradation could not have been validly relied on for denying his promotion as selection grade Municipal Commissioner as on 25.03.1996. In the charge memo, the following charges had been levelled.

Charge:1

"that Thiru.T.V.Palani, Municipal Commissioner has continuously been on leave from 25.6.98 to 22.10.98 and unauthorised absence from 23.10.98 to till date and thereby violated Rule 18(2) of Fundamental Rule".

Charge:2

"Thiru.T.V.Palani, Municipal Commissioner had disobeyed the orders of Government & CMA and not joined duty in the stations posted (viz.) Virudhachalam Municipality and Panruti Municipality vide G.O.No. 294, M.A. & W.S. Dept., dt. 8.6.98 and Procs.Roc.No. 35429/98/C1 Dt.28.10.98 of the CMA, Chennai respectively".

The first charge refers to the period from 25.06.1998 to 22.10.1998 period spent on leave and the absence of the respondent/writ petitioner from 23.10.1998 to till the date of issuance of the charge memo as unauthorised absence. The second charge is that he had disobeyed the orders of the Government and Commissioner of Municipal Administration by not joining in the stations to which he was posted, namely at Virudhachalam and Panruti Municipalities.

10. It shall be noticed that after reducing his rank from selection grade Municipal

Commissioner to Grade-I Municipal Commissioner by order dated 03.07.1996, he joined duty as Grade-I Municipal Commissioner at Pallavaram and at the same time he challenged the said order by moving O.A.No. 4262/1996 on the file of the erstwhile Tamil Nadu Administrative Tribunal. The Tamil Nadu Administrative Tribunal, in the said original application, passed an order on 28.07.1998 directing the appellants herein to dispose of the respondent's/writ petitioner's representation regarding his promotion within a period of 12 weeks. The third respondent passed an order on 28.10.1998 informing the respondent/writ petitioner that orders for posting him in a selection grade municipality was awaited from Government. However, before the expiry of 12 weeks period granted by the Tamil Nadu Administrative Tribunal, the respondent was transferred to Virudhachalam Municipality (Grade ? I) by G.O.Ms.No. 294, Municipal Administration and Water Supply Department dated 08.06.1998. Since the 12 weeks period granted by the Tribunal had not expired, the respondent/writ petitioner did not join the post of Commissioner of Virudhachalam (Grade-I) Municipality expecting orders to be passed by the appellants in compliance with the direction issued by the Tamil Nadu Administrative Tribunal.

11. To his shock and surprise, he was transferred and posted to Panruti (Grade-I) Municipality in the proceedings of the Commissioner of Municipal Administration bearing Roc.No. 35429/98/C1 dated 28.10.1998 at the same time informing him that order from the Government was awaited on his representation for posting him in a selection grade municipality. The said period admittedly came to an end on 19.12.1998. Therefore, till such time the petitioner did not join at Panruti expecting orders to be passed by the appellants. On 23.11.1998 purporting to comply with the order of the Tribunal dated 28.07.1998 made in O.A.No. 4262/1996, the Government passed an order declining the request of the respondent/writ petitioner stating that the Commissioner for Municipal Administration had reported that he had initiated disciplinary proceedings against the respondent/writ petitioner for certain irregularities. Except the charge memo issued on 27.09.1999, no other document has been produced by the appellants to show that disciplinary proceedings were pending as on 23.11.1998, when the order declining the request of the respondent/writ petitioner for posting as selection grade Municipal Commissioner came to be passed. The only reason alleged therein was that the disciplinary proceedings were pending against the respondent/writ petitioner.

12. In the order of the third appellant, in his proceeding Roc.No. 93219/97/C1 dated 02.07.1998 rejecting the respondent's representation for posting him as selection grade Municipal Commissioner, cited a charge memo bearing Roc No. 65848/96/C2 dated 27.11.1996 and another charge memo bearing Memo No. 77068/96-2/C2 dated 21.12.1996, allegedly issued under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules against the respondent/writ petitioner as the ground for such rejection. The same was claimed to be fabricated in order to take vengeance for having moved the Tamil Nadu Administrative Tribunal with O.A.No. 4262/1996. Even then the appellants had

not produced the file containing the document evidencing service of such charge memos. Even if it is assumed that such charge memos were issued, since the claim of the respondent/writ petitioner for posting him in a selection grade municipality was based on the earlier government order in G.O.(Rt) No. 164, Municipal Administration and Water Supply department dated 15.07.1996, by which ineligible persons, who were juniors to the respondent/writ petitioner, were posted as commissioners in Selection Grade Municipalities, reliance was made on the subsequent charge memos dated 27.11.1996 and 21. 12.1996 solely for denying his elevation as Commissioner of Selection Grade Municipalities. The same was correctly found by the learned single Judge to be incorrect, since as on the crucial date, no charge was pending against him. Furthermore, he having been posted as Commissioner of Selection Grade Municipality prior to 15.06.1996, ought not to have been downgraded by order dated 03.07.1996, when no charge was pending against him. Apart from downgrading him from the Commissioner of Selection Grade Municipality to Commissioner of Grade-I Municipality, he was frequently transferred from one Grade-I Municipality to another Grade-I Municipality i.e. from Pallavaram to Pattukottai on 27.8.1996, from Pattukottai to Aruppukottai on 27.08.1997, from Aruppukottai to Virudhachalam on 08.06.1998 and lastly from Virudhachalam to Panruti on 28.10.1998.

13. In this regard, for the period prior to 22.10.1998, admittedly he applied for earned leave and the leave applied for was granted and by order dated 06.03.2008 his period of absence from 25.06.1998 to 22.10.1998 was regularised as earned leave. By yet another order dated 02.07.2008, his absence on 24.06.1998 was also treated as earned leave and the same was regularised. In the charge memo dated 27.09.1999 his absence from 23.10.1998 was projected as unauthorised. Since the period of absence up to 22.10.1998 has been regularised as leave, the charge against the respondent/writ petitioner that he did not obey the orders transferring him to Virudhachalam Municipality had no substance. Thereafter he was transferred to Panruti Municipality by order dated 28.10.1998. By that time, the Tribunal had passed an order directing consideration of his representation for posting him in a selection grade municipality within 12 weeks from the date of receipt of a copy of the order dated 28.07.1998. As no such posting order came to be issued before the expiry of time granted by the Tribunal, the respondent/writ petitioner was justified in not joining the post as Commissioner of Panruti Municipality till the Government passed the order dated 23.11.1998 declining his request. By the time the said order came to be passed, another person had been posted at Panruti, virtually placing the respondent/writ petitioner on compulsory wait. Therefore, the charge of disobedience of the order transferring him to Panruti Municipality also does not have substance in it. The learned single Judge was right in holding that both the charges made against the respondent/writ petitioner in the charge memo dated 27.09.1999 were bound to be quashed. We do not find any reason or justification to interfere with the same.

14. So far as the prayer made in W.P.No. 777/2006 is concerned, as rightly held by the learned single judge, the proceedings of the second appellant in G.O.(D) No. 601, Municipal Administration and Water Supply ME.1 Department dated 23.10.2000 is concerned, when the matter stood like that the second appellant by order dated 23.10.2000 posted the respondent/writ petitioner as Commissioner to Puliangudi Municipality, a Grade-II Municipality still downgrading the respondent/writ petitioner. The same is challenged as vindictive in W.P.No. 777/2000. In view of the reasons stated supra, the said order also deserved to be quashed as rightly held by the learned single judge. The prayer for restoration of his position as Commissioner of Selection Grade Municipality deserves to be accepted.

15. In view of our finding that the respondent's/writ petitioner's claim for retrospective promotion as Commissioner of Selection Grade Municipality with effect from 25.03.1996, we are of the view that the finding of the learned single judge that the petitioner was entitled to be treated as if he continued as a Commissioner in Selection Grade Municipality from March 1996 itself and is also entitled to the monetary benefits payable to the Commissioner of Selection Grade Municipality from 03.07.1996 to 30.06.2001, the date of his retirement on superannuation is well founded. We do not find any reason to interfere with the well considered order of the learned single judge. There is no merit in the writ appeals and all the three writ appeals are bound to be dismissed.

Accordingly, all the writ appeals are dismissed confirming the common order of the learned single Judge dated 25.09.2011 passed in W.P.Nos. 776, 777 and 778 of 2006 (O.A.Nos. 44, 7992 and 45 of 2006. However there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.