
(2001) 09 MAD CK 0124

In the Madras High Court

Case No : Writ Petition No. 10051 of 1995 and W.M.P. No's. 15960 and 15961 of 1995

T.V. Subramaniam and Another

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Coimbatore City Municipal Corporation Act, 1981 — Section 116
Tiruchirapalli City Municipal Corporation Act, 1994 — Section 8(1), 9(6)

Citation : (2001) 3 MLJ 476

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : C. Selva Raju, for the Appellant; S.P. Prabakaran, Additional Government Pleader on behalf of Respondents 1 and 2, R. Ragothaman, for 3rd Respondent and P. Chandrasekar, for 4th Respondent, for the Respondent

Judgement

P.K. Misra, J.—Heard the learned Counsel appearing for the parties.

2. The Petitioners have prayed for quashing the order dated 7.7.1995, whereunder, the fourth Respondent was transferred to the Tiruchirapalli Municipal Corporation as Executive Engineer. It is the contention of the Petitioners that the third Respondent is bound to fill up the post of Executive Engineer according to the seniority from among the eligible employees of the third Respondent Corporation. The Petitioners were initially working under the Tiruchirapalli Municipality. Subsequently by virtue of the Tiruchirapalli City Municipal Corporation Act (Act 27 of 1994) this Municipality was converted to a Corporation and the Petitioners are continuing as such under the said Corporation. learned Counsel appearing for the Petitioners has submitted that in view of Section 9(6) of the Act, it must be deemed that the Petitioners have become employees of the Corporation. The fourth Respondent, who was working under the Tuticorin Municipality, has been transferred as the Executive Engineer of the Tiruchirapalli Corporation. It has been submitted that there is no authority to transfer an employee of the Municipality to the Corporation.

3. learned Counsel appearing for the Respondents 3 and 4 drew my attention to Section 116 of the Coimbatore City Municipal Corporation Act, 1981, hereinafter referred to as 1981 Act, which is as follows:

116. Power of Government to transfer officers and servants of the Corporation or Municipalities: Notwithstanding anything contained in this Act or in the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), the Government shall have power:

(a) to transfer any officer or servant of the corporation to the service of the municipal corporation of Madras constituted under the Madras City Municipal Corporations Act, 1919. (Tamil Nadu Act IV of 1919) or the Municipal Corporation of Madurai constituted under the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act XV of 1971) or any other Municipal Corporation that may be constituted under any law or any municipality constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) or to transfer any officer or servant of any such municipality or the Municipal Corporation of Madras or the Municipal Corporation of Madurai or any other Municipal Corporation that may be constituted under any law to the service of the corporation.

(b) to issue such general or special directions as they may think necessary for the purpose of giving due effect to any transfer made under Clause (a).

4. From the aforesaid provisions, it is clear that the Government can bring any Officer from Municipality to the Corporation on deputation and similarly an employee of the corporation can be sent to any Municipality on deputation. learned Counsel for the Respondent further invited my attention to Section 8(1) of the Act 27/1994, which is as follows:

8.(1) save as otherwise expressly provided herein, all the provisions of the 1981 Act, including the provisions relating to the levy and collection of any tax or fee are hereby extended to and shall apply, mutatis mutandis to the corporation and the 1981 Act shall, in relation to the Corporation be read and construed as if the provisions of this Act had formed part of the 1981 Act.

From a reading of the aforesaid provision, it is thus apparent that by the process of incorporation the provisions contained in 1981 Act, shall apply to the Tiruchirapalli City Municipal Corporation Act and shall form part of the Act 27 of 1994 and as such it must be taken that the Government has the power to bring some persons from any other Municipality on deputation to the Corporation. In such view of the matter, it cannot be said that the posting of the fourth Respondent as Executive Engineer on deputation in Tiruchirapalli Municipal Corporation as illegal or void in any manner.

5. learned Counsel for the Petitioner however submitted even assuming that the fourth Respondent could have brought officers on deputation, such deputation can be only for a fixed period and cannot continue indefinitely. It has been submitted in this connection that by bringing outsiders on deputation, the

Petitioners and other employees of the Corporation are being prejudiced as their avenue for promotion is being clogged by permanent outsiders.

6. learned Counsel appearing for the third Respondent on the other hand submitted that the Petitioner's scope for promotion is not being affected as they were not due for promotion and as and when they would become due for promotion, their cases would be duly considered.

7. Keeping in view the submissions made on either side and the facts and circumstances of the case, it cannot be said that the action of the Government was arbitrary. However, since the fourth Respondent was brought on deputation, it is reasonable to expect that his deputation would come to an end within a reasonable period and thereafter the question of giving of promotion to any person employed in the Tiruchirapalli Municipal Corporation shall be considered by the authorities in accordance with law.

6. Subject to the. aforesaid observation the writ petition is disposed of. There will be no order as to costs. Consequently, the connected W.M. Ps are closed.