
(2007) 09 MAD CK 0056
In the Madras High Court
Case No : W.A. No. 1351 of 2005

V. Dhanasekaran, R. Alamelu and G.R. Krishnamoorthy	APPELLANT
Vs	
M. Ganesan and Others	RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Salem City Municipal Corporation Act, 1994 — Section 9(6)
Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 — Rule 25, 26, 28, 5, 8

Citation : (2007) 6 MLJ 533 : (2008) WritLR 451

Hon'ble Judges : S.J. Mukhopadhaya, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : S. Kamadevan, for the Appellant; K. Sridhar, for Respondents 1, 4 to 9, D. Srinivasan, Advocatefor Respondents 10 and 11 and G. Sankaran, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—This writ appeal is preferred against the order of the learned single Judge in W.P. No. 6635 of 1997 dated

28.1.2005, allowing the writ petition filed by the respondents 1 to 9 herein.

2. The respondents 1 to 9 herein/writ petitioners filed W.P. No. 6635 of 1997 with a prayer to quash G.O.Ms. No. 237 Municipal Administration

& Water Supply Department, dated 26.9.1996 including the abstract thereto and the consequential order of the third respondent in the writ

petition/12th respondent herein dated 30.12.1996 with a direction to implement the promotion panel dated 23.6.1995 by promoting the

respondents 1 to 9 herein/writ petitioners.

3. The brief facts necessary for disposal of the writ appeal are as follows:

(a) The respondents 1 to 8 have joined as Junior Assistant in the Municipal Service and the 9th respondent joined as Attender and all were holding

the post of Junior Assistant in the Salem Corporation at the time of filing of the writ petition. Until the Salem Corporation was formed, they were

employed in the Salem Municipality. The post of Junior Assistant in the Municipal Service are covered under the Tamil Nadu Municipal Services

Rules, 1970, framed under the Tamil Nadu District Municipalities Act, 1920.

(b) Under Rule 5 of the Tamil Nadu Municipal Services Rules, 1970 (hereinafter referred as the Rules), for promotion to the post of Assistant, the

candidates should have passed the prescribed departmental tests viz., Account Test for Local Bodies or Panchayat Development Account Test

and Papers III and IV of the Departmental Test for Officers of the Panchayat development Department or the Account Test for subordinate

Officers, Part I.

(c) According to the writ petitioners, they have passed the qualifying tests (Departmental Tests) and reached the selection grade status as per Rule

9 of the Rules. The procedure to be followed for promotion is that a panel will be prepared by the Director of Municipal Administration, after

obtaining the names from the Commissioner of the respective Municipalities with their view with regard to the suitability for promotion and the

panel will be circulated to the Junior Assistants, calling for their objections, if any. Thereafter, the panel will be finalised and forwarded to the

appellate committee.

(d) The writ petitioners state that the date of passing the test is a relevant consideration for fixing the interse seniority in the promotion panel. On

and from 1.6.1994, the Salem Municipal Corporation was formed by the Act 29 of 1994 and as per Section 9(6)(a) of the Salem Municipal

Corporation Act, 1994, the terms and conditions applicable to such officers and employees, consequent to their absorption in the service of the

Corporation, shall not be less favourable than those applicable to such employees immediately after the date of such commencement as regards the

pay and allowances, leave, pension, gratuity, provident fund and the age of superannuation. Earlier service is to be counted for the purpose of

increments, leave, pension, Provident fund and gratuity and all the persons worked in the Salem Municipality were permitted to give their option,

either to be absorbed in the Corporation or to be retrenched. The respondents 1 to 9/writ petitioners gave their willingness to be absorbed in the Salem Corporation Municipal service.

(e) The grievance of the writ petitioners is that they having passed the departmental test much earlier than several others and their names having been placed in the top of the promotion panel for the respective years, the same cannot be changed merely because some of the persons joined earlier than the respondents 1 to 9, passed the tests subsequently, and they should be shown below the respondents 1 to 9 on the basis of the date of passing the departmental tests. By virtue of the said procedure adopted, the names of the respondents 1 to 9 were placed in the bottom of the panel dated 23.6.1995, published on 30.12.1996, based on G.O.Ms. No. 237 MA&WS Department dated 26.9.1996 which permits the department to take the date of appointment and not the date of passing the departmental tests for fixing seniority. Hence the respondents 1 to 9 challenged the Government Order and the consequential seniority list published on 30.12.1996.

4. The writ petition was allowed by the learned single Judge by holding that passing of the departmental tests is relevant in fixing the interse seniority in the promotion panel and the learned Judge directed the department to make promotion on the basis of the promotion panel dated 23.6.1995, which was prepared on the basis of the date of passing the departmental tests.

5. The learned Counsel appearing for the appellants, who are respondents 5, 6 and 8 in the writ petition, submitted that G.O.Ms. No. 237 MA&WS Department, dated 26.9.1996 is in consonance with the General Rules relating to the Government service, particularly Rule 25 of the Tamil Nadu Municipal Service Rules and therefore even in the absence of the Government Order referred above, as per the said service rules, the date of passing the tests is not the criteria and the date of entry in the service with test qualifications on the date of drawing of the panel is the criteria for preparation of the panel. The learned Counsel also submitted that as per Rule 26 of the Tamil Nadu Municipal Service Rules, 1970, promotions are to be made to a class or category of service on the ground of merit and ability and seniority is taken into account only if the merit

and ability are approximately equal and promotion shall be made from the panel drawn up by the selection committee.

6. The learned Counsel appearing for the respondents 10, 11 and 12 also supported the stand taken by the appellants and prayed for setting aside the order of the learned single Judge.

7. The learned Counsel appearing for the respondents 1 to 9/writ petitioners submitted that they having been absorbed in the Salem Corporation, their service conditions are entitled to be protected u/s 9(6) of the Salem Municipal Corporation Act, which is a saving clause.

8. We have considered the rival submissions made by the learned Counsel for the appellants as well as respondents 1 to 9 and other respective respondents.

9. The point for consideration in this writ appeal is whether the date of passing the departmental tests is relevant or the date of joining in the service is relevant for the purpose of preparing the panel for promotion to the higher post.

10. Admittedly Rule 25 of the Tamil Nadu Municipal Service Rules, 1970 is applicable for preparing the panel for promotion. Rule 25 reads as follows,

25. Seniority:- The seniority of a person appointed to any class or category of service shall be determined with reference to his rank in the list of approved candidates or promotion panel, as the case may be:

Provided that the seniority of person who was already a member of a service on the 14th day of January, 1970, shall be determined with reference to the date of his first appointment to the service, class or category thereto.

From the perusal of the above rule, it is clear that the date of first appointment to the service or class or category shall be taken into account for fixing the seniority and not the date of passing the departmental tests.

11. The reason for prescribing the test qualifications for the promotional post is to ensure the eligibility of the candidate to get promotion, which means unless the candidate successfully completes the test qualifications, he is not entitled to get promotion to the higher category. Merely because of the reason that one has not passed the departmental tests, his seniority in that particular post will not be affected. If test qualification is acquired

within the crucial date of preparation of the panel for promotion to a particular year, the date of passing the test is irrelevant for finding a place in the panel eligible for promotion.

12. Rules 26 and 28 of the Rules deal with promotion, which are extracted hereunder for proper appreciation,

26. Promotion:- Every promotion to a class or category of service to which promotion should be made on the ground of merit and ability, seniority

being taken into account only where merit and ability are approximately equal, shall be made only from a promotion panel drawn up by the

Selection Committee.

28. Merit And Seniority In The Matter Of Promotion:- (a) All promotions shall be made on grounds of merit and ability of the member of the

service, his seniority being taken into account only where merit and ability are approximately equal, except where the special rules governing a

service specifically require that promotion to any class or category thereof shall be made on the basis of seniority alone.

(b) Where the special rules governing a service require that promotion to any class or category thereof shall be made on the basis of seniority

alone, the order of seniority may be departed from in the following cases namely:

(i) Where promotion is given on grounds of conspicuous merit and ability;

(ii) Where promotion has been withheld as a measure of penalty.

As could be seen from Rules 26 and 28, promotions are being made on the ground of merit and ability and seniority is taken into account only

when merit and ability are approximately equal and the promotion shall be made from the promotion panel drawn up by the committee. Thus,

promotions are made by selection and not on the basis of seniority alone.

13. In the light of the above statutory rule, which is applicable to the appellants and respondents 1 to 9 for preparation of the promotion panel, we

are of the view that while preparing the panel for promotion, such of those persons, who have passed the prescribed tests are to be placed in the

seniority list, taking note of their entry into the service and not on the basis of passing the departmental tests. If promotion panel is drawn every

year, the persons who passed the departmental tests before the crucial date, shall be included in the seniority list and if promotions are to be made

within the panel year, the same can be made from the said panel prepared and for the subsequent year of promotion panel, all those who have qualified before the crucial date of that particular year shall be included in the panel based on their date of entry into the service. Mere inclusion in the panel for one year will not confer any right as the panel is prepared for that particular year and it will lapse automatically once the period is over.

14. Therefore, we make it clear that passing the departmental tests is only eligibility prescribed for inclusion in the promotion panel for higher post and not for fixing the seniority in the promotion panel. It is also made clear, if the respondents 10 to 12 are giving any retrospective promotion, the persons, who have passed the departmental tests as on the date of the crucial date of that year alone are entitled to be included in the promotion panel and considered for promotion. If notional promotions are to be given on the basis of a particular crucial date, all the persons, who passed the departmental tests as on the date, shall be included in the panel, considering their date of entry into service for seniority.

15. In the light of our above referred findings, we set aside the order of the learned single Judge and allow the writ appeal with the above observations. No costs.