

M. Balamurugan, Assistant Engineer Vs The Commissioner, Madurai City Municipal Corporation, Madurai 625001 and Others

Court: Madras High Court (Madurai Bench)

Date of Decision: Nov. 12, 2011

Acts Referred: Madurai City Municipal Corporation Act, 1971 " Section 106
Tamil Nadu Municipal Corporation Service Rules, 1996 " Rule 17, 4, 5, 6

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: D. Rajendiran, for the Appellant; M. Ravi Shankar For Respondent No. 1, Mr. T.S. Mohammed Mohideen, Additional Government Pleader For Respondents 2 and 3, Mr. T. Lajapathi Roy For Respondents 4 to9, Mr. R. Rajaraman For Respondent No. 11, Mr. B. Saravanan For Respondents 15 and 18, Mr. Mayil Vahana Rajendran For Respondent No. 14 Mr. S. Visvalingam For Respondent No. 19 and No Appearance For Respondents 10, 12, 13, 16, 17, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. The Writ Petition is filed by the petitioner seeking to challenge an order passed by the Commissioner, Madurai City Municipal Corporation,

Madurai, dated 13.11.2006. By the impugned communication, the petitioner was informed that his request for considering his case for the post of

Assistant Executive Engineers cannot be considered, as the petitioner was not senior to two persons, who were considered for the said post and

he has no right to claim any seniority over those persons whose names were included in the panel for the post of Assistant Executive Engineers.

Challenging the same, the present Writ Petition came to be filed.

2. When the Writ Petition came up for admission on 04.12.2006, this Court ordered notice of motion and private notice was also ordered.

Pending the notice of motion, though the petitioner sought for an order of interim stay of the impugned proceedings, this Court, vide order dated

27.07.2009, granted an interim order to the effect that any promotion made out of impugned panel of seniority is, subject to the result of the Writ

Petition and considering the facts and circumstances, Registry was directed to list the matter for final disposal on 19.08.2009. Subsequently, the

petitioner filed applications to amend the prayer and also to implead the contesting respondents as parties to the main Writ Petition. Both the

applications were allowed. As the matter was not listed within a reasonable period, the petitioner also filed an application for fixing an early date.

For the reasons best known, the matter was not listed.

3. In the meanwhile, the first respondent has filed a counter-affidavit dated 02.01.2007 and the fourteenth respondent by name R.Alexandar has

also filed a counter-affidavit dated 13.08.2007 together with the typed-set of papers containing the relevant documents in support of his counter-

affidavit.

4. Heard the arguments of the learned counsel appearing on either side.

5. The contention of the petitioner was that the post in the Municipal Corporation is governed by the provisions of the Tami Nadu Municipal

Corporation Service Rules, 1996, which are framed in terms of Section 106 of the Madurai City Municipal Corporation Act, 1971. Under the

said rules, a person, who was appointed in service, must complete a probation and his work should be satisfactory for a period of two years on

duty within a continuous period of three years. Rule 4 also states that a temporary promotee to higher post cannot be authorised by virtue of

promotion, if he does not possess the qualification prescribed for such promotion.

6. The learned counsel also produced the Special Rules relating to Tamil Nadu Municipal Corporations Engineering and Water Supply Service

Rules, 1996, by which, in Clause-I and Clause-II, posts are constituted and the post of Assistant Engineer and Assistant Executive Engineer

comes under clause-II. While the post of Assistant Executive Engineer is in Category-1 in Group-1, the post of Assistant Engineer is in Category-1

in Group-II. The post of Assistant Executive Engineer is filled by promotion and the qualification prescribed was a person must have worked as an

Assistant Engineer, Junior Engineer for not less than one year in the Engineering Department of the Corporation main Office and not less than for a

period of three years in the Ward Offices. Insofar as any ratio for promotion to the post of Assistant Executive Engineer is concerned, Rule 5 of

the Special Rules do not prescribe any ratio and it merely states that the Assistant Engineers and Junior Engineers shall be considered as a single

category and under Rule 6, promotion to the posts shall be made in accordance with seniority and appointment on deputation shall be made only

when no qualified person is available in the Corporation.

7. According to the counsel, the contesting respondents, who were shown as seniors to him for promotion to the post of Assistant Executive

Engineer, did not pass the departmental tests and did not complete their probation, within a reasonable time. While the petitioner had passed the

test as early as on 03.06.2003, some other have passed the tests only in the year 2005. But the Corporation, for reasons best known, did not

prepare any panel for promotion to the higher posts. If only a panel was prepared in respect of each year, in which, vacancy will arise, then there is

a possibility of the petitioner being included in the panel. Even though he might have been shown as junior in the earlier list, he was only a qualified

person at the relevant time for the year 2003 to be included in the panel.

8. The contention that the reason given by the Corporation for not preparing the panel was due to the ban order by the State Government cannot

be accepted, since G.O.(Ms) No. 212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001, is applicable only to direct

recruitment and not to promotion and the letter following the said Government Order dated 19.12.2001 was relied upon to state that there was a

specific exclusion of promotion from the ban order and, therefore, the Corporation's action in not preparing the panel for the years 2003 and 2004

ought not to be accepted and the respondents should be directed to prepare a panel in respect of those years and if there is any vacancy for the

said post, then the petitioner should be accommodated against the said post.

9. Reliance was only placed upon a consequential letter followed by the Government Order. But the intention of the Government Order itself was

to effect economy in expenditure and also in filling up of vacant posts to be avoided and only exemption was granted to the post of teachers,

doctors and police. Therefore, the Corporation, either on correct understanding or on an extended understanding of the said Government Order,

decides not to fill up the posts at the relevant time. The petitioner cannot be heard to contend all those things. In essence, he cannot direct the

Corporation to create a vacancy to accommodate the petitioner, if there was no vacancy at the relevant time or if the Corporation chooses not to

fill up the post in a particular year, for the reasons best known to them.

10. The contention that subsequently the persons, who were shown above in the seniority list, had completed the probation is not a relevant factor

for the purpose of deciding as to whether the petitioner was a senior or junior to the contesting respondents. On the other hand, Rule 5 cited by the

learned counsel for the petitioner clearly states that in the matter of filling up the posts of Assistant Executive Engineers, all the posts of Assistant

Engineers and Junior Engineers will be considered as single category and Rule 6 clearly states that the posts shall be filled up in accordance with

seniority. Therefore, the only question to be decided was whether the petitioner was senior to the persons, who are shown in the seniority list

prepared and exhibited on 12.01.2007. The list produced by the fourteenth respondent clearly shows that the fourteenth respondent was in serial

No. 12, while the petitioner is in serial No. 18. Even though both the persons were appointed on the same day, the seniority list that has been

exhibited right from the date of appointment shows that the fourteenth respondent was senior to the petitioner, who is only in the eighteenth rank. In

the present case, the petitioner does not contend that at the time of appointment when the Corporation prepared seniority list, such persons have

been shown as senior to him. Such questions cannot be gone into in this Writ Petition and that is not a prayer of the petitioner.

11. On the other hand, the ground urged by the petitioner was that he had completed probation much earlier to others and, therefore, he should be

shown as senior. This argument does not hold good. The preparation of seniority list is different from the preparation of the panel for higher posts.

The completion of probation or otherwise will have no relevance in the matter of preparation of seniority list, whereas in the preparation of panel

for higher posts, completion of probation may have a bearing on the said panel. In this context, the counter-affidavit filed by the Corporation

clearly refers to Rule 17 of the Tamil Nadu Municipal Corporation Service Rules to the effect that any delay in passing of orders of completion of

probation shall not monetarily affect the approved probationers and all individuals, who have passed departmental tests within the time provided

under the Service Rules, were declared as approved probationers by the Council of the Corporation. Therefore, the question is whether the

petitioner or the contesting respondents were approved probationers on the day when the panel was prepared. Therefore, promotion can be

effected only in terms of the relevant rules and the contention of the petitioner cannot be accepted.

12. In paragraph No. 9 of the counter, it is stated that on 01.04.2006, which was a crucial date for preparing the seniority list for the post of

Assistant Executive Engineers, three persons are eligible, viz., V.Mohandoss, K.N.Damotharan and A.Mathuram and the remaining two posts

were vacant. Since the above said Mohandoss and Damotharan were included in the panel for the existing two vacancies for the post of Executive

Engineer and there was a proposal for sanctioning five additional posts under Jawaharlal Nehru Urban Renewal Mission Scheme, the Corporation

prepared a panel containing nine eligible members for the post of Assistant Executive Engineers from the final seniority list of Assistant Engineers

and Junior Engineers dated 18.07.2006. It was sent to the State Government for approval. It was also stated that the fourteenth respondent by

name Alexander had passed the departmental test in the year 2003. Therefore, his name could not be included in the panel for the post of Assistant

Executive Engineer without complying with the pre-condition of working as Assistant Engineer in the main office for a period of minimum one year.

13. The contention that the Corporation did not prepare the panels deliberately for the year 2003, 2004 and 2005 was denied. It was stated that

even at the relevant time, two posts of Assistant Engineers were vacant. But, at the relevant time, the petitioner was not eligible for being included

in the panel for the post of Assistant Executive Engineers. For the period from 2003 to 2006, there was a ban order by the State Government and

even if any panel is prepared, it could not have been given effect to, in view of the ban order. The similar stand was taken by the fourteenth

respondent in his counter affidavit. The fourteenth respondent also additionally stated that at the relevant time, the petitioner was kept under

suspension for certain misconduct. However, it is unnecessary to go into the other details, since the petitioner has not made out any case either for

altering the seniority list or for inclusion of his name in the panel on the earlier years.

14. In view of the reasons stated above, the Writ Petition cannot be countenanced by this Court. Hence, the Writ Petition stands dismissed.

Consequently, the connected miscellaneous petitions are closed. No costs.