

(2011) 08 MAD CK 0348

Madras High Court

Case No: Writ Petition No. 19087 of 2009

M. Sekar

APPELLANT

Vs

The Director of Municipal
Administration and The
Executive Officer

RESPONDENT

Date of Decision: Aug. 18, 2011

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: N. Balamuralikrishnan, for V. Vijayshankar, for the Appellant; R.M.
Muthukumar, G.A. for R1 and J. Rajakalifulla, for R2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner has filed the present writ petition, seeking to challenge an order dated 13.08.2009 and after setting aside the same seeks for a direction to to regularize his service in the post of Water Pipeline Fitter in the scale of pay of Rs. 3050-4590. By the impugned order, the Petitioner was informed that under the Municipal Engineering Service Rules, for the post of Water Pipeline Fitter, qualification of ITI and 10th Standard was fixed as educational qualification and since the Petitioner do not have the said educational qualification, his request cannot be considered.

2. Initially, when the matter came up on 17.09.2009, private notice was ordered to be served on the Respondents. Subsequently, on 21.10.2009, the writ petition was admitted.

3. On notice from this Court, the second Respondent has filed a counter affidavit dated 04.10.2010.

4. It is the case of the Petitioner that he joined as NMR Employee under the second Respondent Municipality, which was at that time Town Panchayat in the year 1993. He had cleared 10th standard and was put in charge of Water Supply. Subsequently, the second Respondent was upgraded as 3rd Grade Municipality. It was stated by the Petitioner that by G.O. Ms. No. 198 Municipal Administration and Water Supply Department, dated 26.10.1998, the State Government fixed norms and created posts in respect of Water Supply Department in Municipalities and Town Panchayats.

5. It was stated that the post of Water Pipeline Fitter was created for Municipalities having water supply lines over 30 kms and 10th Standard with ITI was fixed as the educational qualification. In respect of Town Panchayats, a maintenance staff for the water supply was created if any water supply is done through overhead tank or a surface level tank and having more than 500 water supply lines and Rs. 1000/- was paid on consolidated basis with Rs. 75/- as annual increment. The qualification prescribed therein was only 8th standard.

6. In the said GO, it was stated that as on the date of 31.12.1996, those who were working on daily rated basis can be fixed in the consolidated pay if they were in for a long time after being sponsored by the Employment Exchange, though registered in the Employment Exchange but not sponsored through Employment Exchange and engaged on daily wages basis, they can be appointed on the basis of their seniority in the Employment Exchange; in case they have not registered in the Employment Exchange, but working as daily rated workers, they can be directed to register their names in the employment exchange and thereafter, on the basis of seniority, they can be appointed. But such appointee must have educational and technical qualifications prescribed in the said GO. In case, they are not in possession of educational and technical qualification, necessary relaxation may be given after getting orders from the Director of Municipal Administration or Director of Town Panchayat and those persons can be appointed on the basis of the educational qualification in the minimum scale of pay.

7. The Petitioner was appointed subsequently by the second Respondent on 01.10.2001 on consolidated basis. He was also informed that he was appointed as Water Supply Maintenance Fitter on a consolidated pay at Rs. 1700/- per month and after three years, assessment of his work will be done and he will be fitted into time scale of pay and necessary proposal in this regard will be sent to the Director of Town Panchayat.

8. It was contended by the Petitioner that that one such daily rated worker by name K. Chinnusamy, who was appointed as Water Supply Maintenance Fitter by Appakoodal Town Panchayat, proposals were sent to the Director of Town Panchayat and the Director of Town Panchayat by proceedings dated 23.01.2002 after referring to G.O. Ms. No. 198 MAWS dated 26.10.1998 granted necessary relaxation in respect of K. Chinnusamy. Subsequently, the second Respondent which

was upgraded as Municipality by proceedings dated 27.02.2006 placed the Petitioner as Water Tank Operator instead of Water Pipeline Fitter since he does not have the educational qualification and fixed the scale of pay as Rs. 2550-3200/-. The Petitioner thereafter sent a representation dated 17.11.2008 and requested that he should be put as Water Pipeline Fitter as was done in the case of K. Chinnusamy who also did not have the technical qualification was granted necessary relaxation by the Director of Town Panchayat in terms of G.O. Ms. No. 198 dated 26.10.1998.

9. It is on the basis of the Petitioner's representation, a proposal was sent by the Regional Director of Municipal Administration, Chenglepet to the first Respondent Director of Municipal Administration. But however by the impugned order dated 13.08.2009, the first Respondent rejected the case of the Petitioner stating that the Petitioner did not possess the educational qualification for the post of Pipeline Fitter.

10. The contention raised by the Petitioner was that at the time when the GO was issued, it also took note of persons who were working on daily wages and gave power to the Director of Town Panchayat / Director of Municipal Administration to relax such qualification and such a qualification having been relaxed in case of one Chinnusamy of Appakoodal Panchayat, he should also be given the similar benefit. It is in that premises the writ petition came to be filed.

11. In the counter affidavit filed by the second Respondent, it was claimed that the Petitioner did not possess the technical qualification of ITI Fitter Trade. He had also not passed SSLC and he was appointed as Water Supply Tank Operator and also his services have been regularised on his willingness. Though the Petitioner's request for relaxation was sent to the first Respondent, the same was rejected and therefore, the second Respondent cannot help the case of the Petitioner.

12. In the present case, it is not as if the Petitioner's entry into the service of the second Respondent was in an irregular manner. Even when G.O. Ms. No. 198 MAWS dated 26.10.1998 was issued, the second Respondent was continued to be a Town Panchayat and the Petitioner was given appointment in terms of the said GO as Water Tank Operator and it is not as if the GO does not take into account cases that of the Petitioner as it provides for relaxation by the appropriate authority namely either Director of Town Panchayat or the Director of Municipal Administration as the case may be. As rightly pointed out by the Petitioner, in the case of one Chinnusamy, the Director of Town Panchayat can grant relaxation in terms of the GO to hold the very same post merely because the second Respondent was subsequently upgraded as Municipality, (Grade III) the Director of Municipal Administration should not take a different stand. This is especially in the context that the Petitioner has been holding the post since 1993 and for more than 18 years.

13. The question as to whether educational qualification can be relaxed considering the long length of service came up for consideration in [Bhagwati Prasad Vs. Delhi](#)

[State Mineral Development Corporation, .](#) In that judgment, the Supreme Court held that in case of long service, the educational qualification can be relaxed as the gained experience can be equated to the educational qualification. It was held as follows:

Practical experience would always aid the person to effectively discharge the duties and is sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a fact to reckoned with but it is at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years experience, ignoring artificial break in service for short period/periods created by the Respondent, in the circumstances, would be sufficient for confirmation.

14. In view of the above, the writ petition stands allowed and the impugned order stands set aside. However, there will be no order as to costs.

15. The first Respondent is hereby directed to consider the proposal sent by the Regional Director of Municipal Administration in the case of the Petitioner in the light of G.O. Ms. No. 198, MAWS Department, dated 26.10.1998 and in the light of the legal precedent set out above including the relaxation given in favour of one K. Chinnusamy of Appakoodal Town Panchayat. Necessary order should be passed in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order and the result shall be communicated to the Petitioner.