

COMMISSIONER OF MUNICIPAL ADMINISTRATION & ANR. A

v.

M. C. SHEELA EVANJALIN & ORS.

(Civil Appeal No. 6565 of 2019)

AUGUST 22, 2019 B

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Service Law: Appointment – On facts, initial appointment of respondent as Road Gang Mazdoor – Respondent claimed appointment to the post of Overseer on basis of her qualification – Several litigations – Pursuant to the order by the High Court, respondent appointed as Revenue Assistant – Thereafter, respondent filed writ petition seeking appointment to the post of Public Work Supervisor, which was rejected – Subsequently, she filed another writ petition – Issuance of direction by the High Court to appoint respondent as Town Planning Commissioner – Respondent sought appointment but her claim was rejected – Contempt petition by the respondent alleging disobedience wherein the appellants were told to comply with the order – On appeal, held: Possession of Diploma in Civil Engineering is not entitlement to a public post unless such post is advertised and opportunity is given to all the eligible candidates to apply for the post in terms of applicable rules – Post of Town Planning Inspector can be filled up either by way of promotion or by direct recruitment – Respondent is not in the feeder cadre for appointment to the post of Town Planning Inspector – In the absence thereof, the High Court committed illegality in directing the consideration for appointment of the respondent to the post of Town Planning Inspector – The General Rules provide for promotion for the post of Revenue Assistant to the post of Revenue Inspector but not to the post of Town Planning Inspector – Town Planning Assistant Draughtsman is the feeder cadre for promotion of Town Planning Inspector and that the Revenue Assistant is not the feeder cadre nor the respondent can claim any right to appointment only on the basis of her educational qualifications – Once the appointment to the post of Town Planning Inspector is not contemplated from amongst the Revenue Inspectors, the respondent cannot claim any parity on the basis of illegality committed by the Municipality – Thus, the directions by the High Court are wholly C D E F G H

- A *without any legal basis and, thus, cannot be sustained and is set aside.*

Constitution of India: Art. 309 – Appointment to public post – Manner of – Qualification for the post is not the criteria as any appointment to a public post cannot be made merely on the basis of

- B *possessing required educational qualifications – Any appointment to a public post can be made in the manner provided by the applicable recruitment rules in terms of law enacted u/Art. 309 or its proviso – In absence thereof, the executive instructions may also prescribe the eligibility conditions for appointment to the post.*

- C **Allowing the appeal, the Court**

HELD: 1.1 The qualification for the post is not the criteria for appointment to the public post as any appointment to a public post cannot be made merely on the basis of possessing required educational qualifications. Any appointment to a public post can

- D **be made in the manner provided by the applicable recruitment rules in terms of law enacted under Article 309 of the Constitution of India or the Rules made in terms of proviso to Article 309 of the Constitution of India. In the absence of law and/or the rules, the executive instructions may also prescribe the eligibility**

- E **conditions including the educational qualifications, experience, age limit for appointment to the post. In the instant case, the respondent sought appointment as Revenue Assistant only on the basis of the fact that she possesses Diploma in Civil Engineering. The possession of Diploma in Civil Engineering is not entitlement to a public post unless such post is advertised**

- F **and opportunity is given to all the eligible candidates to apply for the post in terms of applicable rules. [Para 15] [166-E-G]**

1.2 The Municipality Commissioner appointed the respondent as Revenue Assistant way back in 2006. However, the greed of the respondent for further promotion or appointment

- G **to the higher post did not end. She wanted to be appointed as Town Planning Officer again on the strength of her qualification. As per the facts on record, the post of Town Planning Inspector is governed by the Tamil Nadu Municipal Town Planning Service Rules, 1970 and that such post can be filled up either by way of**

- H **promotion or by direct recruitment. The respondent is not in the**

feeder cadre for appointment to the post of Town Planning Inspector. In the absence of her being in feeder cadre, the High Court committed illegality in directing the consideration for appointment of the respondent to the post of Town Planning Inspector. Town Planning Officer Grade II is a promotional post from amongst Town Planning Inspectors, who has worked in regular capacity for a period of ten years as per the Rules. The General Rules provide for promotion for the post of Revenue Assistant to the post of Revenue Inspector but not to the post of Town Planning Inspector. The Town Planning Assistant Draughtsman is the feeder cadre for promotion of Town Planning Inspector and that the Revenue Assistant is not the feeder cadre nor respondent can claim any right to appointment only on the basis of her educational qualifications. [Para 16, 17] [167-A-E]

1.3 Appointment to the post of Town Planning Inspector from the post of Revenue Assistant in the Municipality may be illegal and not warranted by the recruitment rules. There cannot be any parity in the illegality. Once the appointment to the post of Town Planning Inspector is not contemplated from amongst the Revenue Inspectors, the respondent cannot claim any parity on the basis of illegality committed by Municipality. [Para 19] [167-G-H; 168-A]

1.4 The manner in which the High Court issued directions time and again shows utter disregard to the basic principles of law and then calling upon the officers to face contempt if the directions are not complied with. The orders of the High Court are patently illegal, unwarranted and cannot be sustained and thus, set aside with cost of Rs.20,000/- as the respondent initiated totally untenable and frivolous proceedings. [Para 18, 20] [167-F; 169-B]

Chandigarh Administration & Anr. v. Jagjit Singh & Anr. (1995) 1 SCC 745 : [1995] 1 SCR 126 ; Kulwinder Pal Singh & Anr. v. State of Punjab & Ors. (2016) 6 SCC 532 : [2016] 4 SCR 439 – referred to.

Case Law Reference

[1995] 1 SCR 126	referred to	Para 19	G
[2016] 4 SCR 439	referred to	Para 19	H

- A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6565
of 2019.

From the Judgment and Order dated 22.03.2017 of the Madurai Bench of Madras High Court in Writ Appeal (MD) No. 163 of 2015.

- B S. Nanda Kumar, Ms. Deepika Nanda Kumar, Saran Kumar,
P. Palanivelu, P. R. Mandal, Naresh Kumar, Advs. for the Appellants.

Ms. Anitha Shenoy, Sr. Adv., T. Sakthi Kumaran, Anirudh Sanganeria, Ms. Karpaga Saravana Priya, Surinder Kumar Gupta, Advs., for the Respondents.

- C The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. Leave granted.

- D 2. Challenge in the present appeal is to an order passed by the Division Bench of Madurai Bench of the Madras High Court on March 22, 2017 whereby, an order passed by the learned Single Bench on June 18, 2014 was not interfered with.

- E 3. The respondent No. 1 in the present appeal was appointed as Road Gang Mazdoor on July 12, 1988 by the Kuzhithurai Municipality in pursuance of the names recommended by the District Employment Exchange Officer. The respondent filed Writ Petition No. 11518 of 1990 before the High Court on the ground that she possesses Diploma in Civil Engineering and that Kuzhithurai Municipality has invited applications through Employment Exchange for appointment to the post of Overseer. She projected her claim for consideration for appointment as Overseer.
- F She filed writ petition before the High Court when her claim was not considered for appointment to the post of Overseer. The High Court, on October 5, 1990, passed an order directing the appellants to consider the claim of the respondent for appointment to the post of Overseer along with others who have been sponsored through the Employment Exchange.

- G 4. The services of the respondent were terminated on November 30, 1992 by the Municipal Commissioner, Kuzhithurai Municipality. Aggrieved by the said termination order, she filed Original Application (OA) No. 622 of 1993 before the Tamil Nadu Administrative Tribunal. However, the decision of the said application is not on record. She filed H another OA No. 3517 of 2002 before the Tamil Nadu Administrative

Tribunal¹ wherein, a direction was issued on June 25, 2002 to consider the claim of the respondent for absorption in the vacancies which may arise in future. A

5. The respondent filed Writ Petition No. 1392 of 2005 before the Madurai Bench of the Madras High Court claiming direction to be given to the appellants for disposal of her representation dated March 19, 2003 subsequent to the order passed by the Tribunal. The High Court directed the appellants to dispose of the representation of the respondent in accordance with law and in terms of order passed by the Tribunal in OA No. 3517 of 2002. B

6. The appellants filed Writ Petition No. 25330 of 2005, aggrieved against an order passed by the Tribunal on June 25, 2002. The writ petition was dismissed on account of delay in challenging the order passed and also for the reason that the said direction was given by the Tribunal only to consider the respondent for absorption against the future vacancies. C

7. The respondent again filed Writ Petition No. 34131 of 2005 before the High Court to consider her claim for absorption as Overseer. The said writ petition was decided on December 2, 2005 with a direction to the appellants to consider the claim of the respondent within a period of eighteen weeks from the date of receipt of copy of the order. The Commissioner of Municipal Administration, Chennai communicated on March 8, 2006 to the State Government with copy to the respondent that the claim of the respondent, *inter alia*, was not acceptable on the following reasons: D

**“WP No. 3413/2005 and WP No. 37001/2005 dtd.
02.12.2005** F

Direction to CMA and Municipal Commissioner to consider the claim of the petitioner based on the observation of TNAT in O.A. No. 3517/2002. E

Out of four persons appointed irregularly as mentioned above, one died and two others were absorbed in lower level posts like Helper based on TNAT and High Court orders. When vacancies were available, there are several irregularities in the original appointment of the case in G

¹ Tribunal H

- A question, the main being the violation of the ban of filling up the vacancy in the post of NMRs. For Road Gang Mazdoor DCE qualified candidates should not have been invited. As the individual had worked continuously four years having been sponsored by the Employment Exchange she had acquired right over absorption in regular capacity as per Judicial Interpretations in several cases. At present there is no vacancy in Kuzhithurai Municipality suitable to her.
- B Hence, I request the Government to order for restoring her as NMR for the time being to comply with the Court orders.
- C As a negative decision would only prolong the litigation in High Court and we have to ultimately lose, as several other similar cases had been decided in favour of the individuals for absorption. The Municipality which has poor financial health had already spent substantial money to defend in vain the case by way of advocate fees and other travel expenses for the staff.”
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8. The respondent was informed on May 11, 2006 by the Commissioner Kuzhithurai Municipality that there was a ban imposed by the Government not to appoint casual labour vide Government Order dated October 12, 1974 and there was no vacancy to provide suitable post for her qualifications.

9. Subsequently, Commissioner, Kuzhithurai Municipality passed an order of appointing the respondent as Revenue Assistant against one of the two vacancies in the pay scale of 3200-85-4900 on August 10, 2006.

10. After securing appointment as Revenue Assistant, the respondent started another round to claim appointment to the post of Public Works Supervisor vide letter dated September 8, 2007. She reiterated such request on May 29, 2008 for appointment to the post of Public Works Supervisor. She filed Writ Petition (MD) No. 6825 of 2008, which was disposed of with a direction to the Commissioner of Municipal Administration to pass final order on the recommendation of Commissioner, Kuzhithurai Municipality within eight weeks. Her claim for appointment as Public Works Overseer was rejected by the Director of Municipal Administration on December 30, 2008.

11. The respondent filed Writ Petition (MD) No. 5698 of 2009 which was decided on June 18, 2014 wherein, direction was issued to appoint the respondent as Town Planning Inspector. The said direction was issued by recording the following findings:

“The petitioner has got a chequered history. She had to obtain her rights through this Court, since 1990 onwards. After continuous legal battle, eventually, she was appointed as Revenue Inspector in the year 2006 and she was working as such. As far as the eligibility is concerned, in paragraph Np.7, the fourth respondent admits that she is qualified for the post, which she seeks for, in this Writ Petition. However, the respondents state that the rules alone are not applicable to the petitioner. As rightly pointed out by the learned counsel appearing on behalf of the petitioner, when there is a proceedings of the Municipal Commissioner, Nagercoil Municipality, Kanyakumari District to the effect that both General Rules as well as the Tamil Nadu Municipal Town Planning Service Rules, 1970 are followed to fill up the post of Town Planning Inspector and also in view of the facts narrated above, there is no justifiable reason to ignore the claim of the petitioner, despite the fact that all along, she has obtained favourable orders from this Court. If both the rules are applied in the case on hand, the petitioner comes within the zone of consideration. Therefore, the impugned order passed by the second respondent in proceedings Na.ka.No. 43733/08/KI2 dated 30/12/2008 is quashed. Consequently, the second respondent is directed to appoint the petitioner as Town Planning Inspector, in any one of the Municipalities, within a period of six weeks from the date of receipt of a copy of this order. While doing so, since the fifth respondent in this Writ Petition has no say as regards the claim of the petitioner, this Writ Petition is dismissed in respect of the fifth respondent.”

12. The appeal against the said order was dismissed on March 22, 2017 which is the order challenged in the present appeal.

13. The respondent on the basis of the order passed by the High Court sought appointment to the post of Town Planning Inspector for the reason that she has Diploma in Civil Engineering with first class on August 6, 2014. On April 27, 2017, Commissionerate of Municipal

- A Administration, Chennai rejected the claim of the respondent on the ground that the post of Town Planning Inspector is governed by Tamil Nadu Municipal Town Planning Service Rules, 1970² and that the method of appointment for the post of Town Planning Inspector is either by direct recruitment or by promotion from the post of Town Planning Assistant Draughtsman. The post of Revenue Assistant is governed by Tamil Nadu Municipal General Service Rules, 1970³. Therefore, she is not holding a feeder category post for appointment to the post of Town Planning Inspector, and thus not eligible for appointment to the post of Town Planning Inspector.
- C 14. The respondent filed contempt petition alleging disobedience of the order dated March 22, 2017 passed by the High Court. In Writ Appeal (MD) No. 163 of 2015 filed by the appellants, the High Court gave opportunity to the appellants to comply with the order failing which the contemnors were called upon to appear in person.
- D 15. We find that the orders of the High Court are patently illegal and unwarranted. The respondent was initially appointed as Road Gang Mazdoor. She came to be appointed as Revenue Assistant in pursuance of the orders passed by the Madras High Court for the reason that she is qualified for such post. The qualification for the post is not the criteria for appointment to the public post as any appointment to a public post cannot be made merely on the basis of possessing required educational qualifications. Any appointment to a public post can be made in the manner provided by the applicable recruitment rules in terms of law enacted under Article 309 of the Constitution of India or the Rules made in terms of proviso to Article 309 of the Constitution of India. In the absence of law and/or the rules, the executive instructions may also prescribe the eligibility conditions including the educational qualifications, experience, age limit for appointment to the post. In the present case, the respondent sought appointment as Revenue Assistant only on the basis of the fact that she possesses Diploma in Civil Engineering. The possession of Diploma in Civil Engineering is not entitlement to a public post unless such post is advertised and opportunity is given to all the eligible candidates to apply for the post in terms of applicable rules.
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² Rules

³ General Rules

16. The fact remains that the Commissioner, Kuzhithurai Municipality has appointed the respondent as Revenue Assistant way back in 2006. However, the greed of the respondent for further promotion or appointment to the higher post did not end. She wanted to be appointed as Town Planning Officer again on the strength of her qualification of Diploma in Civil Engineering. As per the facts on record, the post of Town Planning Inspector is governed by the Tamil Nadu Municipal Town Planning Service Rules, 1970 and that such post can be filled up either by way of promotion or by direct recruitment. The respondent is not in the feeder cadre for appointment to the post of Town Planning Inspector. In the absence of her being in feeder cadre, the High Court committed illegality in directing the consideration for appointment of the respondent to the post of Town Planning Inspector. It may be noticed that Town Planning Officer Grade II is a promotional post from amongst Town Planning Inspectors, who has worked in regular capacity for a period of ten years as per the Rules.

17. The stand of the respondent that the post of Town Planning Inspector is governed by the General Rules, is not made out as such Rules provide for promotion for the post of Revenue Assistant to the post of Revenue Inspector but not to the post of Town Planning Inspector. The Town Planning Assistant Draughtsman is the feeder cadre for promotion of Town Planning Inspector and that the Revenue Assistant is not the feeder cadre nor the respondent can claim any right to appointment only on the basis of her educational qualifications.

18. We find the manner in which the High Court has issued directions time and again shows utter disregard to the basic principles of law and then calling upon the officers to face contempt if the directions are not complied with. Such directions are wholly without any legal basis and, thus, cannot be sustained.

19. At this stage, it may be mentioned that learned counsel for the respondent referred to appointment to the post of Town Planning Inspector from the post of Revenue Assistant in the Nagercoil Municipality. We find that such appointment may be illegal and not warranted by the recruitment rules. It is well settled that there cannot be any parity in the illegality. Once the appointment to the post of Town Planning Inspector is not contemplated from amongst the Revenue Inspectors, the respondent cannot claim any parity on the basis of illegality

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- A committed by Nagercoil Municipality. Reference can be made to *Chandigarh Administration & Anr. v. Jagjit Singh & Anr.*⁴ and *Kulwinder Pal Singh & Anr. v. State of Punjab & Ors.*⁵. This Court in *Kulwinder Pal Singh*, held as under:
- B “16. The learned counsel for the appellants contended that when the other candidates were appointed in the post against dereserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. In *State of U.P. v. Rajkumar Sharma* [State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330 : 2006 SCC (L&S) 565] it was held as under: (SCC p. 337, para 15)
- C “15. Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha v. State of U.P.* [Sneh Prabha v. State of U.P., (1996) 7 SCC 426]; *Jaipur Development Authority v. Daulat Mal Jain* [Jaipur Development Authority v. Daulat Mal Jain, (1997) 1 SCC 35] ; *State of Haryana v. Ram Kumar Mann* [State of Haryana v. Ram Kumar Mann, (1997) 3 SCC 321 : 1997 SCC (L&S) 801] ; *Faridabad CT Scan Centre v. DG, Health Services* [Faridabad CT Scan Centre v. DG, Health Services, (1997) 7 SCC 752] ; *Jalandhar Improvement Trust v. Sampuran Singh* [Jalandhar Improvement Trust v. Sampuran Singh, (1999) 3 SCC 494]; *State of Punjab v. Rajeev Sarwal* [State of Punjab v. Rajeev Sarwal, (1999) 9 SCC 240 : 1999 SCC (L&S) 1171] ; *Yogesh Kumar v. Govt. (NCT of Delhi)* [Yogesh Kumar v. Govt. (NCT of Delhi), (2003) 3 SCC 548 : 2003 SCC (L&S) 346] ; *Union of India v. International Trading Co.* [Union of India v. International Trading Co., (2003) 5 SCC 437] and *Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit v. Indore Development Authority* [Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit v. Indore Development Authority, (2006) 2 SCC 604].”
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- H ⁴(1995) 1 SCC 745
⁵(2016) 6 SCC 532

Merely because some persons have been granted benefit illegally A or by mistake, it does not confer right upon the appellants to claim equality.”

20. In view of the above, we find that the order of the High Court dated March 22, 2017 cannot be sustained and is, thus, set aside with cost of Rs.20,000/- as the respondent has initiated totally untenable and frivolous proceedings. The respondent shall deposit costs with Tamil Nadu Legal Services Authority within three months from the date of this judgment. The appeal is allowed. B

Nidhi Jain

Appeal allowed.