

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.11590 of 2011
& M.P.No.1 to 3 of 2011

Raja Mahesh Kumar, M.E. (Civil - Structural)

...Petitioner

-Vs.-

1. The Secretary to Government
Housing and Urban Development Department
Secretariat
Chennai-600 009.
2. The Member Secretary
Chennai Metropolitan Development Authority
No.9, Gandhi-Irwin Road
Chennai-8.
3. Mr.M.Balamurugan, B.E. (Electrical)

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 12 August 2010 Ref.Proc.No.E2/11784/2010 and the consequential communication dated 12 April 2011 Ref.Memo No.E2/5586/2011 and all further proceedings and quash the same and consequently direct the second respondent authority to follow the Madras Metropolitan Development Authority Service Regulation 1980 and grant promotion to the petitioner for the post of Executive Engineer.

For Petitioner : Mr.S. Thankasivan
For Respondents : Mr.P. Sanjaigandhi
Addl.Govt. Pleader for R.1
Mr.Raja Srinivas for R.2
Mr.L.Chandrakumar
for Mr.R.Mohan for R.3

ORDER

The petitioner got promotion to the post of Assistant Executive Engineer by operating the Draft Service Regulations and by relaxing the condition regarding five years of completed service as Assistant Engineer. However when it comes to promotion to the post of Executive Engineer, the petitioner is taking a "U" Turn and contending that Draft Service Regulations have statutory force and Madras Metropolitan Development Authority Service Regulations, 1980 (hereinafter referred to as "MMDA Service Regulations") should be followed, ignoring the fact that under MMDA Service Regulations there is no post of Assistant Executive Engineer.

Brief facts:

2. The petitioner was appointed as Draughtsman in Chennai Metropolitan Development Authority. The petitioner was later promoted as Assistant Engineer. The petitioner was thereafter promoted to the post of Assistant Executive Engineer by operating the Draft Service Regulations framed by the Chennai Metropolitan Development Authority.

3. While so, the Chennai Metropolitan Development Authority (hereinafter referred to as "CMDA") prepared the seniority list of Assistant Executive Engineers fit for promotion to the post of Executive Engineers. The name of the third respondent was placed above the petitioner. The petitioner therefore submitted a representation to the second respondent to give him preference while considering his case for promotion to the post of Executive Engineer in accordance with MMDA Service Regulations, 1980.

4. The request was turned down by the second respondent on the ground that Draft Service Regulations does not contain any provision for giving preference to the post graduate degree holders. The petitioner therefore challenges the seniority list dated 12 August 2010 and the consequential communication dated 12 April 2011 on the file of CMDA.

Defense:

5. The Member Secretary, Chennai Metropolitan Development Authority filed a counter affidavit wherein it was contended that only by operating Draft Service Regulations, the petitioner was given promotion to the post of Assistant Executive Engineer. According to the second respondent, the Government vide its letter No.15366/UDII (2)/04-14, Housing and Urban Development Department dated 22 March 1997 have directed to follow the provisions of the existing Service Regulations approved in G.O.Ms.No.210, H & UD dated 26 February, 1980 for all posts and whenever the service condition of the employee

or provision have not been made specifically in the existing regulation, to follow Draft Service Regulations. The CMDA further contended that as there is no provision in the approved Service Regulations for promotion to the post of Assistant Executive Engineer as Executive Engineer, they are following the Draft Service Regulations to give further promotion to the post of Executive Engineer.

Submissions:

6. The learned counsel for the petitioner by placing reliance on the proceedings dated 23 June 1982 contended that CMDA has been making appointments to the post of Assistant Executive Engineer even before framing Draft Service Regulations. According to the learned counsel, the petitioner was promoted to the post of Assistant Executive Engineer not on the basis of Draft Service Regulations. The learned counsel contended that the case of the petitioner should be considered at the first instance for promotion to the post of Executive Engineer in view of his possession of post graduate qualification which is a preferential qualification as per MMDA Service Regulations, 1980.

7. The learned Standing Counsel for CMDA justified the seniority list and the related communication challenged in the writ petition. According to the learned Standing Counsel, it was only by operating the Draft Service Regulations, the petitioner was promoted to the post of Assistant Executive Engineer. Therefore it is too late on his part to contend that CMDA is not entitled to operate Draft Service Regulations for the purpose of giving further promotion. The learned counsel produced the relevant file to substantiate his contention.

8. The learned counsel for the third respondent contended that the third respondent is senior and as such his name was rightly placed above the petitioner. According to the learned counsel, MMDA Service Regulations, 1980 does not contain detailed provisions with regard to appointment and promotion and the same made the CMDA to revise it. The Draft Service Regulations framed by CMDA is now pending with the Government for approval. According to the learned counsel there is no illegality in operating the Draft Service Regulations in view of the fact that the existing regulations does not deal with specific cases relating to promotion.

Factual Analysis:

9. The Government have framed Madras Metropolitan Development Authority Service Regulation, 1980. As per the said regulation, Assistant Engineers having experience for a period less than five

years are eligible to be promoted to the post of Executive Engineers. The proviso gives preference to a person who has acquired Master's Degree or an equivalent Diploma in Town and Country Planning or Engineering. Therefore it is clear that as per MMDA Service Regulations, 1980, in case a person is having Master's degree he would get preference over others.

10. The MMDA Service Regulations, 1980 does not contain the post of Assistant Executive Engineer. There are only three posts namely, Junior Engineer, Assistant Engineer and Executive Engineer. There is nothing like Assistant Executive Engineer in between the post of Assistant Engineer and Executive Engineer.

11. The petitioner has taken up a contention that he was not promoted to the post of Assistant Executive Engineer based on Draft Service Regulations. According to the learned counsel for the petitioner, CMDA has been promoting Assistant Engineers to the post of Assistant Executive Engineers even before preparing Draft Service regulations. Since such a contention was taken by the petitioner for the first time, I have summoned the entire file relating to Draft Service Regulations and related files dealing with promotion given to the Assistant Engineers as Assistant Executive Engineers.

12. The original file produced by the CMDA shows that the petitioner was given promotion to the post of Assistant Executive Engineer only by operating Draft Service Regulations. The CMDA for the purpose of promotion to the post of Executive Engineers prepared a list containing two names. The name of the third respondent was placed at Sl.No.1. The name of the petitioner was placed at Sl.No.2. While preparing the panel, CMDA has indicated that the petitioner is not having the required qualification of five years experience as Assistant Executive Engineer as per Draft Service Regulations. The CMDA issued order dated 21 June 2002 promoting the third respondent as Assistant Executive Engineer. The CMDA thereafter considered the question of giving promotion to the petitioner by relaxing the eligibility criteria. The note prepared by CMDA dated 3 July 2002 shows that the case of the petitioner was considered on the basis of Draft Service Regulations and it was found that he was having short fall of 15 days for inclusion of his name in the panel for promotion to the post of Assistant Executive Engineer in the year 2002-2003. The CMDA by operating Draft Service Regulations and relaxing the condition regarding completion of five years of continuous service as Assistant Engineer promoted him to the post of Assistant Executive Engineer vide order dated 23 August 2002. The petitioner is therefore not correct in his contention that he was not given promotion on the basis of Draft Service Regulations.

13. The core question is whether the petitioner being the beneficiary of Draft Service Regulations is correct in his contention that further promotion should be made only as per MMDA Service Regulations, 1980.

14. The MMDA Service Regulations, 1980 does not contain the post of Assistant Executive Engineer as a Feeder Category for promotion as per earlier Regulations to the post of Executive Engineer. The feeder category for promotion as per earlier Regulation to the post of Executive Engineer is Assistant Engineer. In case the petitioner wanted to operate MMDA Service Regulations, 1980, he should plead and prove that the post of Assistant Executive Engineer is a feeder category for appointment to the post of Executive Engineer. As per MMDA Service Regulations, 1980 only Assistant Engineer could be promoted as Executive Engineer. Such being the factual position, the petitioner cannot be heard to say that Assistant Executive Engineer like him should be promoted to the post of Executive Engineer. The petitioner having obtained the benefits of Draft Service Regulations is now claiming further promotion on the basis of the earlier Regulation which has not been followed after making Draft Service Regulations. I am therefore of the view that the second respondent was perfectly correct in revising the seniority list and issuing the related communication declining relief to the petitioner.

15. The learned counsel for the petitioners contended that there is no post of Executive Engineer (Electrical) in CMDA and as such the third respondent is not eligible for promotion. The said contention is factually incorrect in view of the letter No.E8/14394/2014 dated 21 October 2014 whereby and whereunder CMDA called for deputation to serve as Executive Engineer (Electrical). In the said communication, it is stated that there are two posts of Executive Engineers, one Executive Engineer - Civil and other Executive Engineer - Electrical. Therefore it is clear that there is a post of Executive Engineer - Electrical.

16. The file produced by CMDA contains the Draft Service Regulations approved by the authority in 2014 and forwarded to the Government. The CMDA has incorporated all the amendments upto date and vide letter dated 4 April 2014 requested the first respondent to grant approval. The Government is now seized of the matter. The entire controversy could be resolved in case a decision is taken by the Government either to accept the Draft Service Regulation or reject it. Therefore I am of the view of that the issue requires consideration by the first respondent at the earliest.

Disposition:

17. The first respondent is directed to consider the Draft Service Regulations, 2014 and pass appropriate orders on merits. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

18. Since I have already arrived at a conclusion that promotion of the petitioner was on the basis of Draft Service Regulations, the petitioner is not entitled to be promoted to the post of Executive Engineer by following MMDA Service Regulations, 1980. I therefore do not find any merit in the contention taken by the petitioner.

19. In the result the writ petition is dismissed. Consequently the connected MPs are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Tr/

To:

1. The Secretary to Government
Housing and Urban Development Department
Secretariat
Chennai-600 009.
2. The Member Secretary
Chennai Metropolitan Development Authority
No.9, Gandhi-Irwin Road
Chennai-8.

+1cc to M/s.N.Sampath, Advocate, S.R.No.16270
+1cc to M/s.S.Thankasivan, Advocate, S.R.No.16509
+1cc to Mr.R.Mohan, Advocate, S.R.No.16271
+1cc to the Government Pleader, S.R.No.16658

AD(CO)
CA(27/03/2015)

W.P.No.11590 of 2011

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