

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2015

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.Nos.1787 and 1788 of 2011

K. Karunamoorthy ...Petitioner in W.P.No.1787 of 2011
J. Maruthy ...Petitioner in W.P.No.1788 of 2011

- Vs.-

1. The Director of Rural Development &
Panchayat Raj
Panagal Buildings
Saidapet
Chennai-15.
2. The Secretary to Government
Rural Development & Panchayat Raj
Department
Fort St. George
Chennai-9. ...Respondents in both.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned orders passed by the first respondent in Rc.No.61807/09/EE2 dated 10.12.2009 and 11.1.2011 respectively; quash the same and further direct the respondents to amend the rule suitably in the method of appointment to the post of Asst. Engineer by including the Junior Engineer Cadre in the method of recruitment by transfer and promote the petitioners to the post of Asst. Engineer from the date of acquiring their B.E. qualification by including their names in the panel for the year 2006 and grant them all consequential service and monetary benefits.

For Petitioners : Mr.N.G.R.Prasad
for M/s.Row & Reddy.
For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader

ORDER

The petitioners challenge the orders dated 10 December 2009 and 11 January 2009 on the file of the first respondent rejecting the request to include their names in the seniority list of Assistant Engineer (RD) on the ground that the Tamil Nadu Panchayat Development Service Rules does not provide for transfer of service from the post of Junior Engineer to Assistant Engineer.

The facts:

2. The petitioner in W.P.No.1787 of 2011 originally acquired Diploma in Civil Engineering and entered the service as Overseer in Erumaipatti Panchayat Union. Likewise the petitioner in W.P.No.1788 of 2011 acquired Diploma in Civil Engineering and joined the service as Overseer in Soolagori Pachayat Union. The petitioners thereafter acquired B.E.(Civil) by undergoing part time course. The petitioners were appointed as Junior Engineers taking into account their possession of B.E. qualification.

3. The Government have formed a separate Engineering Wing in Rural Development Department and issued an order in G.O.Ms.No.263, Rural Development, CSS1 Department dated 27 December 1996. As per the said Government Order the post of Overseer and Junior Drafting Officer which was the feeder category of the post of Junior Engineer, were merged together and brought into the category of Overseer. As per the Government Order in G.O.Ms.No.102, Rural December E4 Department dated 25 May 1998 the Government constituted a separate service viz., Tamil Nadu Panchayat Development Engineering Subordinate Service for four categories of Senior Drafting Officer, Junior Engineer, Overseer and Road Inspector.

4. The post of Junior Engineer in the Rural Development Department came into effect as per Government Order in G.O.Ms.NO.295, Rural Development E1 Department dated 14 November 2001. As per the said Rule, the post of Assistant Engineer would be filled up by direct recruitment as well as recruitment by transfer. The candidates sponsored for recruitment by transfer must possess B.E.Degree and should have served as Overseer or Junior Draughting Officer for a period of not less than five years. The claim of the petitioners for recruitment by transfer was not considered on the ground of absence of provision enabling the Junior Engineers to be appointed as Assistant Engineers.

5. The petitioners having found that promotions were given to Overseers and Junior Draughting Officers after serving five years as Assistant Engineers, submitted representations to the respondents to appoint them as Assistant Engineers on recruitment by transfer. The representations were rejected on the ground that Rules does not permit such recruitment by transfer. The petitioners are therefore before this Court.

6. The second respondent filed a counter affidavit contending that the names of the petitioners were not considered for promotion as they were already promoted as Junior Engineers from Overseer. According to the second respondent, junior of the petitioners under the cadre of Overseer on acquiring B.E. (Civil Engineering) and on completion of five years of service in the post of Overseer was promoted as Assistant Engineer (RD). The petitioners were promoted as Junior Engineers on 28 June 2004 based on the qualification of Diploma in Civil Engineering with ten years of service as Overseer. The said promotion was taken as a ground to deny them promotion to the post of Assistant Engineer .

7. Heard the learned counsel for the petitioners and the learned Additional Government Pleader appearing on behalf of the respondents.

8. The counter affidavit filed by the second respondent shows that juniors were promoted to the post of Assistant Engineer notwithstanding the claim made by the seniors like the petitioners. The petitioners were denied promotion solely on the ground that they were promoted to the post of Junior Engineers and that there is no Rule for giving promotion to Junior Engineers as Assistant Engineers. The very same respondent has stated that Overseer and Junior Draughting Officers, who are juniors to the petitioners were all given promotions as Assistant Engineers. The promotion given to the petitioners as Junior Engineers appears to be the reason for the failure to consider them for appointment to the post of Assistant Engineers.

9. In service jurisprudence seniority has got its own weight. The juniors should not be given a march over seniors not withstanding the position that the senior is also having the required qualification for promotion. The Rule quoted by the first respondent really would case prejudice to the employees like the petitioners. Therefore I am of the view that the

matter requires consideration by the second respondent.

10. The petitioners are given liberty to submit a comprehensive representation to the second respondent. In case any such representation is given, the same should be considered and disposed of by the second respondent taking into account their seniority and the event relating to the promotion given to the Juniors as Assistant Engineer. Such exercise shall be completed within a period of four months from the date of receipt of representation.

11. The writ petitions are disposed of with the above direction. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Tr/

To

1. The Director of Rural Development &
Panchayat Raj
Panagal Buildings
Saidapet
Chennai-15.

2. The Secretary to Government
Rural Development & Panchayat Raj
Department
Fort St. George
Chennai-9.

+2ccs to M/s.Row & Reddy, Advocate SR.No.9713
1 CC to the Government Pleader SR NO 9999

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of 2011

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