

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.31139 of 2015
And
MP.Nos.1 to 3 of 2015

D.Elamparithi, AEE, Tamil Nadu Slum Clearance Board, Chennai-10 ..Petitioner

Vs.

- 1.The Secretary to Government, Housing and Urban Development Department, Fort St.George, Chennai-9
- 2.The Secretary to Government, Personnel and Administrative Department, Fort St.George, Chennai-9
- 3.The Chairman, Tamil Nadu Slum Clearance Board Chennai-5
- 4.The Tamil Nadu Slum Clearance Board rep. by Secretary to the Board, No.5, Kamarajar Salai, Chennai-5
- 5.Elangovan, Chief Engineer (temporary post specially created for the purpose of appointment/reemployment of Chief Engineer, TNSCB), Housing and Urban Development Fort St.George, Chennai-9

..Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in GO(D)No.95 Housing and Urban Development SC2(2) Department, dated 31.07.2015 and subsequent and connected paragraph 4 of GO(Rt) No.173 Housing and Urban Development SC2(2) Department of the 1st Respondent, dated 26.08.2015 and to quash the same.

For Petitioner	: Mr.S.Vadivelu
For Respondent	: Mr.S.Gunasekaran, GA-RR1 & 2 Mr.R.V.Balu-RR3&4 Mr.G.Ravisankar-R5

ORDER

Being aggrieved by re-employment of the 5th Respondent as Chief Engineer after his retirement, by GO(D) No.95 Housing and Urban Development SC2(2) Department, dated 31.07.2015 and the subsequent GO(Rt) No.173 Housing and Urban Development SC2(2) Department, dated 26.08.2015, this Writ Petition has been filed.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. The learned counsel for the Petitioner would contend that the Petitioner is an Assistant Executive Engineer and he has sought for relaxation of the Rules, which governs a minimum period of 5 years in the post of Superintending Engineer for promotion to the post of Chief Engineer. The learned counsel would further contend that by virtue of such extension or re-employment of the 5th Respondent after his retirement, the promotional hierarchy of various persons are affected including that of the Petitioner and that by virtue of such adhoc appointment of retired employees will not only deprive the benefit of promotion to persons awaiting in the feeder post, but will also choke the employment opportunity at the entry level and hence, the Petitioner has got legal right to question the same.

4. The learned Government Advocate for the Respondents 1 and 2 would mainly contend that the writ petition itself is not maintainable, as the Petitioner is a person, who is in no way connected with the subject matter and he is not the person affected and there is a specific rule, which governs a promotion policy, under which a person who has got minimum of 5 years of experience in the post of Superintending Engineer alone could be promoted as Chief Engineer and the Petitioner was lacking such qualification and at the relevant point of time, no other person had possessed the requirement of minimum 5 years of experience. The learned Government Advocate would also contend that it is only a temporary appointment or a temporary post, which was given for one year and therefore, the Petitioner cannot challenge the same. In any event, even on merits, as a policy decision when that has been done, the same cannot be challenged in a court of law.

5. The learned counsel for the 5th Respondent would contend that earlier another person who was eligible to be promoted also sought for exemption and filed a Writ Petition, wherein this court took a view that it is for the Government to consider the relaxation of the rules, but as on date it has not been considered and that a third party, who is not eligible for promotion, cannot question the appointment or re-employment or extension of other person.

6. On a careful consideration of the entire facts and circumstances of the case, including the materials available on record, one thing is certain that the Petitioner cannot be called as an affected person. This court may even consider that any person aggrieved may come to the court, but at the same time, whether by this order such person would be benefited should also be taken into consideration.

7. Definitely, the Petitioner is only an Assistant Executive Engineer and he was not even eligible for promotion as Chief Engineer, as at that time he did not possess the required qualification of 5 years of experience in the post of Superintending Engineer. If at all, the Petitioner, after possessing 5 years of experience as required, should have sought for becoming a Chief Engineer. While so, can that person be entitled to question the order appointment or extension or re-employment by the Government that too when such person is not eligible for such promotion, would be the main question. First of all, the Government has got the authority to make a policy decision to appoint any person even after retirement. It is well settled that a policy decision of the Government cannot be challenged by any person in a court of law.

8. The Petitioner has come to the court only on the ground that eligible persons were available. The learned Government Advocate has stated that the minimum requirement of 5 years of experience in the post of Superintending Engineer, which is the criteria for appointment of a person in the post of Chief Engineer, was not available to any other person at that time and therefore, on that particular date, when such a person was not available, there was no impediment for the Government for giving re-employment or extending the services of that particular person who had by then had acquired such qualification.

9. In 2013 (11) SCC 746 (Balbir Singh Bedi and State of Punjab), it has been held as under:-

"20. In view of the above, the law as regards this point can be summarised to the effect that, where a promotion is to be given on the principle of "seniority-cum-merit", such promotion will not automatically be granted on the basis of seniority alone. Efficiency of administration cannot be compromised with at any cost. Thus, in order to meet said requirements, all eligible candidates in the feeder cadre must be subject to a process of assessment to determine whether or not an individual in fact possesses the specified minimum necessary merit, and in the event that he does possess the same, his case must be

considered giving due weightage to his seniority. Furthermore, the statutory authority must adopt a bonafide and reasonable method to determine the minimum necessary merit, as is required to be possessed by the eligible candidate. It must also take into account his period of service, educational qualifications, his performance during his past service for a particular period, his written test, interview, etc. The authority must further be competent to allocate separate maximum marks on each of the aforesaid counts. Fixing such criteria, or providing for minimum necessary merit, falls within the exclusive domain of policy making. Thus, it cannot be interfered with by courts in the exercise of their judicial powers, unless the same is found to be off the mark, unreasonable, or malafide.

23. If, the instant case is examined in light of the aforesaid settled legal propositions, it becomes evident that even in the absence of the executive instructions, the State/employer has the right to adopt any reasonable and bonafide criteria to assess the merit, for the purpose of promotion on the principle of "seniority-cum-merit". The aforesaid executive instructions are nothing but codification of directions issued by this Court in the cases referred to hereinabove. Therefore, a challenge made to the executive instructions on the ground that they were issued at a date subsequent to the date on which the vacancy arose, is meaningless. The present case is not the one where, Respondent No. 5 was found to be more meritorious, in fact, the same is admittedly a case, where the appellant was unable to achieve the benchmark set, as it is evident from the record that his ACRs were average, and the benchmark fixed by the State was 'Good'."

10. In view of the above reasons and considering the facts that the Petitioner did not possess the required qualification for promotion and he is not the affected person and in view of the settled position of law that a policy decision of government cannot be questioned in a court of law, this court is of the considered view that an appointment cannot be challenged by one, who himself is not qualified to be appointed. I do not find any infirmity or illegality in the impugned orders, which warrants no interference by this court.

11. In the result, this Writ Petition is dismissed. No costs. Consequently, the connected MP are closed.

Srcm

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

- 1.The Secretary to Government, Housing and Urban Development Department, Fort St.George, Chennai-9
 - 2.The Secretary to Government, Personnel and Administrative Department, Fort St.George, Chennai-9
 - 3.The Chairman, Tamil Nadu Slum Clearance Board Chennai-5
 - 4.The Secretary,
The Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai, Chennai-5
- + 2 ccs to Mr.S.Vadivelu, Advocate Sr 38294
+ 1 cc to Mr.G.Ravisankar, Advocate Sr 38734
+ 1 cc to The Govt.Pleader, Sr 38526

KR/5/8/16

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