

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2017

PRONOUNCED ON: 01.08.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

**Writ Appeal No.1959 of 2010 and
M.P.Nos.1,2 & 4 of 2010**

R.Gurunathan

..

Appellant

vs

1.The Managing Director,
Chennai Metropolitan Water
Supply and Sewerage Board,
1, Pumping Station Road,
Madras – 600 002.

2.K.Balasubramanian

3.S.Muthukrishnan

4.R.Jeyaraman

5.T.Lakshmanan

6.G.Babu

7.L.Ramasubramanian

8.T.Thanikavale

9.P.Rajagopal

10.Y.Rubalingam

..

Respondents

(Respondents 5 to 10 were impleaded
as per the order in M.P.No.3 of 2010)

Prayer:- Writ Appeal has been filed under Section 15 of the Letter Patent Act, against the order dated 22.04.2010 made in W.P.No.16174 of 2009 passed by His Lordship Mr.Justice K.Chandru.

For Appellant : Mr.R.Thiagarajan, Senior Counsel
for Mr.P.Navaneethan
For R.1 : Mr.T.Gowthaman
For RR.2 to 10 : Mr.Balan Haridass

JUDGMENT

(Judgment of the Court was delivered by G.Jayachandran.J.,)

This writ appeal is directed against the judgment of the learned Single Judge dismissing the writ petition filed for the following relief:-

"Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, to direct the respondent Board to implement the order dated 02.04.2008 passed by the Division Bench of this Honourable Court in W.A.No.590 of 1998 and to consider the petitioner for promotion to the post of Executive Engineer for the vacancies to which the second respondent Mr.V.Velusamy in the W.P.No.21791 of 1993 who is junior to the petitioner was promoted with all the consequential benefits arising out of the same."

2.Since, the case carries a long history of legal battle, it is necessary to put forth the background of the case in nutshell to decide the issue in this Writ Appeal.

3.The Madras Metropolitan Water Supply and Sewerage Board was formed with effect from 22.07.1978. At that time, the persons employed in the local authority and who was serving in connection with Water Supply or Sewerage System within the Madras Metropolitan Area were transferred to the service of the said Board after obtaining their option. At that point of time, the persons who were observed to the Madras Metropolitan Water Supply and Sewerage Board were apprehensive of losing their service privilege and therefore, they were assured by the then Managing Director of the Board that any change in service condition will be only for better and no service condition will be changed adversely except with the prior sanction of the Government. With this assurance, the Supervisors, Draughtsmen, Surveyors and Overseers who were observed into the service of the Board were provided with Special Regulation dated 10.08.1982, regarding the method of promotion to the post of Assistant Executive Engineer. As per the Special Regulation, for the post of Assistant Executive Engineer, the candidate should possess the following qualifications:-

“(i)Persons with B.E Degree should have

served as Junior Engineer (or) Supervisor, for a period of not less than five years on duty.

(ii) Persons with Diploma should have put in a total service of not less than 10 years in one or more categories (i.e., Junior Engineer, and also in the lower post such as Draughtsman, Surveyors, Overseers). This has been confirmed in G.O.Ms.No.31 RD & LA, Dept., dated 07.01.1969 and further clarified in RD & LA Dept., Memorandum No.14357(A) M VI/78-3 dated 14.08.1978."

(Emphasis applied)

4.This was the subject matter of the first round of writ petition before this Court filed by one V.R.Rajarajan and others in W.P.Nos.4826 to 4929 of 1986. When there was 10 vacancies in the post of Assistant Executive Engineer was sought to be filled up, the battle line between the degree holder who were called as Assistant Engineers and the diploma holders who were called as Junior Engineers was drawn. At that point of time, when the writ petition was filed, there was 10 vacancies in the cadre of Assistant Executive Engineer. Relying upon a Special resolution passed by the Board, dated 21.09.1982 and taking note of the exigency to fill up the vacancy urgently, a learned Single Judge directed the Board to implement the resolution in letter and spirit and the benefit should flow to all the writ petitioners who are fit to be promoted as Assistant Executive Engineer

without insisting upon the experience of 10 years as Junior Engineers.

(Emphasis applied)

5. This order of the learned Single Judge was challenged and the Division Bench of this Court vide its order dated 26.06.1990, dismissed the appeals in W.A.Nos.4318 of 1987 etc., and upheld the order of the learned Single Judge and wherein, the Division Bench has held that "the Service Regulations, 1982 by Regulation 6-B, contemplate that there could be a relaxation in exceptional cases. Earlier on 13.03.1980, the Employment Committee has taken the decision, as already noted. If under these circumstances, to remedy the anomaly the resolution of the Board had come to be passed on 21.09.1992, we cannot row upon it as lacking a basis on intelligible differentia or the intelligible differentia having no reasonable nexus to the object sought to be served. The petitioners belong to a particular category in the class, on account of their previous service with the Corporation of Madras, the rules of which laid down a different criterion for promotion. By their getting drafted into the services of the Board, and by the force of the Service Regulations of the Board, their chances of promotion stood affected. A need to remedy the anomaly arose. Viewed from this angle, we are convinced that there is no room for grievance that there has been a violation of the principles set down in Articles 14 and 16 of

the Constitution of India, as complained of by the learned counsel for the appellants in W.A.Nos.1260 to 1263 of 1986".

6.It appears that a Special Leave Petition was filed against this order in S.L.P.No.11796 of 1990 and the same was also dismissed. Thereafter, one R.Mukundan filed a writ petition in W.P.No.14341 of 1990 seeking mandamus to direct the Madras Metropolitan Water Supply and Sewerage Board, to prepare a seniority list of Assistant Engineer/Junior Engineer on the basis of their date of qualification to the post of Assistant Executive Engineers and also to adhere the ratio of 3:1 among the eligible degree holders/Diploma holders for promotion to the post of Assistant Executive Engineer.

7.R.Mukundan plea was to maintain two separate seniority list for Assistant Engineers with engineering degree and Junior Engineers with diploma and they have to be promoted to the post of Assistant Executive Engineer in the ratio of 3:1.

8.In the said writ petition, the present appellant got himself impleaded and put forth his case in support of the diploma holders as against the degree holders. Several writ petitions were filed by various stakeholders including the Association of Assistant Engineers of Madras

Metropolitan Water Supply and Sewerage Board for and against the implementation of 3:1 ratio, while considering the Assistant Engineers/Junior Engineers to the post of Assistant Executive Engineer. The Government vide its G.O.Ms.No.218 Municipal Administration and Water Supply Department dated 24.09.1993, ordered the Board to amend the relevant provision in the Madras Metropolitan Water Supply and Sewerage Board Regulation 1982, so as to fix the ratio of 3:1 between the Assistant Engineers and Junior Engineers for the post of Assistant Executive Engineer.

9.R.Gurunathan, the appellant herein has filed a writ petition in W.P.No.21791 of 1993 challenging the amendment to Section 6 (ii) of the Special Regulations 1982 dated 17.10.1993 and the preparation of panel following the ratio of 3:1 between Assistant Engineers and Junior Engineers for promotion to the post of Assistant Executive Engineer and the promotion orders issued on the same day.

10.As usual, several writ petitions were filed supporting and opposing the 3:1 ratio for the degree holders and the diploma holders. The writ petition in W.P.No.14341/1990 filed by R.Mukundan and W.P.No.21791 of 1993 filed by R.Gurunathan, the appellant herein were heard together and disposed of by a learned Single Judge of this Court on 25.02.1998 with the

following directions:-

"123.To render substantial justice, to put an end and to the raging controversy and unending litigation, while following the law laid down by the Apex Court in 1981 (2) LLJ 223 (supra), 1982 (2) SCC 116 (Supra), 1993 (2) SCC 340 (Supra), 1996 (2) SCC 168 (supra), 1997 (3) SCC 59 (supra), and 1997 (4) ST 218 (Supra), this Court answers the contention and even in respect of vacancies that arose prior to 24.09.1993, but being filled up after 24.9.1993 on the facts of this case and on the statutory provisions governing the service, this Court holds that the amended rule which is retrospective has to be given effect and followed and the rule that existed prior to the amendment or the date on which the vacancy arose need not be followed. The point that has been framed in paragraph 70 of the judgment is answered thus.

124.It is clarified that all the vacancies in AEE cadre whether arose prior to 24.9.1993 or after that date shall be filled up by regulations as amended and the vacancies in the cadre of Assistant Executive Engineers have to be filled up in the ratio of 3:1 between Assistant Engineers – degree holders and Junior Engineers – diploma holders so long as

the statutory regulation stand as of.

125.As already held, separate seniority of the two cadres, namely, Assistant Engineers and Junior Engineers have to be drawn and promotions have to be effected at the ratio of 3:1 provided if the individual is qualified in all respects. If a particular Junior Engineer though place on the top of the seniority list is not qualified for the particular year, his date of passing of all the prescribed test alone should be taken into consideration, while promoting him and his juniors, who have acquired the qualification earlier could very well be promoted.

126.This Court further directs that promotions shall be effected depending upon the vacancies which arose both prior to 24.09.1993 based on actual vacancies and promotions shall be effected at the ratio already indicated and if a Junior Engineer is not qualified for a particular year consequent to he is not acquiring test qualifications, so also an Assistant Engineer, they shall not be considered for the year during the turn as per seniority, but will be considered for the year during which they acquire the test qualifications.

127.This Court further directs that services put in by the diploma holders in the cadre of Junior

Engineers alone be taken into consideration including the services rendered by Junior Engineers in the Local Bodies or Public Work Department before joining the services of the first respondent Board to consider as Junior Engineer for promotion, while reckoning the total service of ten years in the cadre of Junoir Engineer."

11.This judgment was challenged before the Division Bench of this Court by way of Writ Appeal in W.A.No.590/1998. While disposing the above Writ Appeal, the Division Bench has observed as under:-

"21.Therefore, we consider that the orders passed by the learned single Judge in giving reasons and coming to the conclusion as cited supra, is illegal and the same is liable to be set aside. Accordingly, the order of the learned single Judge is set aside. The respondents are directed to fill up the vacancies as per the unamended rule. The 20 vacancies has to be filled up by way of promotion following the unamended rule as on the date when the vacancies arose."

12.The sum and substance of the judgment in W.A.No.590/1998 as seen above is that the 20 vacancies of Assistant Executive Engineer fell vacant before the Rule amendment fixing quoto for degree

holders/Assistant Engineers and Diploma holders/Junior Engineers, should be filled up drawing common seniority as prevailing under the pre-amendment regulation.

13.The pre amended rule for promotion to the post of Assistant Executive Engineer is as below:-

(i)Assistant Engineers with Engineering degree, should have served 5 years whereas;

(ii)The Junior Engineer with Diploma holders should have served for 10 years.

14.The appellant herein, who joined service of Corporation of Madras as Overseer on 29.07.1975 got absorbed in the Madras Metropolitan Water Supply and Sewage Board after its formation in the year 1978. He was promoted as Junior Engineer on 14.08.1979. On compliance of 10 years of service as Junior Engineer, he becomes eligible for promotion as Assistant Executive Engineer. Therefore, his date of eligibility is 14.08.1989. Whereas, Velusamy whom the appellant claims to be his junior is a degree holder in Engineering. He was promoted as Assistant Engineer on 28.05.1980. He being a graduate, he is eligible for next promotional post of Assistant Executive Engineer on completing 5 years of service as Assistant

Engineer.

15. While fact being so, on the disposal of the Batch of writ petitions by the learned Single Judge vide common order dated 25.02.1998, in W.P.No.14341 of 1990 etc., the Board vide its proceeding dated 18.03.1998, promoted 20 Assistant Engineers/Junior Engineers as Assistant Executive Engineers following 3:1 ratio in deference to the High Court judgment.

16. Meanwhile, the appeals were filed against the single Judge order. In the batch of W.A.Nos.590/1998 etc., the Division Bench reversed the finding of the single Judge. It directed to fill up the 20 vacant post of Assistant Executive Engineer as per the unamended Rule, on the date when the vacancies arose. Though the Board took up the matter to the Supreme Court, the Special Leave Petition, filed by the Board was dismissed. On the same line, the writ petition in W.P.No.2039 of 1994 filed by the Junior Engineers/Diploma holders was also allowed on 02.03.2002, holding that the ratio 3:1 will not apply for the vacancies which arose prior to the amendment.

17. The appellant herein, alleging that the direction of the Division Bench given in W.P.No.590/1998 etc., was not given effect, filed

W.P.No.16174/2009, to direct the respondent Board to implement the order of the Division Bench in W.A.No.590/2008 dated 02.04.2008.

18.As a fact of the matter, even if combined seniority list among the Assistant Engineers and Junior Engineers is drawn, the appellant would not fall within 20th rank, to get the advantage of the judgment rendered in W.A.No.590/1998 etc., which specifically refers to filling of 20 posts of Assistant Executive Engineers which fall vacant prior to introduction of separate quota for degree holders and diploma holders.

19.The contention of the appellant that his seniority has to be decided only on the basis of the date of entry into service has no legs to stand, because, in the earlier round of litigation, the Court taking note of the urgent need to fill up the vacancy and the power to relax the eligibility condition conferred under the regulation thought it fit that for the vacancy fall prior to regulation 1982, the old rule of the Corporation shall apply and accordingly judgment in W.A.No.590/1998 was passed. Thereafter, sea change has taken place in the matter of reconciling the eligibility rule and service condition. Further, the Division Bench in W.A.No.590 of 1998 has not overruled the observation made by the learned single Judge in paragraph No.127 of his judgment which deals in the manner how the 10 years service has to be reckoned in the cadre of Junior Engineers. Thus,

when the learned single Judge has categorically held that the 10 years service as Junior Engineer alone has to be taken into account, while considering the diploma holder the said finding has not been disturbed by the Division Bench in W.A.No.590/1998. The contention of the appellant is that he is eligible for the post of Assistant Executive Engineer as early as in the year 1985 is baseless and contra to the law settled by the High Court.

20.The appellant was ranked 16th in the list of Junior Engineers eligible for promotion as Assistant Executive Engineer as on 23.09.1993. In the seniority list of Assistant Engineers eligible for promotion as Assistant Executive Engineer, 92 candidates are over and above the appellant. In the combined seniority list (Assistant Engineers and Junior Engineers) the appellant's rank is 108. Whether, it is combined seniority list or separate seniority list, following 3:1 ratio, the appellant is not within the zone of consideration for the identified 20 vacancies of Assistant Executive Engineer which was precisely the subject matter of writ appeal in W.A.No.590/1998.

21.The learned single Judge after thoughtful and thorough analysis of the fact and the law, has rightly held that the contention of the appellant cannot be countenanced at this distance point of time. Though, his other observation regarding dismissal of contempt petition and pendency of Special Leave Petition may have lost relevance in view of the judgment of

the hon'ble supreme Court in **Commissioner Karnataka Housing Board v. C.Muddaoah** reported in 2007 (7) SCC 689 and in view of the dismissal of Special Leave Petition, filed against the judgment rendered in W.A.No.590/1998 etc., however, those cannot make a ground to interfere the judgment passed in W.P.No.16174/2009.

22.From the records, it is evident that the appellant has filed this vexatious writ by litigating the issue settled long back. The dispute between the Assistant Engineer/degree holders and Junior Engineers/diploma holders can never be re-agitated after the Courts have settled the issues on two earlier occasions. The appellant has been promoted as Assistant Executive Engineer on 21.01.1999 after disposal of Writ Petition and pending disposal of W.A.No.590/1998. Except harping on a vexatious contention that his seniority is to be reckoned from the date of joining into service as Overseer in the year 1975 for the post of Assistant Executive Engineers which was once done due to administrative exigency as one time concession and on the intervention of the Court order cannot be continued perpetually after the Special Service Regulations of 1982 and G.O.Ms.No.218 dated 24.09.1993, in fixing quota for degree holder and diploma holder in the ratio of 3:1 has come into vogue. The verdict in W.A.No.590/1998 etc., is for the filling up of the 20 vacancies arose before the said Government Order. The Government Order fixing 3:1 ratio between

Assistant Engineers and Junior Engineers prospective effect for vacancies arose after 24.09.1993. Therefore, the plea of the appellant to follow pre-amended rule for vacancies after amendment is untenable. The learned Single Judge of this Court has rightly dismissed the Writ Petition and it requires no interference at the hands of this Court.

23. In the result, the Writ Appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(H.G.R.J.,) & (G.J.J.,)
01.08.2017

Index: Yes
Speaking order/non speaking order

jbm

To

The Managing Director,
Chennai Metropolitan Water
Supply and Sewerage Board,
1, Pumping Station Road,
Madras – 600 002.

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**HULUVADI G.RAMESH.J.,
AND
G.JAYACHANDRAN.J.,**

jbm



**Pre Delivery Judgment in
W.A.No.1959 of 2010**

01.08.2017

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