

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.11.2017

Delivered on: 06.12.2017

Coram

The Honourable **Mr.Justice V.PARTHIBAN**

**W.P. No.36963 of 2015 &  
MP No.2 of 2015**

1. V.Dayalan
2. P.Murugan
3. R.Loganathan
4. P.Muruganandham

... Petitioners

versus

1. The Secretary to  
Government of Tamil Nadu,  
Housing and Urban Development,  
Fort St.George, Chennai-600 009.

2. The Chairman,  
Tamil Nadu Slum Clearance Board,  
No.5 Kamarajar Salai,  
Chepauk, Chennai-600 005.

3. Mrs.Immaculate Rajeswari,  
Junior Engineer, Division IV,  
Office of the Tamil Nadu Slum Clearance Board,  
Chennai-600 005.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified

Mandamus, to call for the entire records of the 1st respondent dated 24.3.2015 and made in G.O.Ms.No.44 and consequential order of the 2nd respondent dated 29.04.2015 and made in R.C.No.J2/9985/2014, quash the order or the respondents 1 and 2 as illegal and without jurisdiction and consequently direct the respondents 1 and 2 to fix the seniority of the petitioners in the cadre of Junior Engineers for the purpose of promotion to the post of Assistant Executive Engineers in the respondent Board.

For Petitioner : Mr.N.G.R.Prasad for  
Mr.V.Chokalingham  
For Respondents : Mr.S.Gunasekaran, AGP -R1  
Mr.B.Kesavan for R2  
Mr.Prem Narayan-R3 to R5

**ORDER**

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Certiorarified Mandamus, to call for the entire records of the 1st respondent dated 24.3.2015 and made in G.O.Ms.No.44 and consequential order of the 2nd respondent dated 29.04.2015 and made in R.C.No.J2/9985/2014, quash the order or the respondents 1 and 2 as illegal and without

jurisdiction and consequently direct the respondents 1 and 2 to fix the seniority of the petitioners in the cadre of Junior Engineers for the purpose of promotion to the post of Assistant Executive Engineers in the respondent Board.

2. The petitioners and the respondents 3 to 5 are the employees of the Tamil Nadu Slum Clearance Board (hereinafter referred to "the respondent Board"). The petitioners were appointed as Surveyors whereas respondents 3 to 5 were appointed as Draughtsman Grade III. The petitioners were originally appointed between 1987 and 1994. The basic pay drawn by the petitioners in the post of Surveyor was Rs.5000/- as against the basic pay drawn by the respondents 3 to 5 as Draughtsman, was Rs.4500/-. According to the petitioners, the Government had issued G.O.Ms.1069, dated 13.10.1984, wherein, a procedure was prescribed for appointment to the higher post and the scales of different categories were also considered for promotion to the next higher post. According to the G.O., the employees who were borne on the category of

higher post with higher basic pay, will have to be considered first and if no suitable persons were available, then the persons holding the post carrying next higher scale of pay shall be considered.

3. According to the petitioners, they were admittedly carrying higher pay than the respondents 3 to 5 herein. The next avenue of promotion for both Surveyor and Draughtsman Grade III was to the post of Junior Engineer. The qualification prescribed for consideration to promotion to the post of Junior Engineer is that a person should have diploma in Civil Engineering. All the petitioners herein were in possession of Diploma in Civil Engineering having successfully passed the Diploma course during 1996-2001. Since the petitioners were fully qualified for consideration to the post of Junior Engineer, they submitted a representation dated 4.8.2000 requesting for promotion as Junior Engineer. However, their request was not considered at that point of time in view of ban on appointment which was prevailing then.

4. While matters stood thus, without considering the request of the petitioners, respondents 3 to 5 came to be promoted as Junior Engineers on 29.1.2004. According to the petitioners, the said action on the part of the Board was in violation of the provisions contained in G.O.Ms.No.1069 dated 30.10.1984. However, later on, on enquiry, it was found that the post of Surveyor was not found place as one of the feeder categories for the promotion to the post of Junior Engineer. Therefore, the petitioners approached the respondent Board to set aside the anomaly, since the employees carrying higher basic pay, had been denied promotion, whereas, the employees who were admittedly carrying lower basic pay, had been considered for promotion to the next higher post.

5. Recognizing the anomaly in the matter of promotion as between the post of Surveyor and Draughtsman, a resolution was passed by the respondent Board on 7.6.2005 proposing to amend the service rules by including the post of Surveyor as one of the feeder categories. Pending amendment to the recruitment rules, the respondent Board had promoted all the petitioners as Junior



Engineers vide proceedings dated 3.10.2005. After the promotion of the petitioners, the rules were also amended vide G.O.Ms.No.246 Housing and Urban Development (SC2-2) Department, dated 1.12.2008 by including the post of Surveyor as one of the feeder categories in the Tamil Nadu Slum Clearance Board Technical Subordinate Service, 1972.

6. The grievance of the petitioners is that since the respondents 3 to 5 had been promoted earlier to the petitioners, i.e. in 2004, inter se seniority between the petitioners and the respondents 3 to 5 had been fixed as per the date of their respective appointments and therefore, the present petitioners had suffered loss of seniority although they were drawing higher basic pay during the relevant point of time.

7. In the said circumstances, the petitioners requested for re-fixation of seniority over and above the respondents 3 to 5 by applying the principles laid down in G.O.Ms.No.1069 dated 30.10.1984. However, the request of the petitioners came to be rejected by proceedings dated 24.3.2015 and made in

G.O.Ms.No.44 and also by order dated 29.4.2015 of the second respondent. These rejection orders are put to challenge in the present Writ Petition.

8. According to the G.O.Ms.No.44 dated 24.3.2015, the persons holding the post of Surveyor, became eligible for promotion to the post of Junior Engineer only after inclusion of their post as feeder category after the amendment in the year 2008 and therefore, the grant of higher seniority does not arise.

9. Mr.N.G.R.Prasad, learned counsel appearing for the petitioners would strongly contend that the respondent Board having recognized the anomaly in the matter of promotion of two category of persons one from the post of Surveyor and other from the post of Draughtsman and granted promotion to the petitioners as early as in 2005, cannot turn around and reject the claim of the petitioners saying that their claim for seniority could be considered only after the inclusion of the post of Surveyor as feeder category in the service rules, for promotion as Junior Engineer.

10. According to the learned counsel once promotion had been given before the amendment to the rules in 2008, it must be taken that the respondent Board had applied the principles laid down in G.O.Ms.No.1069 dated 13.10.1984 in and by which event, the petitioners ought to have been shown as seniors to the respondents 3 to 5 herein. The learned counsel would submit that the seniority as assigned to the respondents 3 to 5 over and above the petitioners, is in clear violation of the principles laid down in G.O.Ms.No.1069 dated 13.10.1984, particularly with reference to the date of promotion of the petitioners in 2005 which preceded much before the amendment, which came into effect from 2008.

11. Per contra, the learned counsel appearing for the respondent Board would submit that the question of grant of higher seniority to the petitioners would not arise for the simple reason that the amendment itself came into effect from 1.12.2008 and therefore, the question of granting higher seniority to the petitioners over and above respondents 3 to 5 does not arise at all. According to the learned counsel, the petitioners having acquired right only by virtue of the amended



rule, cannot seek to enforce their right much earlier to the said amendment and seek for higher fixation of seniority.

12. The learned counsel appearing for the respondents 3 to 5 would vehemently argue that admittedly, the petitioners were appointed only on 3.10.2005 whereas, respondents 3 to 5 were appointed in 2004 itself. Therefore, by virtue of their earlier appointment, respondents 3 to 5 were rightly shown as seniors to the petitioners. According to the learned counsel, the assignment of the seniority is only consequential to the date of promotion and therefore, the grant of higher seniority cannot independently be sought for unless promotion is ordered to the higher post either earlier or on the same day when the respondents 3 to 5 were promoted.

13. This Court has given its anxious consideration to the rival submissions put forth by the learned counsel for the parties and perused the entire materials and pleadings available on record.

14. Though it appears in the first blush that the question of seniority is always reckoned from the date of promotion and in the instant case, the fact that the petitioners were promoted only

in 2005 as against the promotion of the respondents 3 to 5 in 2004, yet the case has to be decided with reference to object which, the Government was seeking to achieve vide its order in G.O.Ms.No.1069 dated 13.10.1984. According to the said G.O., the persons in the higher pay has to be considered first and only when no eligible hands were available, the persons who were carrying next higher pay, can be considered for promotion to the next post. Admittedly, in the case on hand, all the petitioners became eligible for consideration of promotion to the post of Junior Engineer in 2004 itself or before. However, their promotion could not be effected in view of non-inclusion of their post Surveyor as feeder category for promotion to the post of Junior Engineer. However, this anomaly was recognized by the respondent Board itself and therefore, the respondent Board thought it fit to promote the petitioners in 2005 itself much before the amendment to the rule came on 1.12.2008. When such action is initiated by the respondent Board to promote the petitioners as Junior Engineers without there being actual amendment taken place in 2005, the respondent Board ought to have considered and promoted the petitioners much before

respondents 3 to 5 who were considered and promoted in 2004. If such action had been initiated and effected, it should have furthered the spirit and object of G.O.Ms.No.1069 dated 13.10.1984. In any case, admittedly, the petitioners having enjoyed the higher pay during the relevant time than the respondents 3 to 5, cannot be treated differently to their disadvantage in the matter of grant of promotion and seniority. Once the Board had recognized anomaly and granted promotion to the petitioners in 2005, it ought to have taken into consideration the promotion of the respondents 3 to 5 in 2004 for assignment of inter se seniority as between the petitioners and respondents 3 to 5. Although the arguments placed on behalf of the respondents 3 to 5, had some justification, nevertheless in over all administration, the persons who enjoyed higher pay than the respondents 3 to 5, cannot be allowed to suffer loss of seniority in the face of the clear principle laid down in G.O.Ms.No.1069 dated 13.10.1984. The higher seniority which has to to be granted to the petitioners, cannot legitimately result in heart-burn as to the claim of the respondents 3 to 5 since they were working in the post which carried lesser pay than the post

of the Surveyor.

15. In the conspectus of the above discussion and in the larger interest of administration and justice, this Court is of the considered view that the claim of the petitioners as sought for in the Writ Petition has to be entertained.

16. Accordingly, the Writ Petition is allowed. The impugned orders of the 1<sup>st</sup> respondent dated 24.3.2015 and the 2nd respondent in R.C.No.J2/9985/2014 dated 29.04.2015 are hereby set aside. Consequently, respondents 1 and 2 are directed to fix the seniority of the petitioners in the cadre of Junior Engineer over and above the respondents 3 to 5 if necessary by granting them notional promotion as such for the purpose of promotion to the next higher post. This exercise shall be completed by respondents 1 and 2 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

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Index: Yes/No  
Internet: Yes/No

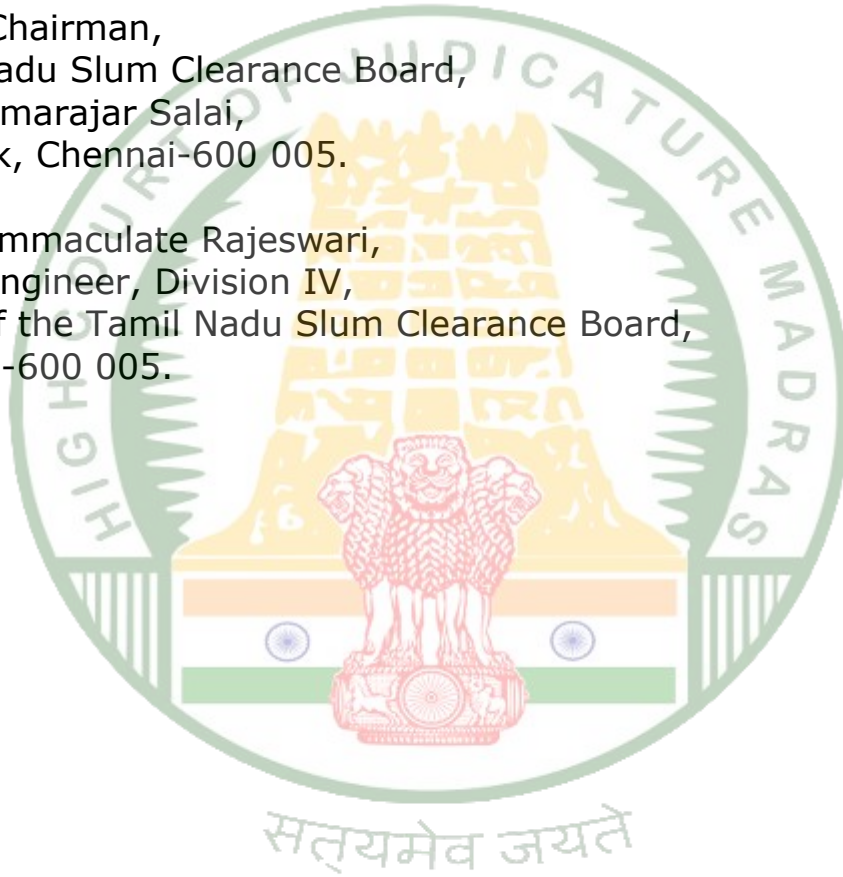
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To

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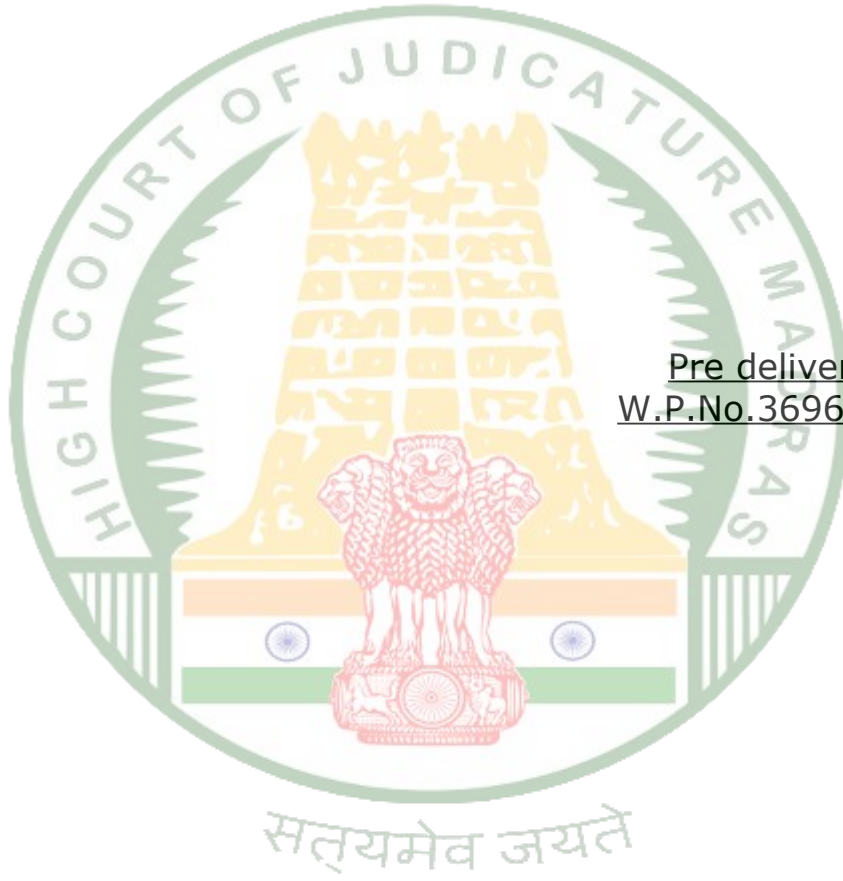


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V.PARTHIBAN, J.

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