

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Appeal No.2656 of 2012
M.P.No.1 of 2012

P.Manoharan

... Appellant

Vs.

1. The Secretary,
Government of Tamil Nadu,
Municipal Administration and Water
Supply (ME III) Department,
Fort St. George, Chennai 600 009.
 2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.
 3. A.P.Baskar
- ... Respondents

Writ Appeal under clause 15 of the Letters Patent against
the order passed in W.P.No.30152 of 2011, dated 02.11.2012.

W.P.No.30152 of 2011 : Writ Petition filed under Article 226
of the Constitution of India praying for a Writ of
Certiorarified Mandamus, Calling for the records relating to
the issue of G.O.(2D).No.113 Municipal Administration and
Water supply (MEIII) DEPT., dated 01.12.2011 issued by the 1st
respondent and the proceedings of 2nd respondent and the
proceedings of 2nd respondent in Roc.No.28388/2011/F1 dated
16.12.2011 and quash the same and consequently to direct the
2nd respondent to promote the petitioner notionally as
Assistant Executive Engineer from 20.12.2011 the date on
which the 3rd respondent has joined as Assistant Executive
Engineer pursuant to the impugned order with all consequential
monetary and service benefits.

For Petitioner : Mrs.Nalini Chidambaram,
Senior Counsel for Mrs.C.Uma

For Respondents : Mr.K.V.Dhanapalan
Special Government Pleader
for R1 & R2

Mr.A.P.Baskar,
3rd Respondent - Died

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J)

Mr.A.P.Baskar, 3rd respondent herein, then Assistant Executive Engineer, Madurai Corporation, Madurai, filed W.P.No.30152 of 2011, for a Writ of Certiorarified Mandamus, to quash G.O.2D No.113, Municipal Administration and Water Supply (MEIII) Department dated 01.12.2011, issued by the Secretary to Government, MA&WS (MEIII) Department, Fort St. George, Chennai, 1st respondent herein, and the proceedings of the Commissioner of Municipal Administration, Chepauk, Chennai, 2nd respondent herein, in Roc.No.28388/2011/F1 dated 16.12.2011 and consequently, to direct 2nd respondent to promote him notionally, as Assistant Executive Engineer from 20.12.2011, the date on which, the appellant joined as Assistant Executive Engineer, with all consequential monetary and service benefits.

2. The 3rd respondent joined the service as Assistant Engineer, by direct recruitment on 7th December' 1998. The appellant was appointed as public works overseer on 22nd August' 1990 and thereafter, was promoted as Junior Engineer on 25th January' 1996. Later, the appellant acquired B.E. Degree on 21st December' 2001 and consequently, re-designated as Assistant Engineer. The Commissioner of Municipal Administration, Chepauk, Chennai, 2nd respondent herein, prepared a seniority list for the category of Assistant Engineers, as on 31st December' 2006, vide proceedings, dated 5th April' 2010, after publishing a provisional seniority list. The 3rd respondent was placed at Sl.No.24. The appellant, who acquired B.E. Qualification on 21st December' 2001 was placed at Sl.No.72. The seniority list was published on 5th April' 2010. Based on the seniority list of Assistant Engineers, two panels for promotions to the post of Assistant Executive Engineer for the years 2010-11 and 2011-12 respectively, were drawn and published on 19th April' 2010 and 28th July' 2011 respectively. The name of the 3rd respondent was placed at Sl.No.15 in the panel for the year 2011-12. The name of the appellant was not included in the panel, as he did not come within the zone of consideration. The appellant submitted a representation to the Government, complaining that his seniority was not correctly fixed and requested to re-fix the same, taking into account the date of his initial appointment to the post of Junior Engineer viz., 25th January' 1996. The Government, without issuing notice to the 3rd respondent or other affected persons, recognized the seniority of the appellant and placed him at Sl.No.2A in the panel of Assistant Engineers, fit for promotion to the post of Assistant Executive Engineers for the year 2010-11.

3. On the challenge made by the 3rd respondent, the question framed by the Writ Court was that the appellant, who got B.E. Degree on 17th December' 2001, would get a march over

the 3rd respondent, who was appointed as Assistant Engineer directly on 2nd December' 1998. The rule position considered by the Writ Court was that a Junior Engineer on acquiring the qualification of degree in Engineering would be re-designated as Assistant Engineer from the date of acquiring such qualification and therefore, the Writ Court observed that the Government cannot be heard to say that such of those Junior Engineers, who have acquired the qualification at a later point of time would be given re-designation as Assistant Engineer retrospectively, from the date on which, they were originally appointed as Junior Engineers.

4. Taking note of the decisions of the Hon'ble Apex Court in Union of India v. Hemraj Singh Chauhan reported in 2010 (3) Scale 272, State of U.P. v. Dinkar Sinha reported in (2007) 10 SCC 548 and H.S.Vankani v. State of Gujarat reported in (2010) 4 SCC 301 and also of the fact that in case the appellant had come up with a case that he was appointed as a Junior Engineer at an earlier point of time and that his juniors were placed above him, necessarily, all those who would be affected adversely on account of revision of seniority should have been given notice and that there was nothing on record to show that the 3rd respondent was given notice and for the abovesaid reasons, quashed G.O.2D No.113, Municipal Administration and Water Supply (MEIII) Department dated 01.12.2011 issued by 1st respondent and the consequential proceedings of the 2nd respondent in Roc.No.28388/2011/F1, dated 16.12.2011. The writ Court observed that quashing the abovesaid orders, would not stand in the way of the Government to consider the issue afresh, on merits and as per law, with notice to the concerned employees, including the 3rd respondent.

5. Being aggrieved by the same, the instant writ appeal has been filed. During the pendency of this appeal, A.P.Baskar, writ petitioner/3rd respondent herein, died.

6. Inasmuch as inter se seniority is the only dispute and that the appellant has continued as Assistant Executive Engineer, Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the appellant submitted that G.O.2D.No.113, Municipal Administration and Water Supply (MEIII) Department, dated 01.12.2011, issued by the Secretary to Government, MA&WS (MEIII) Department, Fort. St. George, Chennai, 1st respondent herein and the consequential order of the Commissioner of Municipal Administration, Chepauk, Chennai, 2nd respondent herein, dated 16.12.2011, be retained.

7. The Additional Director, Municipal Administration, Chennai, has filed a counter affidavit, on behalf of the 2nd respondent and reiterating the same, Mr.K.V.Dhanapalan, learned Special Government Pleader submitted that the Government have issued G.O.Ms.No.38, MAWS (ME-III) Department, dated 22.02.2010, amending the Tamil Nadu Municipal

Engineering Service Rules and insofar as appointment of Assistant Executive Engineer, is concerned, the ratio for appointment by promotion as Assistant Executive Engineer from the post of Assistant Engineer and Recruitment by transfer from the post of Junior Engineer, was 3:1. Based on the above amendment, vide ROC.No.13990/2009/F1, dated 05.04.2010, seniority list for the post of Junior Engineer/Assistant Engineer, was prepared. He further submitted that taking note of the date of re-designation, the appellant was placed at Sl.No.72 in the seniority list between M.Karthikeyan (S.No.71) and M.Ganesan (S.No.73).

8. Learned Special Government Pleader further submitted that while the appellant was working as Municipal Engineer at erstwhile Maduravoyal Municipality (now greater Chennai Corporation), he gave a representation on 01.06.2011, stating that he was promoted as Junior Engineer on 25.01.1996 and later, when he acquired Bachelor of Engineering, exercised his option for re-designation of his post as Assistant Engineer for entitlement of monetary benefits from 17.12.2001 onwards. He has also requested to include his name in the seniority list of Assistant Engineer, with effect from the date of appointment as Junior Engineer, ie., on 25.01.1996.

9. Learned Special Government Pleader further submitted that based on the said request, Government have issued G.O.2D.No.113, Municipal Administration and Water Supply (MEIII) Department, dated 01.12.2011, including the name of the appellant, in the seniority list of Assistant Engineer at Sl.No.4A, instead at Sl.No.72. Subsequently, after including his name in the approved panel for the year 2010-11, he was promoted as Assistant Executive Engineer on 16.12.2011. Being aggrieved by the same, Mr.A.P.Baskar, Assistant Executive Engineer, 3rd respondent herein (expired) filed W.P.No.30152 of 2011 and vide order, dated 02.11.2012, this Court set aside the Government Order, dated 01.12.2011, along with the consequential order of promotion, dated 16.12.2011.

10. Learned Special Government Pleader further submitted that since the appeal is pending, the appellant has not been reverted as Assistant Engineer. Mr.A.P.Baskar (expired), 3rd respondent herein, was senior in the post of Assistant Engineer and while implementing the order made in W.P.No.30152 of 2011, dated 02.11.2012, the appellant would be entitled to be included in the subsequent panels, subject to the availability of vacancy, instead of the panel for the year 2010-11. For the abovesaid reasons, he prayed for dismissal of the writ appeal.

11. The appellant has filed a detailed re-joinder and Mrs.Nalini Chidambaram, learned Senior Counsel for the appellant submitted that stating that on 19.12.2006, a combined provisional seniority list of Assistant Engineers/Junior Engineers, in the Tamil Nadu Municipal

Engineering Services, was prepared by the Commissioner of Municipal Administration, Chennai and in the said list, the appellant was placed at Sl.No.96 and Mr.A.P.Baskar, 3rd respondent herein (expired) was placed at Sl.No.147. The Government have issued G.O.Ms.No.38, Municipal Administration and Water Supply Department, dated 22.02.2010, amending the Tamil Nadu Municipal Engineering Service Rules, 1997 and among other posts, the post of Assistant Executive Engineer is a promotional post to the feeder category posts of Assistant Engineer and Junior Engineer, in the ratio of 3:1.

12. Learned Senior Counsel for the appellant further submitted that by memorandum, dated 05.04.2010, the seniority list was bifurcated between the Assistant Engineer and Junior Engineer and the name of the 3rd respondent was shown at Sl.No.24, with reference to the date of appointment, ie., on 2nd December' 1998 and the appellant was placed at Sl.No.72 and his date of appointment as Assistant Engineer, was indicated as 17th December, 2001. She submitted that the initial date of appointment of the appellant as Junior Engineer, is 25.01.1996, which is the relevant date for determining his seniority in the combined seniority, prior to G.O.Ms.No.38, dated 22.02.2010.

13. Learned Senior Counsel further submitted that being aggrieved by G.O.Ms.No.38, Municipal Administration and Water Supply (ME-III) Department, dated 22.02.2010, fixing the ratio of 3:1 between the Assistant Engineer and Junior Engineer, for promotion to the posts of Assistant Executive Engineer, certain Junior Engineers have filed writ petitions, which were dismissed. Against which, W.A.Nos.415 of 2011, etc., batch, were filed. A Hon'ble Division Bench of this Court, vide order, dated 05.07.2013, while upholding the validity of G.O.Ms.No.38, dated 22.02.2010, has passed the following directions,

"(i) Such of those appellants/diploma holders, who would have been otherwise considered for the vacancies that were in existence prior to the coming into the force of the impugned rule will have to be considered for the promotional posts of Assistant Executive Engineer under the old rule. This direction is subject to their qualification and eligibility in accordance with the rules.

(ii) The individuals, who are promoted and accordingly covered by the first direction issued by us, will carry forward their seniority, which shall be given effect to from the date they ought to have been promoted.

(iii) Such diploma holders/promotees shall be entitled to the benefits of seniority and pay fixation flowing from such retrospective promotions. However, they shall not be entitled to the arrears of difference in salary for the period they did not actually work as Assistant Executive Engineers.

(iv) Those Executive Engineers, who have already been promoted under the new rules and who would have been promoted as per the old rules, shall not be disturbed. However they cannot claim seniority over those diploma holders/promotees, if they are juniors to them in the combined category of Assistant Engineer/Junior Engineer.

(v) The respondents 1 and 2 are directed to identify the then available vacancies which were available prior to the coming into force of the amended rules and fill the same as per the directions issued earlier within a period of eight weeks from the date of receipt of a copy of this order. They shall also comply with the other directions also within the said time."

14. Learned Senior Counsel further submitted that in the combined provisional seniority list of Assistant Engineer/Junior Engineer, prepared in the year 2006, the appellant was placed at Sl.No.96 and Mr.P.Mohan, V.Srinivasan, J.Subramanian, R.Jeyaseelan, V.Kanniah and P.Suresh Kumar, were placed at Sl.Nos.113, 127, 124, 128, 129 and 130 respectively. But in the bifurcated revised seniority list, dated 22.03.2010, the appellant was placed in Sl.No.71, whereas the above mentioned persons were placed at Sl.Nos.6 to 11. Therefore, the appellant has made a representation for adopting the seniority already communicated by Roc.No.72362/2002/F2, dated 19.12.2006. According to her, G.O.Ms.No.38, Municipal Administration and Water Supply (ME-III) Department, dated 22.02.2010, is applicable only to those persons, appointed after 22.02.2010 and not before.

15. Learned Senior Counsel further submitted that pursuant to the orders made in W.A.Nos.415 of 2011, etc. batch, dated 05.07.2013, the 2nd respondent, vide proceedings, dated 10.12.2015, has issued a revised panel for promotion to the post of Assistant Executive Engineer, for the year 2009-10. In the said panel, one K.Elankumaran, junior to the appellant, is placed at Sl.No.23 and the name of the appellant has not been included. He also made a representation, dated 18.12.2015, to the 2nd respondent, stating that in the combined seniority list published by the 2nd respondent, dated 19.12.2006, he was placed at Sl.No.98 and therefore, requested that he may be placed below Mr.A.Allavudeen in Sl.No.22 and above Mr.K.Elankumaran in Sl.No.23 and include his name in the revised panel of Assistant Executive Engineer, for the year 2009-10. However, no orders are passed in the above representation. For the abovesaid reasons, the appellant has prayed for the reliefs, stated supra.

Heard the learned counsel appearing for the parties and perused the materials available on record.

16. Pleadings disclose that the 3rd respondent (expired), was appointed as Assistant Engineer on 07.12.1998,

after acquiring B.E. Degree qualification and whereas, the appellant was appointed as public works overseer on 22nd August' 1990 and thereafter, promoted as Junior Engineer on 25th January' 1996. Later, the appellant acquired B.E. Degree on 21st December' 2001 and consequently, re-designated as Assistant Engineer.

17. In the seniority list of Assistant Engineer/Junior Engineer, as on September' 2006, the appellant was placed at Sl.No.96 and Mr.P.Mohan, V.Srinivasan, J.Subramanian, R.Jeyaseelan, V.Kanniah and P.Suresh Kumar, were placed at Sl.Nos.113, 127, 124, 128, 129 and 130 respectively. G.O.Ms.No.38, Municipal Administration and Water Supply Department, dated 22.02.2010, has been issued, amending the Tamil Nadu Municipal Engineering Service Rules and as per the amended rules, the ratio for promotion from the post of Assistant Engineer and recruitment by transfer from the post of Junior Assistant is 3:1.

18. Based on the above amendment, the Director of Municipal Administration, Chennai, vide Memorandum, dated 05.04.2010, has issued an approved panel of seniority list of Assistant Engineers, as on 31.12.2006 and Junior Engineers, as on 28.02.1999. On the basis of the above revision of seniority, the name of the 3rd respondent (deceased) was shown at Sl.No.24 and his date of appointment was indicated as 2nd December' 1998. Whereas, the appellant was placed at Sl.No.72.

19. At this juncture, the appellant has sent a representation, dated 01.06.2011, stating that he was promoted as Junior Engineer on 25.01.1996 and lateron, on acquiring B.E qualification on 17.12.2001, he was re-designated as Assistant Engineer. He exercised his option to the cadre of Assistant Engineer and that his seniority in the post of Assistant Engineer should have been reckoned from the date of appointment of Junior Engineer.

20. Action of the Government, in issuing the revised seniority list in G.O.2D No.113, Municipal Administration and Water Supply (MEIII) Department dated 01.12.2011 and the consequential promotion given to the appellant, dated 16.12.2011, have been challenged on the grounds that no notice was given to the persons, who would be adversely affected, on account of revision of seniority, the Writ Court set aside the order of the Government in G.O.2D No.113, Municipal Administration and Water Supply (MEIII) Department dated 01.12.2011, and the consequential proceedings of the Commissioner of Municipal Administration, Chepauk, Chennai, 2nd respondent herein, dated 16.12.2011. While quashing the same, liberty was given to the Government to consider the issue afresh, on merits and as per law, with notice to the concerned employees, including the 3rd respondent (died).

21. Material on record discloses that certain Junior Engineers, aggrieved over G.O.Ms.No.38, Municipal Administration and Water Supply (ME-III) Department, dated 22.02.2010, in fixing the ratio of 3:1 between the Assistant Engineer and Junior Engineer, for promotion to the posts of Assistant Executive Engineer, have filed writ petitions. Against the dismissal of the said writ petitions, appeals have been filed. A Division Bench of this Court, vide order, dated 05.07.2013, while upholding the validity of G.O.Ms.No.38, dated 22.02.2010, has issued certain directions, extracted supra.

22. Pursuant to the above, the 2nd respondent has issued a revised panel, dated 10.12.2015, for promotion to the post of Assistant Executive Engineer, for the year 2009-10, in which, the name of the appellant has not been included. Whereas, one K.Elankumaran, junior to the appellant, is placed at Sl.No.23. Therefore, the appellant seemed to have made a representation, dated 18.12.2015, to the 2nd respondent, stating that the combined seniority list published by the 2nd respondent, dated 19.12.2006, should be modified, placing him below Mr.A.Allavudeen at Sl.No.22 and above Mr.K.Elankumaran at Sl.No.23 and consequently, include his name in the revised panel of Assistant Executive Engineer, for the year 2009-10.

23. What was challenged before the Writ Court was the revision of seniority in G.O.2D No.113, Municipal Administration and Water Supply (MEIII) Department dated 01.12.2011 and the consequential proceedings of the Commissioner of Municipal Administration, Chepauk, Chennai, 2nd respondent herein, dated 16.12.2011, without giving any opportunity to the 3rd respondent and others. The appellant is stated to have ventilated his grievance, by way of representation, dated 18.12.2015, for inclusion of his name in the panel, for the year 2009-10.

24. Merely because, others have not questioned G.O.2D No.113, Municipal Administration and Water Supply (MEIII) Department dated 01.12.2011 and during the pendency of the appeal, the 3rd respondent died, the seniority of the appellant, as stood in the year 2006, cannot be directed to be maintained. It could be seen that pursuant to the directions made in W.A.No.415 of 2011, etc. batch, the seniority position has been revised and accordingly, the panel for the year 2009-10, has been drawn, in which, the name of the appellant has not been included. If the appellant is entitled to any benefits, flowing from the judgment made in W.A.No.415 of 2011, etc., batch, dated 05.07.2013, it is always open to him to take recourse under law. Revision of seniority without notice cannot be accepted and therefore, there is no error in the order impugned in the appeal.

25. With the above observations, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Secretary,
Government of Tamil Nadu,
Municipal Administration and Water
Supply (ME III) Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.

+1cc to Mr.C.Uma, Advocate, S.R.No.307
+1cc to the Government Pleader, S.R.No.743

W.A.No.2656 of 2012

LRS (CO)
CA(31/01/2017)

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