

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.4730 of 2015

and M.P.Nos.1 to 3, 6 of 2015

V.Chandran .... Petitioner

Vs.

1. The Commissioner,  
Salem City Municipal Corporation,  
Salem - 636 007.

2. K.Senthil Kumar .... Respondents  
(R2 impleaded vide order dated 13.03.2015 made in M.P.No.4 of 2015 in W.P.No.4730 of 2015)

R3. S. Senthil Kumar

R4. R. Senthil Kumar

R3 & R4 are impleaded as per order dt. 16/06/2016 by BRJ in MP No. 5/15 & MP No. 7/15 in WP No. 4730/15.

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of certiorarified mandamus calling for the records relating to the impugned proposal of the respondent issued in No.C3/2321/2015 dated 17.02.2015 dated 17.02.2015 and quash the same and consequently direct the respondent to consider the name of the petitioner for promotion as Assistant Executive Engineer by following the 3:1 ratio in the light of the orders issued by the Government in Letter No.46851/MCV/2001-1 MAWS Department dated 08.03.2002 and also in the light of the undertaking already given by the respondent in W.P.No.4193 of 2012 dated 29.06.2012.

For Petitioner : Mr.K.Doraisami, Senior Counsel  
assisted by Mr.Kandan Doraisami

For Respondents: Mr.L.Chandrakumar  
assisted by Mrs.K.Bhuvaneswari (R1)  
Mr.M.Muthappan (R2)

O R D E R

The petitioner is employed as Junior Engineer in the services of the respondent viz., Salem City Municipal Corporation and he was initially appointed as Work Inspector on 11.01.1991 based on his qualification of Diploma in Civil Engineering. The petitioner got his promotion as Junior Engineer on 03.07.1995 and his next promotion was due to the post of Assistant Executive Engineer by seniority and as per Tamil Nadu Municipal Corporation Engineering Service Rules, 1996, which came into being by virtue of the G.O.Ms.No.237, Municipal Administration and Water Supply (Election) Department dated 26.09.1996.

2.According to the petitioner, he is fully qualified for promotion to the post of Assistant Executive Engineer and there is no disciplinary action/ proceeding pending against him. The petitioner would contend that the above said Department also issued clarification in letter No.46851/MCV/2011-1 M.A. & W.S. Department dated 08.03.2001 stating that the ratio of 3:1 between Assistant Engineer and Junior Engineer shall be followed for promotion to the post of Assistant Executive Engineer. The petitioner had also submitted a representation dated 23.11.2012 to the 1<sup>st</sup> respondent/Corporation stating that already three Assistant Engineers have been promoted as Assistant Executive Engineers and since the next person M.Selvaraj is not eligible for promotion on account of disciplinary proceedings pending against him and the petitioner, being next to Selvaraj, ought to be considered to the post of Assistant Executive Engineer by following the ratio 3:1. The petitioner has also submitted a reminder dated 21.07.2014.

3.It is also contended by the petitioner that the 1<sup>st</sup> respondent had also drawn a common seniority list on 07.03.2001, contrary to the instructions in the Government Letter dated 08.03.2001 and the ratio prescribed was also put to challenge in W.P.No.4193 of 2012, wherein the 1<sup>st</sup> respondent also took a stand that the ratio of 3:1 is being followed between the Assistant Engineers and Junior Engineers for giving promotion to the post of Assistant Executive Engineers and the said submission was also placed on record by this Court.

4.The petitioner has also filed a Writ Petition in W.P.No.22128 of 2014 praying for issuance of a Writ of Mandamus directing the 1<sup>st</sup> respondent to consider his representations dated 23.11.2012 and 21.07.2014, in the light of the instructions issued in the Government Letter dated 08.03.2001 and also in the light of the undertaking given by the 1<sup>st</sup> respondent, which has been recorded in the order dated 29.06.2012 in W.P.No.4193 of 2012 and the Writ Petition is still pending on the file of this Court. The grievance expressed by the petitioner is that without following the ratio of 3:1, the Assistant Engineer viz., the 2<sup>nd</sup> respondent has been promoted as Assistant Executive Engineer and challenging the legality of the same, the petitioner came forward to file this Writ Petition.

5.Mr.K.Doraisami, learned Senior Counsel assisted by Mr.Kandan Doraisami, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and to the additional typed set of documents and would contend that as per the G.O.(Ms).No.38 Municipal Administration & Water Supply (M.E.III) Department dated 22.02.2010, amendment has been made to the Tamil Nadu Municipal Engineering Service Rules, 1997 and as per the amendment, the ratio between promotion from the post of Assistant Engineer and recruitment by transfer from the post of Junior Engineer shall be 3:1 in respect of Tamil Nadu Municipal Engineering and Water Works Service. Despite such an amendment, the 1<sup>st</sup> respondent seem to have followed old Tamil Nadu Municipal Corporation Service Rules, 1996 issued in G.O.Ms.No.237 of the Municipal Administration & Water Supply (Election) Department and therefore, prays for appropriate orders.

6.Per contra, Mr.L.Chandrakumar, assisted by Mrs.K.Bhuvaneswari, learned Standing Counsel for the 1<sup>st</sup> respondent Corporation has drawn the attention of this Court to the counter affidavit of the 1<sup>st</sup> respondent and would contend that necessary instructions have been issued to implement the service rules has been published in Annexure I of the G.O.Ms.No.237 Municipal Administration & Water Supply Department dated 26.09.1996 and accordingly, in the ratio of 3:1, the seniority list was drawn between Assistant Engineers and Junior Engineers and it was also clarified in the said rules that during the fixation of interse seniority, some of the Junior Engineers may remain without any place in the list and therefore, as a special case, the names of the remaining Junior Engineers may be placed at the end of the seniority list and they may be considered for promotion to the post of Assistant

Executive Engineer without re-fixing the seniority in the ratio of 3:1 along with the Assistant Engineers, who are being appointed in future vacancies. In the light of the above, a seniority list was also drawn, vide proceedings dated 07.03.2001 and admittedly, the said seniority list has not been put to challenge. It is further submitted by the learned counsel for the 1<sup>st</sup> respondent that the amendment pointed out by the learned Senior Counsel pertains to only Tamil Nadu Municipal Engineering Service Rules, 1997 and not in respect of Tamil Nadu Municipal Corporation Service Rules, 1996 and as such, the amendment made in G.O.Ms.No.38, Municipal Administration & Water Supply (M.E.III) Department dated 22.02.2010, have no application and prays for dismissal of the Writ Petition.

7.This Court considered the rival submissions and perused the records placed before it.

8.It is not in dispute that for promotion to the post of Assistant Executive Engineer, the interse seniority of the Assistant Engineers and Junior Engineers for inclusion of their names in the panel for promotion is 3:1 (i.e.) 3 Engineering Graduates Assistant Engineers and one Diploma Holder Junior Engineer.

9.As per the Tamil Nadu Municipal Corporations Engineering and Water Supply Service Rules, 1996, the qualification prescribed for the post of Assistant Executive Engineer by promotion is that the concerned Engineer must have worked as Assistant Engineer and Junior Engineer for not less than one year year in the Engineering Department of the Corporation main Office and for a period of not less than three years in the Ward offices. G.O.Ms.237, Municipal Administration and Water Supply (Election) Department dated 26.09.1996 contains instructions to be followed by the Commissioners of Corporations, except Chennai, while implementing Corporation Service Rules. It is relevant to extract the following portion of the said Government Order:

"...

In future, the initial appointment itself shall be made at the rate of 3:1, i.e., 3 Engineering Graduates Assistant Engineers and one Diploma holder Junior Engineer, hence, the question of fixing the seniority at the rate of 3:1 does not arise. But it becomes necessary to follow the ratio of 3:1 now. While fixing the inter-se-seniority between the Assistant Engineers and Junior Engineers along with the Town Planning Inspectors who are also being transferred to the

Engineering and Water Supply Department. However, there may be already a panel of names of Assistant Engineers and Junior Engineers as approved either by the Government or by the Special Officer in Council for promotion to the posts of Assistant Executive Engineers in the Corporation. The names of these Assistant Engineers and Junior Engineers who are in the approved panel shall not be taken into account and the inter-se-seniority shall be fixed for the remaining Assistant Engineers and Junior Engineers who are waiting for inclusion of their names in the next panel for promotion to the posts of Assistant Executive Engineer, along with the Town Planning Inspectors are being transferred to the Engineering and Water Supply Department. Further, when the Junior Engineers are more in number than the Assistant Engineers in a Corporation, while following the ratio of 3:1, some of the Junior Engineers may remain without placement in the seniority list. For example, in a Corporation there are 15 Assistant Engineers and 10 Junior Engineers. After fixing the inter-se-seniority by following the ratio 3:1, i.e., 15 Assistant Engineers : 5 Junior Engineers, the last five Junior Engineers may remain without placement in the seniority list. Therefore, as a special case, the names of all these remaining five Junior Engineers may be placed at the end of that seniority list and they may be considered for promotion to the posts of Assistant Executive Engineer without refixing their seniority at the ratio of 3:1 later along with the Assistant Engineers who are being appointed in future vacancies in the Corporation."

10. In compliance of the said instructions, a common seniority list was drawn on 07.03.2001 and though the petitioner took a stand that the said common seniority is contrary to the instructions contained in the Government Letter dated 08.03.2001, it has not been put to challenge. According to the petitioner, G.O.Ms.No.38 Municipal Administration and Water Supply (M.E.III) Department dated 22.02.2010 and as per the amended Rule 3, the ratio for appointment between the promotion from the post of Assistant Engineer and recruitment by transfer from the post of Junior Engineer shall be 3:1 of the Tamil Nadu Municipal Engineering and Water Works Service. Admittedly, in the considered opinion of this court, the said Government Order has no application to the case on hand for the reason that the service conditions of the petitioner as well as the contesting 2<sup>nd</sup> respondent is governed by Tamil Nadu Municipal Corporation

Engineering Service Rules, 1996 issued in G.O.Ms.No.237, Municipal Administration and Water Supply (Election) Department dated 26.09.1996. The instructions contained in the above cited Government Order also contemplates the drawal of common seniority list. It is not even the case of the petitioner that while drawing the seniority list, the ratio of 3:1 has not been followed. In the considered opinion of this Court, there is no separate seniority list for Assistant Engineers, Junior Engineers in the light of the drawal of the common seniority list on 07.03.2001, which admittedly, has not been put to challenge. The 1<sup>st</sup> respondent, after drawing the common seniority list, has given promotion to the 2<sup>nd</sup> respondent as Assistant Executive Engineer. The petitioner is under the apprehension as if there is a separate seniority list for Assistant Engineers and Junior Engineers and as there is disciplinary proceedings pending against the next person, he claims that he has to be promoted as Assistant Executive Engineer. In the considered opinion of this Court, as his senior is facing disciplinary proceedings, the stand taken by the petitioner that he should be given promotion, is misconceived and also untenable.

11. In the light of the reasons cited above, this Court is of the considered view that the Writ Petition lacks merit and deserves dismissal and accordingly, the Writ Petition is dismissed. However, in the above circumstances of the case, there shall be no order as to costs. The interim order granted on 24.02.2015 stands vacated. Consequently, the connected Miscellaneous Petitions are dismissed.

Sd/-  
Assistant Registrar

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

va  
To

1. The Commissioner,  
Salem City Municipal Corporation,  
Salem - 636 007.

+1cc to Mr.Kandan Duraisamy, Advocate, S.R.No.1289  
+1cc to Mr.Bhuvaneshwari, Advocate, S.R.No.1264

SKV(CO)  
RS(18/01/2017)

W.P.No.4730 of 2015  
and M.P.Nos.1 to 3, 6 of 2015