

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33524 of 2012

and

M.P.No.1 of 2012

K.Surendra Kumar

.. Petitioner

vs

1.The Director,
Local Administration Department,
Puducherry.

2.The Commissioner,
Puducherry Municipality,
Puducherry.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to promote the petitioner to the post of Junior Engineer with all other consequential benefits.

For Petitioner : Mr.V.Ajayakumar

For Respondents : Mr.R.Syed Mustafa
Government Pleader (Service
Matters (Writs - Pondy)

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to promote the petitioner to the post of Junior Engineer with all consequential benefits.

2. The writ petitioner joined as Tracer on regular basis on 1.11.1996 and the post of Tracer was redesignated as Overseer. The post of Overseer Grade-I and Grade-II were amalgamated and redesignated as a single category of Overseer in the scale of pay of Rs.4,000-6,000. The Puducherry Municipality had also extended the benefits to its employees, including the writ petitioner. The name of the writ petitioner was placed in fourth place, below the post of D'Man Grade-II and in fact, in the column itself, it was stated that the writ petitioner was regularly appointed with effect from 1.11.1996. The next avenue for promotion is to the post of Junior Engineer (Civil). The recruitment rules state that the method of appointment to the

post of Junior Engineer is by way of promotion, failing which by direct recruitment. Further, promotion is to be given to the post of Junior Engineer from the Grade of Overseer Grade-I/D'Man Grade-II with five years of service along with the educational qualification of Diploma in Civil Engineering, failing which by promotion from Overseer Grade-II with ten years of service. The writ petitioner has completed Diploma in Civil Engineering and possessing 16 years of service and therefore, claims that he is entitled for promotion to the post of Junior Engineer.

3. The claim of the writ petitioner is that five vacancies of Junior Engineer were available in the Puducherry Municipality and the respondents had taken steps to fill up the posts. The name of the writ petitioner had not been considered without any valid reason. A complaint made out in this writ petition is that one Thiru Krishnamurthy, who was working in the post of Technical Assistant on daily wages, filed a writ petition and based on the orders of the Hon'ble Division Bench, directing the Municipality to regularise his services in the post of Junior Engineer with effect from the date on which, he had joined service as Technical Assistant with all other consequential benefits, including arrears of wages. Following the same, five other persons serving in the cadre of D'Man Grade-II filed another writ petition in W.P.No.30178 of 2011, claiming promotion to the post of Junior Engineer and the said writ petition is pending. However, the name of the writ petitioner had not been considered, despite the fact that the date of joining in service of the writ petitioner is earlier to those, who had filed the writ petition.

4. At present, the writ petitioner's name is placed in Serial No.4 and accordingly, he is entitled to get promotion to the post of Junior Engineer. However, Puducherry Municipality had taken a decision on 10.7.2009 to promote all the five candidates, who were working as D'Man and Overseer to the post of Junior Engineer (Civil). Since, no subsequent action was taken by the Municipality, the decision taken on 10.7.2009 had not been implemented during the relevant point of time. Thus, the writ petitioner is constrained to move the present writ petition.

5. The ground on which the present writ petition is filed by the writ petitioner is that the second respondent-Municipality had taken a decision to promote all the five candidates to the post of Junior Engineer (Civil) and to promote one Thiru V.Gokulakrishnan to the post of Junior Engineer (Mechanical). However, the decision was not implemented. Thus, the writ petitioner seeks for a direction to promote him to the post of Junior Engineer.

6. This Court is of the opinion that the services of the writ petitioner seems to have regularised even before the date of regularisation of the other employees, including the one Thiru Krishnamurthy. The date of regularisation or permanent absorption must be the date of fixing the seniority. Thus, the respondents are bound to fix the seniority based on the date of regular appointment into the services and accordingly, the grant promotion, considering the eligibility and in accordance with the rules in force. It is not disputed between the parties that the seniority is to be fixed based on the date of regularisation of the respective employees. However, there are certain discrepancies on account of the orders passed in favour of one Thiru Krishnamurthy in a writ petition and his case alone was considered in advance for promotion to the post of Junior Engineer by overlooking the other senior employees working in the same organisation. The consideration of the case of the said Thiru Krishnamurthy for promotion to the post of Junior Engineer caused denial of seniority and promotion to the other senior employees, including the writ petitioner. Thus, it is the duty mandatory on the part of the respondents to settle the issue of seniority and promotion by granting retrospective notional promotion, if necessary, to all the senior and eligible employees, in accordance with the rules.

7. In this view of the matter, the second respondent is directed to consider the entire issues in accordance with the seniority and accordingly, consider the case of the writ petitioner for grant of retrospective notional promotion on par with his immediate juniors in accordance with the seniority and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

8. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sk/kak/Svn

To

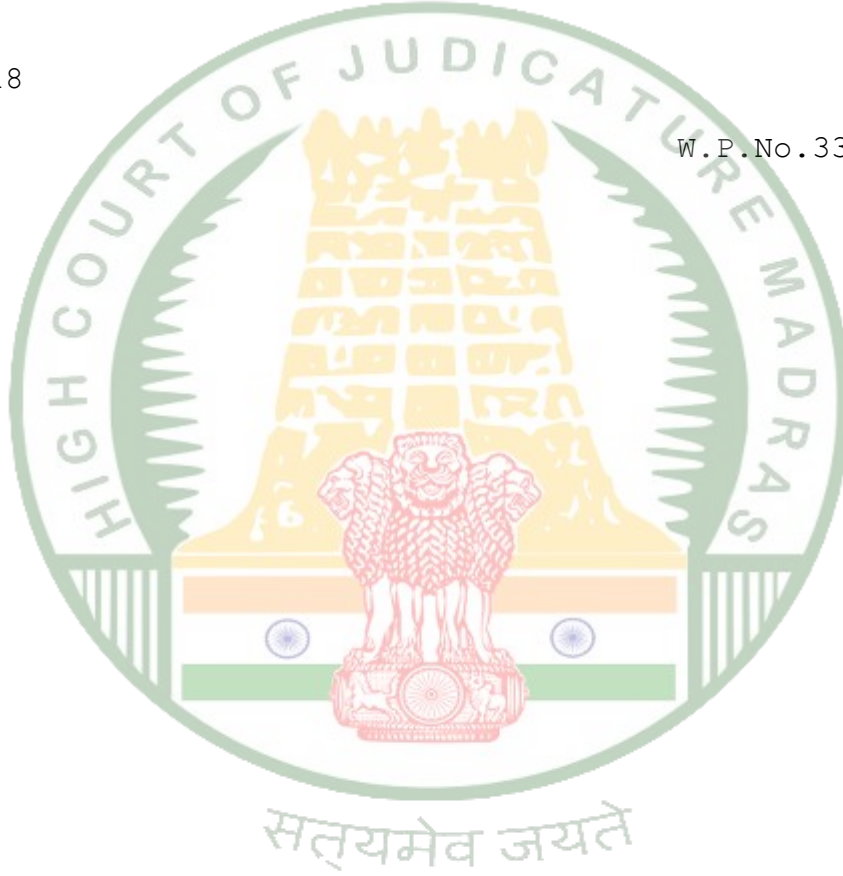
1.The Director,
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2.The Commissioner,
Puducherry Municipality,
Puducherry.

+lcc to Mr.V.Ajayakumar, Advocate Sr.No.92220

SSI(CO)
sm:7.2.2018

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