

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.08.2017
Pronounced on : 17.08.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.29759 of 2016 and
W.M.P.Nos.25739, 25740 of 2016
and 372 of 2017

S.Balu,
S/o N.Sivan,
Junior Engineer,
Electrical Department,
Chennai Corporation,
Chennai 600 003.

.. Petitioner

/versus/

1. The State rep.,
by its Secretary,
Municipality Administration and Water
Supply Department,
Fort St.George,
Secretariat, Chennai 600 009.

2. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

.. Respondents

Writ Petition is filed under Article 226 of Constitution of India praying to issue of Writ of Certiorarified Mandamus to call for the records on the file of the respondents in G.O.(Ms) No.96, dated 29.07.2016 by Municipal Administration and Water Supply (MC-3) Department and Resolution No.50, in G.D.Na.Ka.No.E1/20893/2016 dated 18.08.2016 and quash the same and direct the respondents to promote the petitioner to the post of Assistant Division Engineer(Electrical) with all service and monetary benefits.

For Petitioner :Mr.M.Vijayakumar

For Respondents:Mr.R.Prathapkumar-AGP-R1
Mr.Karthika Ashok-R2

O R D E R

Dr.G.Jayachandran, J.,

The writ petitioner herein is presently working as Junior Engineer in the Electrical Department of second respondent herein. He joined the service as Assistant Supervisor on 25.07.1995 and was later upgraded to the post of Junior Engineer (Electrical Department) on 01.08.1997. The next promotional avenue for Junior Engineers in the second respondent Corporation is Assistant Divisional Engineer. Junior Engineer with diploma and minimum service experience of 15 years is required qualification for the said post.

2. The case of the writ petitioner is that earlier when the respondents reckoned 15 years of total service experience in the Corporation, instead of exclusive service in the cadre of Junior Engineer and introduced 3:1 quota between the decree holders (Assistant Engineers) and Diploma Holders (Junior Engineers), both being the feeder categories for the promotional post of Assistant Divisional Engineers, it was challenged by way of Writ Petition by the Assistant Engineers (Decree Holders). Though the Decree Holders initially succeeded before the learned Single Judge, on appeal the Division Bench of this Court set aside the order of the learned Single Judge and held that, Rule 4 of the Madras Corporation Engineering Service Rules, 1969, prescribes 15 years of total experience in the Electrical Department and not 15 years experience as Junior Engineers. Therefore, the promotion of Diploma Holders with total experience of 15 years cannot be faulted. In respect of fixing ratio, the Division Bench held that the Authority to fix ratio in promotion vest with the Government, when the Government has consciously omitted to fix ratio among the feeder category, the Decree Holders cannot claim ratio in promotion prevailing in other Departments. While the Law regarding promotion to the post of Assistant Divisional Engineers from the feeder categories of Assistant Engineers and Junior Engineers is settled by the verdict of this Court in W.A.No.255 of 2005, dated 28.09.2007, in violation of the said judgment, the respondent has passed the impugned order following the ratio in promotion with retrospective effect from 22.08.1996. Hence, the petitioner has filed the present writ petition praying for issuance of Certiorarified Mandamus to quash G.O.(Ms) No. 96, dated 29.07.2016 by Municipal Administration & Water Supply (MC-3) Department and the consequential Resolution No.50 in G.D.Na.Ka.No.E-1/20893 /2016 dated 18.08.2016 and direct the respondents to promote the petitioner to the post of Assistant Division Engineer (Electical) with all service and monetary benefits.

3. The Corporation of Chennai, who is the second respondent herein, in its counter has stated that in the

earlier round of litigation between the Degree Holders and Diploma Holders challenging the vires of 3:1 ratio for the further promotion as Assistant Executive Engineers, the Hon'ble Supreme Court in S.L.P.No.10595 of 1992, Civil Appeal No.406 of 1993 directed the Corporation to ascertain the vacancies in the category of Assistant Executive Engineers, that have arisen three months prior to the coming into force of the amendment introducing 3:1 quota between Degree Holders and Diploma Holders and work out the vacancies which would have gone to the Diploma Holders, if un-amended Rules had been followed. On ascertaining, the Diploma Holders, who would have been promoted in those vacancies, they all should be promoted to that vacancies. Untill these Diploma Holders are promoted to the category of Assistant Executive Engineers, no Degree Holders shall be promoted.

4. In compliance to the above said direction, the Corporation has relaxed the adoption of 3:1 ratio by three months, after identifying the Diploma Holders entitle for promotion as per unamended Rule, they were all promoted as Assistant Executive Engineers before promoting any other Degree Holders. Similarly, in this case, in compliance to the judgment of the Division Bench of this Court in W.A.No.255 and 651 of 2005, dated 28.09.2007, amendment to the Service Rule was effected, wherein the nomenclature of Assistant Divisional Engineer is changed to Assistant Executive Engineer and the method of selection among the feeder categories and qualification has been prescribed. This Rule Amendment has been carried out by the Government, pursuant to the proposal of the Corporation duly resolved by the Board.

5. The first respondent in its counter, apart from highlighting the justification in bringing out the amendment as proposed by the second respondent has also brought to light that, in the year 1986, Government permitted the Corporation to set up a separate wireless wing and to administer the wing, 8 Technical Assistant posts were created. Out of 8 persons appointed to that post, 2 of them were Degree Holders and 5 were Diploma Holders and one has discontinued the service. They all were appointed on 22.08.1996. They all were appointed temporarily and their appointment was ratified and regularised only on 24.06.2016. Therefore, to protect their service condition, the amendment is deemed to have come into effect from 22.08.1996.

6. From the pleadings and submission, this Court finds that fixation of 3:1 ratio between Degree Holders and Diploma Holders never been found to be irrational or unreasonable by this Court. In the earlier judgment rendered in W.A.Nos.255 and 651 of 2005, what is rightly pointed out by the Court is, without amendment to the Service Rule, merely through executive orders quota cannot be introduced in the feeder categories. The G.O.(Ms)No.96, dated 29.07.2016, which is

impugned in this writ petition, is a consequential order, pursuant to the amendment to Rule 4 of the Chennai Corporation Engineering Service Rules, 1969. The amendment is brought into the Service Rules, pursuant to the judgment of this Court, which has pointed out that quota cannot be introduced without Rule Amendment.

7. The relevant portion of the judgment in W.A.Nos.255 and 651 of 2005 dated 28.09.2007 is as below:-

"14. The writ petitioners also cannot claim the benefit of 3:1 ratio for promotion to the post of Assistant Divisional Engineer (Electrical) in view of the order dated 21.03.1991 of this Court in W.P.Nos.6057 to 6059 of 1990. The claim of 3:1 ratio was rejected following the judgment of the Division Bench dated 21.12.1989, holding that it is only the Government, which can fix the ratio. The Government having consciously omitted the feeder category for promotion to the post of Assistant Divisional Engineer(Electrical) from the application of 3:1 ratio, the writ petitioners cannot claim the said ratio as they are working in the Electrical Department of the Corporation. We are informed that the Government also not fixed any ratio to be followed while giving promotion to the post of Assistant Divisional Engineer(Electrical).

15. In the light of the above conclusion arrived at by us, we are of the view that the order of the learned Single Judge is liable to be set aside and the writ petition filed by the writ petitioners is liable to be dismissed. We accordingly allow the writ appeals and set aside the order of the learned Single Judge and dismiss the writ petition. No costs. Connected Miscellaneous Petition is closed."

8. The fixation of quota 3:1 between graduates and Diploma Holders also set at rest by the Hon'ble Supreme Court in P.Murugesan and others -vs- State of TamilNadu reported in 1993 SCC (2) 340, wherein the Hon'ble Apex Court has held that,

"The Corporation shall ascertain the vacancies in the category of Assistant Executive Engineers, that have arisen three months prior to the coming into force of the impugned amendment (introducing the quota 3:1 as between degree holders and diploma holders)

and shall work out the vacancies which would have gone to the diploma holders if unamended rules had been followed. The Corporation shall also ascertain which of the diploma holders would have been promoted in those vacancies. Such diploma holders will be promoted in the vacancies that may be existing as on today and those that may arise in future. Until these diploma holders are so promoted to the category of Assistant Executive Engineers, no degree holders shall be promoted. After these Diploma holders are so promoted and thereafter, it is obvious the amended Rules shall be applied and followed. It is further directed that as and when a diploma holder is promoted in pursuance of this direction, his promotion shall be given effect to from the date he ought to have been promoted. Such diploma-holder-promotees shall be entitled to the benefit of seniority and pay-fixation, flowing from such retrospective promotions, but they shall not be entitled to the arrears of difference in salary for the period they have not actually worked as Assistant Executive Engineers".

9. Therefore, the submission of the learned counsel for the writ petitioner that the impugned G.O is in violation of the Division Bench judgment, is baseless. In fact, the impugned G.O is in strict compliance with the letter and spirit of the judgment. The said GO has been passed by the Government, after fully satisfied with the proposal of the second respondent along with the justification for the said amendment. The writ petition could not point any illegality or attribute any malafide to the action of the respondents. His attack on the impugned GO on the ground that it is in violation of the earlier Division Bench judgment and bad for giving retrospective effect, is unsustainable.

10. The respondents herein through their counter and submission has satisfactorily demonstrated before this Court, as recorded above, that the impugned GO is not in violation of the Court order and the said amendment is to bring uniformity among similarly placed persons in other Departments and also in the other wings of the same Department. The impugned G.O. (Ms)No.96 of the first respondent is self explanatory. The reason for giving retrospective effect is to only protect the service condition of Diploma Holders, who were appointed earlier to the writ petitioners and it will no way prejudice the writ petitioner.

11. Therefore, this Court finds no illegality in the impugned G.O.(Ms)No.96 dated 29.07.2016. Hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
Municipality Administration and Water
Supply Department,
Fort St.George,
Secretariat, Chennai 600 009.
2. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

+1 CC to Mr. M. Vijaya kumar, advocate sr 59158.

+1 cC to Mr. Karthika Ashok, Advocate sr 59077.

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W.M.P.Nos.25739, 25740
and 3712 of 2017

SP(04/09/2017)

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