

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P. No.22939 of 2018

K.Shanmuganathan

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Fort St. George,
Chennai- 600 009.

2. The Director General,
Highways Department,
Guindy, Chennai-600 025

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to the impugned Government Order issued by the 1st respondent in G.O.Ms.No.83 Highways and Minor Ports (HK2) Department dated 11.10.2017 and to quash the same in so far as it ignores the period of service rendered from the date of initial appointment in Tamil Nadu State Construction Corporation and subsequently in Rural Development Department on deputation is concerned and consequently directing the respondents to pass appropriate orders to consider the service rendered by the petitioner from the date of initial appointment as service period for all service benefits with all attendant and consequential benefits including the right to consider the petitioner for promotion as Assistant Divisional Engineer, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran
For Respondents: Mr.D.Suriyanarayanan
Additional Government Pleader

O R D E R

Mr.D.Suriyanarayanan, learned Additional Government Pleader accepts notice on behalf of the respondents.

2. This Writ Petition has been filed challenging the Government Order issued by the first respondent in G.O.Ms.No.83 Highways and Minor Ports (HK2) Department dated 11.10.2017 and to quash the same in so far as it ignores the period of service rendered from the date of initial appointment in Tamil Nadu State Construction Corporation and subsequently in Rural Development Department on deputation is concerned and consequently direct the respondents to pass appropriate orders to consider the said service rendered by the petitioner from the date of initial appointment as service period for all service benefits with all attendant and consequential benefits including the right to be consider the petitioner for promotion as Assistant Divisional Engineer.

3. The case of the petitioner in this Writ Petition is that the petitioner was initially appointed as Site Engineer Grade-1 Trainee in the Tamil Nadu Construction Corporation (TNSCC). After completion of one year training in the said post, he was brought into regular post of Site Engineer Grade-I with time scale of pay with effect from 01.07.1992 vide proceedings dated 01.07.1992 and his services have been regularized. Subsequently, his probation was declared and he become regular member of service vide proceedings of General Manager, TNSCC dated 22.06.1996. Thereafter, the said TNSTC appears to have forwarded the list of Assistant Engineers working in TNSCC to the Director of Rural Development and Panchayat Raj Department for deputation to work as it become a sick unit, pursuant to which the petitioner was posted as Additional Union Engineer in the Kottampatti Panchayat Union of Madurai District and as such the service of the petitioners on deputation utilised by the Rural Development and panchayat Raj Department, where they are stated to have served for 10 years. Thereafter, the Rural Development Department had recruited its own Engineers and therefore the service of the petitioner and the similarly placed persons were not required by the said department. But considering the difficulties of the petitioner and other similarly placed persons, the Director of Rural Development Department issued orders dated 07.12.2007, surrendering all the 23 Assistant Engineers belonging to TNSCC including the petitioner to Highways Department and pursuant to the the same, the petitioner was posted in Highways Department

and the Government issued orders in G.O.Ms.No. 314 Highways Department dated 29.12.2007 to absorb the petitioner and others in Highways Department on deputation basis. Pursuant to which, the petitioner joined in the Highways Department and continued to work till date. Then, the Government issued G.O.Ms.No.83 dated 11.10.2017, stating that 23 Assistant Engineers of TNSCC who worked earlier in Rural Development Department on contract basis and later reverted to Highways Department on deputation basis be absorbed permanently from the date of joining in Highways Department i.e., 01.01.2008 and their seniority be fixed below the regular incumbent appointed in the cadre of Assistant Engineer. Challenging the fixation of seniority and ignoring the service rendered from the date of initial appointment in Tamil Nadu State Construction Corporation and subsequently in Rural Development Department on deputation, the present writ petition has been filed. The petitioner also sought for a direction to the respondents to pass appropriate orders to consider the service rendered by the petitioner from the date of initial appointment as service period for all service benefits with all attendant and consequential benefits including the right to consider the petitioner for promotion as Assistant Divisional Engineer.

4.The learned counsel appearing for the petitioner would submit that since the petitioner had served in the T.N.S.C.C. followed by his services in the Rural Development Department of the Government before their absorption from 01.01.2008 in the Highways Department, the impugned order not taking into consideration his earlier services rendered for fixation of his seniority and also consequential benefit of such seniority, is illegal and arbitrary and notice be issued and after hearing the parties, the prayer made be allowed.

5. The learned Additional Government Pleader, who accepts notice on behalf of the State however would submit that the petitioner has no case inasmuch as he has not come through a process of selection to the Department in accordance with rule but in sympathetic consideration by way of regularisation. Hence, he being not born in the cadre of Assistant Engineers of the Highways Department, the prayer of the petitioner claiming seniority including the service benefits is without any substance and as such the same is liable to be dismissed.

6. The same is objected to by the learned counsel for the petitioner, placing reliance on the proceedings of the Director of Rural Development, Chennai dated 17.03.1999, wherein the persons working in the said department including TNSCC , to be absorbed permanently in Rural Development Department, subject to the formation of adhoc service rules of the Tamil Nadu Rural Development Engineering Service and Tamil Nadu Rural Development

Engineering Subordinate Service and as such they are entitled to the benefit thereof. However, it is an undisputed fact that the petitioner was never born in the cadre of Assistant Engineer of the Highways Department. He had also not come to the Department as regularly recruited Assistant Engineer through Tamil Nadu Public Service Commission. He was recruited TNSCC and subsequently, went to contract basis to Rural Development Department, where he served for 10 years. When the Rural Development Department recruited its regular set of Assistant Engineers, his services and similarly placed persons services not required. But, considering the difficulties of the petitioner, they were taken to Highways Department and their services were utilised on deputation. Subsequently, in view of the order passed in different litigations had decided to absorb them in the same department and as such Tamil Nadu Public Services Commission was consulted in this regard. Tamil Nadu Public Services Commission, in its opinion though allowed such absorption, so far as seniority is concerned, it is stated that they shall remain below the Assistant Engineers already in the cadre as on the date and has not come through the regular process of recruitment. Therefore, the petitioner being not born in the cadre, though absorbed from 01.01.2008 cannot be said to have a case for their seniority stealing a march over the persons who are regularly recruited through a process of selection in accordance with rule, as prescribed for the said posts. So far as other service benefits consequent upon such regularisation is concerned, the petitioner does not press the same presently.

7. Accordingly, this Court finds no illegality in the Impugned Order so far as fixation of seniority is concerned and as such this Writ Petition is dismissed at the stage of admission itself. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Fort St. George,
Chennai- 600 009.

2. The Director General,
Highways Department,
Guindy, Chennai-600 025

+1cc to Mr.G.Sankaran, Advocate, S.R.No.73261

+1cc to the Government Pleader, S.R.No.73914

W.P.No.22939 of 2018

GMI (CO)
GSP (03/01/2019)