



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2018

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P.(MD).No.11219 of 2011 and
M.P.(MD)Nos.1 & 2 of 2011

R.Mohandoss,
Junior Engineer(Industries),
District Industries Centre,
Madurai - 625 002.

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Industries and Commerce,
Secretariat,
Chennai - 600 009.

2. The Industries Commissioner and
Director of Industries and Commerce,
Chepauk,
Chennai - 600 005.

3. The Principal Accountant General Officer,
Accountant General Office,
Anna Salai, Chennai 600 018.

(R-3 is impleaded vide order dated 12.11.2018

in W.M.P.(MD)No.17708 of 2018)

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to G.O.Ms.No.45 Small Industries (Estt.I) Department, dated 10.07.1996 issued by the first respondent and quash the portion of the Government Order in respect of the effect date of the said G.O. as 10.07.1996 and consequently direct the respondents to fix the effective date of the said G.O.Ms.No.45 Small Industries (Estt.I) Department, dated 10.07.1996 as 11.03.1991 and consequently promote the petitioner to the post of Junior Engineer(Industries) with effect from 11.03.1991 with service, monetary and other attended benefits.

For Petitioner

: Mr.A.Thirumurthy

For Respondents

: Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

**ORDER**

Heard the learned counsel on either side.

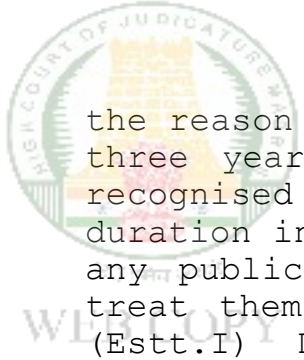
2. The petitioner obtained Diploma in Mechanical Engineering (D.M.E.) in the year 1986 and also completed "Tool and Die Maker" certificate course which is of three years duration. He was appointed as a Die Maker vide order dated 27.02.1989 and posted at the Institute of Tool Engineering, Dindigul. He completed his probation successfully on 10.03.1991.

3. The post of Die Maker did not have any promotional post. This situation was remedied by making it a feeder category for the post of Junior Engineer(Industries) vide G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996. Thereafter, the petitioner was promoted to the said post by order dated 03.12.1997. The petitioner's grievance in this petition is that the Government acted arbitrarily and unfairly by making the said Government Order prospective in its application. The petitioner wants the effective date of implementation of the said Government Order as 11.03.1991 instead of 10.07.1996. He questions the Government Order to this extent and seeks consequential relief of promotion to the post of Junior Engineer(Industries) with effect from 11.03.1991 with consequential benefits.

4. The learned counsel appearing for the petitioner reiterated the contentions set out in the affidavit filed in support of this Writ petition. He also placed reliance on the decision reported in 1990 (Supp) S.C.C.688 (O.Z.Hussain V. Union of India).

5. The Hon'ble Supreme Court in the aforesaid decision observed that there must be a provision of promotion. That alone would increase the efficiency of the public service. If there is no avenue for promotion, that would result in stagnation thereby reducing the efficiency of the employee. Promotion is a normal incidence of service.

6. Probably heeding to the aforesaid mandate, the Government issued G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996. It must be borne in mind that when the petitioner was appointed as a Die Maker in the year 1989, the post did not have any promotional avenue. The petitioner knew fully well that the post of Die Maker did not have any promotional post. As pointed in the counter affidavit, the post of Die Maker was constituted as a separate category in the Tamil Nadu Industries Subordinate Service vide G.O.Ms.No.457, Industries Department, dated 04.04.1984. The service rules were also prescribed vide G.O.Ms.No.528, Industries (Estt.II-1) Department, dated 21.05.1990. In both these Government Orders, there was no provision for promotion from the post of Die Maker. The post of Die Maker was not included as a feeder post to the higher post of Junior Engineer(Industries). A mere look at the counter affidavit filed by the Government would clearly show that



the reason for this non-inclusion was that the certificate course of three years duration awarded in the case of Die making was not recognised as equivalent to National Trade Certificate of 18 months duration in the appropriate trades for the purpose of appointment to any public service in Tamil Nadu. Only later, it was decided to treat them on par and that is how G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996 came to be issued for including the post of Die Maker as the feeder post to the higher post of Junior Engineer(Industries).

7. As rightly contended in the counter affidavit filed by the Government, in as much as the Writ petitioner was not eligible in the first place for promotion to the higher post of Junior Engineer (Industries) at the time of his appointment to the post of Die Maker, he is not entitled to claim the same as a matter of right. It is not the case of the petitioner that any person who was junior to him in the post of Die Maker stole a march over him. Those persons working in other posts cannot by any stretch of imagination, be termed as juniors to the petitioner, merely because, they entered service later in point of time. The impugned G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996, is prospective in application and operation. The Writ petitioner wants this Court to make it retrospective. It would be beyond the power and jurisdiction of this Court to confer retrospective operation on a Government Order, when the Government had as a matter of policy, made it prospective in its application and operation.

8. The Writ petition came to be filed only in the year 2011. The Government Order is of the year 1996. The petitioner was in service at the time of issuance of the impugned Government Order. But, he would challenge the Government Order after a gap of 15 years, after it was issued. The Writ petition is thus liable to be dismissed on the sole ground of laches.

9. It is well settled that the issues relating to seniority and promotion will have to be agitated at the earliest point of time. The petitioner is demanding that he should be given retrospective promotion as Junior Engineer(Industries) from the year 1991. But the demand itself has been made a full two decades later. I find no merit in this Writ petition.

10. The Writ petition stands dismissed, accordingly. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

/True Copy/

Sub Assistant Registrar(CS I)

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To

1. The Principal Secretary,
The Government of Tamil Nadu,
Department of Industries and Commerce,
Secretariat, Chennai - 600 009.

2. The Industries Commissioner and
Director of Industries and Commerce,
Chepauk, Chennai - 600 005.

3. The Principal Accountant General Officer,
Accountant General Officer,
Anna Salai, Chennai 600 018.

1CC TO MR. A. THIRUMURTHY, ADVOCATE SR 96924

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ORDER MADE IN

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