

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.5155 of 2008

and

M.P.No.1 of 2008

K.Palanichamy

.. Petitioner

Vs.

1.State of Tamilnadu represented by
Secretary to Government,
Public Works Department,
Chennai - 600 009.

2.Engineer in Chief cum Chief Engineer (General),
Public Works Department, Chepauk,
Chennai - 600 005.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to Letter No.S4(2)/30573/2006-02 dated 24.11.2006 and Letter No.S4(2)/62900/2007 dated 12.11.2007 on the file of the 2nd respondent and to quash the orders passed therein respectively and to direct the respondents herein to fix the seniority of the Petitioner with effect from 27.09.1982 and promote him as Senior Draughting Officer.

For Petitioner : Mr.R.Agilesh

For Respondents : Mr.R.S.Selvam
Government Advocate

O R D E R

The petitioner has come out with the present Writ Petition challenging the Letters of the second respondent bearing Letter No.S4(2)/30573/2006-02 dated 24.11.2006 and Letter No.S4(2)/62900/2007 dated 12.11.2007 and to direct the respondents herein to fix the seniority of the Petitioner with effect from 27.09.1982 and promote him as Senior Draughting Officer.

2. According to petitioner he was appointed as Assistant Draughtsman on 04.12.1978 temporarily under Rule 10 (a) (i) of General Rules to State and Subordinate services, which would not count for increment, seniority, promotion, etc.,. On 12.02.1979, the petitioner was appointed as Junior Draughting Officer temporarily. The petitioner relinquished his right in the post of Assistant Draughtsman. When a person who has not completed 5 years of service in a post and posted to higher post, it has to be treated as direct recruitment only and not as a promotion as per Proviso of Item 14 of rule 2 of Part I of Tamilnadu Service Manual Volume-I. In view of the said provision, the regularisation of petitioner's service in the post of Junior Draughting Officer from 12.02.1979 in Ref.Roc.No.A2/3798/82 dated 12.04.1982 by the Superintending Engineer, PWD Circle No.1, Madurai was in accordance with Rules.

2(a). Subsequently, the petitioner was promoted as Draughting Officer on 27.09.1982 and his services were regularised from that date. The petitioner has completed his 2 years of probation within 3 years in the post of Junior Draughting Officer and therefore his promotion to Draughting Officer is correct. In May 1988, without any valid reason, the petitioner was reverted from the post of Draughting Officer. The petitioner filed Writ Petition in W.P.No.6355 of 1988 before this Court and this Court transferred the same to Tamilnadu Administrative Tribunal and numbered as T.A.No.300 of 1990. The Tribunal disposed the said T.A.No.300 of 1990 along with other O.As., by a common order dated 19.06.1991 protected the promotion already made till the date of issue of amendment to the Rules and ordered to create certain number of supernumerary posts to accommodate seniors, who were not given promotion. The panel may be drawn up for each year with reference to actual number of vacancies that had arisen during 2 years based on combined single unit seniority and qualification with reference to the crucial date to preparation of the panel each year.

2(b). The first respondent according to the said order of the Tribunal, created 340 supernumerary posts of Draughting Officer by G.O.Ms.No.395 Public Works (C-1) Department dated 22.06.1998 to accommodate persons who claimed to be seniors to the petitioner from 27.09.1982 and 340 Junior Draughting Officers were promoted in those posts.

2(c). In the revised seniority list, the petitioner was at serial No.343 and his appointment as Junior Draughting Officer was shown as 04.12.1980 and not from 12.02.1979, the date from which he was appointed as Junior Draughting Officer. The respondents have shown his appointment as Junior Draughting Officer from 04.12.1980 as petitioner was appointed as Assistant Draughtsman on 04.12.1978 and completed 2 years of probation on

04.12.1980 and he became eligible only from that date. The same is contrary to the Rules. The petitioner has relinquished his right to the post of Assistant Draughtsman and he was directly appointed as Junior Draughting Officer which became vacant on 12.02.1979. The promotion of the petitioner as Draughting Officer from 27.09.1982 is in accordance with Rules and he is eligible for inclusion in the panel on 1983 for promotion as Senior Draughting Officer. By wrong interpretation of Rules, the petitioner was considered as junior to A.Godwin and others. Without properly considering the case of the petitioner and not referring to his representation, he was not included in the panel and 57 persons were promoted as Senior Draughting Officer. Various representations given by the petitioner were not considered and petitioner was not given promotion. The impugned seniority list dated 24.11.2006 is contrary to law and erroneous. There is no indication for the basis or foundation for such promotional list and the promotion made are arbitrary and unjust. The petitioner is claiming seniority in the post of Draughting Officer with effect from 27.09.1982. Without considering the said claim, the juniors to the petitioner were promoted ignoring the rights and claims of the petitioner and also the order of the Tamilnadu Administrative Tribunal in T.A.No.300 of 1990. The respondents after stating that impugned seniority list dated 24.11.2006 is final and thereafter many corrections and promotion orders were passed thereby giving a go-by to the seniority list and prayed for the relief sought for in the Writ Petition.

3.The respondents filed counter and stated that the petitioner was appointed as Assistant Draughtsman on 04.12.1978 and completed his probation on 04.12.1980 and therefore his appointment as Junior Draughting Officer is only from that date. Item 14 of rule 2 of part I of the Tamilnadu Service Manual Volume I is not applicable to the case of the petitioner. The said rules applies only to the persons appointed through Tamilnadu Public Service Commission. The post of Assistant Draughtsman and Junior Draughtsman do not come under the purview of Tamil Nadu Public Service Commission. As per the General Rules, one can relinquish his right of promotion either for 3 years temporarily or permanently. The contention of the petitioner that he relinquished his right in the post in which he was appointed is without merits.

4.The Government in G.O.(Ms)No.1425, Public Works Department, dated 04.11.1978 approved the proposal to have a single and common unit for entire Public Works Department in respect of recruitment, promotion, etc., for Draughtsman. The first respondent has directed that no promotion can be made on regular basis to any of the categories of post of Draughtsman in the Tamil Nadu Engineering Subordinate Service, till the

combined seniority list in different categories are finalised and that the One Unit System can be given effect from 01.09.1978. The first respondent had implemented the said One Unit System in G.O.Ms.No.2508, Public Works Department, dated 21.12.1982. On implementing the One Unit System, several Draughting Officers were reverted to the post of Junior Draughting Officers so as to accommodate their seniors in that post including the petitioner in May 1988. The services of the petitioner in the post of Draughting Officer had been regularised from 27.09.1982 only for a limited purpose for drawal of increments and for higher rate of pay for the services rendered. Based on the One Unit System, juniors including the petitioner faces reversion and they filed OA challenging their reversion. The Tribunal by the order dated 19.06.1991 protecting the promotion made till the date of actual issue of amendment to service rules. The respondents contended that promotion given to the petitioner in the post of Junior Draughting Officer is in accordance with Rules. The petitioner got eligibility to obtain the said promotion only on 04.12.1980 as per Tamil Nadu Engineering and Subordinate Service Rule. But he was promoted as Junior Draughting Officer on 12.02.1979, before completion of probation period. In view of the same, the date on which he actually got promotion was not considered to fix seniority. The combined One Unit inter-se seniority list is prepared and circulated on 27.11.2006 as per the guidelines issued in the Tamilnadu Administrative Tribunal judgment dated 19.06.1994 in T.A.No.300 of 1990. The combined One Unit inter-se seniority list is prepared and seniority on 27.11.2006 by the impugned letter as per the guidelines issued by the Tribunal which was confirmed by this Court and Hon'ble Apex Court, the petitioner's name was not included in the seniority list as his turn has not come with reference to said seniority. The correction made in the impugned seniority list dated 24.11.2006 are all in accordance with law and prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the entire materials on record.

6. The petitioner is claiming his promotion as Draughting Officer on 27.09.1982 and his regularisation in the said post are correct as he has completed 2 years of probation within 3 years in the post of Junior Draughting Officer. The petitioner is claiming his promotion to Draughting Officer with effect from 27.09.1982 on the ground that he was directly appointed as Junior Draughting Officer on 12.02.1979 on temporary basis. It is the further contention of the learned counsel for the

petitioner that the petitioner has relinquished his right in the post of Assistant Draughtsman to which post he was appointed on 04.12.1972 under Rule 10 (a) (i) of General Rules to State and Subordinate services. On the other hand, the said claim is disputed by the respondents on the ground that petitioner completed his probation as Assistant Draughtsman only on 04.12.1980 and his promotion to Junior Draughting Officer is only from 04.12.1980. The contention of the respondents are contrary to the facts of the case. Both the petitioner as well as the respondents have not produced the order dated 12.02.1979. On the other hand, the petitioner has produced proceedings of the Superintending Engineer, PWDP.I.Circle No.I, Madurai bearing Roc.no.A2/3798/82 dated 12.04.1972. In the said proceedings Superintending Engineer, PWDP.I.Circle No.I, Madurai has stated that petitioner was appointed as Draughtsman Grade-III with effect from 12.02.1979, the forenoon before the declaration of probation in the lower post of Assistant Draughtsman. The post of Draughtsman Grade-III is now re-designated as Junior Draughting Officer. In the said proceedings of the Superintending Engineer, PWDP.I.Circle No.I, Madurai, has also recorded that the petitioner had given his willingness to relinquish his services in the lower post of Assistant Draughtsman. He will not claim any preferential right for the services rendered by him as Assistant Draughtsman. By the said proceedings as per rule 2 (a) under Part I Section 8 of T.N.E.S.S. Under T.N.Service Manual Vol.III, the Superintending Engineer, PWDP.I.Circle No.I, Madurai has stated that probation of the petitioner in the post of Draughtsman Grade-III deemed to have been commenced with effect from 12.02.1979. In view of the said proceedings, it is not open to the respondents to contend that petitioner was not appointed temporarily as Junior Draughting Officer (Draughtsman Grade-III). Further the learned counsel appearing for the petitioner has contended that as per Proviso of Item 14 of rule 2 of Part I of Tamilnadu Service Manual Volume-I, when a person has not completed 5 years service in the first appointment to the service of Government of India or Government of a State deemed to be not in Government service. On the other hand, the learned Government Advocate appearing for the respondents contended that the said provision applies only to a person who was appointed and recruited through Tamil Nadu Public Service Commission. Both the post of Assistant Draughtsman and Junior Draughting Officer are not coming under the purview of Tamil Nadu Public Service Commission. The contention of the learned Government Advocate appearing for the respondents is contrary to the said proviso. The said rules reads as follows:

"(14) A candidate is said to be "recruited direct" to a service, class, category or post when, incase his first appointment thereto has to be made in consultation with the Commission, on hte date of its notification inviting applications for the recruitment and in any other case, at the time of his first appointment thereto, he is not in the service of the Government of India or the Government of a State:

Provided that for the purposes of this definition a person shall be deemed to be not in the service of the Government of India or the Government of a State -

i) if a period of five years has not elapsed since his first appointment to a service of the Government of India or the Government of a State ; or

ii) if he belongs to the Scheduled Castes, Scheduled Tribes or Backward Classes ;"

7.A reading of the above Rules reveals that the said Rule is applicable to the persons appointed either through Tamil Nadu Public Service Commission or otherwise. As per the proviso, if a person who has not completed 5 years of service in the appointment, he is deemed to be not in service of Government of India or Government of State. The words "in any other case also covers a person appointed without consultation of Tamil Nadu Public Service Commission within 3 months of his appointment as Assistant Draughtsman temporarily, the petitioner was appointed as Junior Draughting Officer (Draughtsman Grade-III)". Therefore, petitioner was directly appointed as Junior Draughting Officer. From the proceedings of the Superintending Engineer, PWDP.I.Circle No.I, Madurai bearing Roc.no.A2/3798/82 dated 12.04.1972, it is seen that probation of the petitioner in the post of Assistant Draughtsman deemed to have been confirmed from 12.02.1978.

8.In view of the above proceedings, the petitioner was appointed as Junior Draughting Officer with effect from 12.02.1979 directly and not promoted from the post of Assistant

Draughtsman. The petitioner was appointed as Junior Draughting Officer on 12.02.1979 and his probation in the post of Junior Draughting Officer has commenced from that date. In view of this factual aspect, the promotion of the petitioner as Draughting Officer on 27.09.1982 is valid and is in order. The contention of the respondents that petitioner was only promoted as Junior Draughting Officer and was not directly appointed to that post is without merits.

9. For the above reason, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar (Insp Cell)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government
Public Works Department
Chennai-600 005

2. The Engineer in Chief cum
Chief Engineer (General)
Public Works Department
Chepauk, Chennai-600 005

+1 cc to M/s. T. Dhanasekaran Advocate sr69587
+1 cc to Special Government Pleader sr69711

W.P.No.5155 of 2008

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