

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:25.02.2019

Delivered on: 14.03.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.3563 of 2011

1.S.Murugan
2.N.Senthamarai Kannan
3.M.Muthuramalingam
4.T.Murugesan
5.G.Sekar
6.A.Amara Sundar

.... Petitioners

vs.

- 1.Tamil Nadu Slum Clearance Board,
rep.by its Managing Director,
No.5, Kamarajar Salai,
Chennai-5
- 2.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai-5
- 3.N.Usha
Assistant Executive Engineer,
Chennai Circle-1, No.5, Kamarajar Salai,
Chennai-5.
- 4.T.Gnanakumari
Assistant Executive Engineer,
TNSCB, 13, Arokkiasamy West Street,
R.S.Puram, Coimbatore-2
- 5.K.Sakthivadivel
Assistant Executive Engineer,
TnSCB, Division-5,
Vijayaragava Road,
Chennai-18.

6.A.Mahendran,
Assistant Executive Engineer,
TNSCB, Division-1, T.P.Chattiram,
Chennai-10.

7.V.Sridhar
Assistant Executive Engineer,
TNSCB, Division-1,T.P.Chattiram,
Chennai-10

8.K.Mohan
Assistant Executive Engineer,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Chennai-5

9.K.Mathimaran,
Junior Engineer,
TNSCB, Division-IV,
T.P.Chattiram, Chennai-10

10.T.Elamparithi,
Junior Engineer,
Tsunami Division(Centre-1)
No.5, Kamarajar Salai, Chennai-5

11.M.Sidhdhardan,
Junior Engineer,
TNSCB, Division-III,
Viyasarbadi, Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondents 1 and 2 to replace all the excessively appointed Junior Engineers, respondents 3 to 8, as Assistant Executive Engineers than their eligible quota of vacancies under 3:1 ratio mandated under the rules by promoting the petitioners and like Assistant Engineers in their places and granting them the consequential service and monetary benefits with retrospective effect notionally from the respective dates on which the petitioners and like Assistant Engineers ought to have been promoted had the rule of 3:1 ratio been followed scrupulously.

For Petitioners .. Mr.N.Subramanian

For Respondents ... Mr.B.Kesavan for R1 and R2
Mr.P.V.Balasubramanian
for M/s.B.F.S.Legal
for RR9 to 11
No appearance for 3 to 8

ORDER

The petitioners are all working as Assistant Engineers in the first respondent Board. The next avenue of promotion to the post of Assistant Engineer is the post of Assistant Executive Engineer and their promotion is governed by the Tamil Nadu Slum Clearance Board Engineering Officers' Service Rules. The respondents 3 to 11 are working as Junior Engineers and being in the lower category of service, they are governed by Tamil Nadu Slum Clearance Board Technical Subordinate Rules.

2. For appointment to the post of Assistant Executive Engineers, as per the relevant Recruitment Rules, promotion shall be made either from the category of Assistant Engineers or from the category of Junior Engineers with five years and ten years of service respectively. The Recruitment Rules also provide ratio to be maintained as 3:1 as between Assistant Engineers and Junior Engineers. The grievance of the petitioners is that the first respondent Board, over the years, has not been following the recruitment Rules in the matter of promotion to the post of Assistant Executive Engineers by maintaining 3:1 ratio and from 1986 onwards, several Junior Engineers were promoted in excess of their quota by encroaching upon the quota of 3% reserved for Assistant Engineers in terms of the statutory Recruitment Rules.

3. The promotion of Junior Engineers in excess of the quota of 1% had been causing severe heartburn among the Assistant Engineers and therefore, repeatedly representations were submitted to the Board on behalf of the Assistant Engineers. Way back in 2007, an information has been sought as to the number of Assistant Engineers and Junior Engineers promoted to the post of Assistant Executive Engineers and an information had been given on 18.06.2007 stating that till that time, 80 Assistant Engineers and 45 Junior Engineers were appointed as Assistant Executive Engineers. The figure showed that the Board, at that point of time, was not following the Recruitment Rules, by applying the ratio 3:1.

4. While so, the Board has appointed a Committee by its Resolution No.42, dated 08.08.2007 to set right the anomaly while making appointments to the post of Assistant Executive Engineers by not following the quota Rule and without waiting for the Committee Report, once again the Board has appointed Assistant Executive Engineers by proceedings dated 28.12.2007, promoting 16 Assistant Engineers and six Junior Engineers as Assistant Executive Engineers. In the said circumstances, the petitioner Association moved this Court in W.P.No.3256 of 2008, seeking to declare the excess appointments of Junior Engineers

as illegal and for consequential prayer of replacement of Junior Engineers appointed in excess of their quota.

5.This Court disposed of the writ petition by directing the Committee to submit its report within a period of six months by affording opportunities to both categories of Engineers, viz., Assistant and Junior Engineers. Thereupon, the Committee submitted a report and in pursuance of which, the Board has issued orders promoting nine Assistant Engineers as Assistant Executive Engineers by proceedings dated 25.01.2011.

6.Being not satisfied with the application of quota Rule, once again information was sought under the Right to Information Act and as on 20.12.2010, according to the figure furnished by the Board, 101 Assistant Engineers and 45 Junior Engineers were appointed as Assistant Executive Engineers. From the information furnished, it is seen that there was a deficiency of nine Assistant Engineers and correspondingly there was an excess appointment of nine Junior Engineers. According to the petitioners herein, the Board in all fairness ought to have reverted the excess Junior Engineers and replaced them by the Assistant Engineers. But that was not forthcoming from the Board. Likewise, on every time when the issue of non-adherence to the quota Rule has been raised on behalf of the Assistant Engineers, the Board has disregarded the representation and continued to appoint Junior Engineers in excess of their quota by creating an imbalance between the Assistant Engineers and Junior Engineers all through. As on the date of filing of the writ petition, according to the petitioners, there were 12 vacancies in the category of Assistant Executive Engineers and the Board was attempting to draw a panel to fill up the existing 12 vacancies by including both Assistant and Junior Engineers. In the said circumstances, the petitioners are before this Court seeking the prayer as aforementioned.

7.Mr.N.Subramanian, the learned counsel appearing for the petitioners would submit that all along grave injustice has been done to the category of Assistant Engineers, as the Board has not been following the quota Rule at all. The Board has always been favouring the category of Junior Engineers and whenever promotions were effected to the post of Assistant Executive Engineers, Junior Engineers were always granted such promotion in excess of their quota, violating the statutory Rules. According to the learned counsel, at least, in future, the deficit of Assistant Engineers occupying the post of Assistant Executive Engineers has to be set off, in order to maintain the quota Rule by following the Recruitment Rules scrupulously. This submission is made on behalf of the petitioners by taking into consideration the fact that the private respondents, who have been appointed as Assistant

Executive Engineers, before the Writ Petition could be filed, have been working for so many years during pendency of litigation before this Court and their appointments need not be disturbed, but at the same time, the Board ought to be directed to follow the Recruitment Rule strictly in future so that the category of Assistant Engineers is not put to any further disadvantage in the matter of promotion to the post of Assistant Executive Engineers. In the said circumstances, the learned counsel would implore this Court to direct the Board to follow the Recruitment Rules strictly in future and appoint as many Assistant Engineers to the post of Assistant Executive Engineers, to comply with the quota Rule strictly.

8. The learned counsel appearing for the respondent Board would submit that the grievance of the petitioners is without any justification, since earlier an attempt was made to fill up the vacancies for the post of Assistant Executive Engineers only by appointing the Assistant Engineers by promoting nine Senior most Assistant Engineers notionally with effect from 06.02.2008, vide proceedings dated 25.01.2011. This was necessitated in order to maintain the balance of ratio as provided in the Recruitment Rules. According to the instructions as produced by the Board, dated February 2019, which is addressed to the Legal Advisor, Tamil Nadu Slum Clearance Board, the Board had been following 3:1 ratio in the matter of subject promotion and there is no question of adjusting the ratio in future for Assistant Executive Engineers promotion.

9. The learned counsel would also reiterate the stand of the Board and a counter affidavit has also been filed. The counter affidavit filed both on behalf of the Board as well as on behalf of the private respondents would reveal that in the past in 1987 and thereafter, sufficient number of qualified candidates were not available from the category of Assistant Engineers and in view of the absence of sufficient candidates, the eligible Junior Engineers were promoted, in the interest of administration, as according to the Rules, the same did not provide for any mandate to carry over the short fall or backlog vacancies. In such situation, the Board had to resort to filling up the vacancies of the posts of Assistant Executive Engineers, by appointing eligible Junior Engineers. When such necessity arose, in the interest of administration, there was nothing wrong in filling up the vacancies by the eligible Junior Engineers and today, the Assistant Engineers cannot seek for reversion of the Junior Engineers, who were promoted 2/3 decades before and have been working in the interest of administration. In any case, the stand of the Board is that the quota Rule has been followed and according to the Board, the writ petition is without any merits.

10. Heard the learned counsels for the parties and also heard Mr.P.V.Balasubramanian, the learned counsel appearing for the private respondents and perused the pleadings and materials placed on record.

11. From the above narrative, it is very clear that the Board, under compelling circumstances, had to resort to appointment of Junior Engineers at various points of time as Assistant Executive Engineers in excess of their quota, as sufficient eligible Assistant Engineers were not available at that particular points of time. However, it also appears from the materials, after a period of time, in 2007-08 and onwards, sufficient number of Assistant Engineers were available for promotion, in which event, the Board ought to have initiated effective action in off setting the deficit and filled up the vacancies in the post of Assistant Executive Engineers with Assistant Engineers.

12. Once the Recruitment Rules, which are statutory in nature, provide for quota Rule of 3:1, the same has to be followed by the Board scrupulously without any deviation. Even if deviation became inevitable in the interest of administration over a period of time, it is always open to the Board to set right the anomaly by adjusting the future vacancies of Assistant Executive Engineers by filling up the vacancies with the Assistant Engineers and ensure that the quota Rule is maintained at any given point of time. Unfortunately, it appears that the Board is unwilling to accept the lacunae in following the Recruitment Rules, but insisted that the quota Rule has been followed and maintained.

13. The learned counsel, who appeared for the petitioners, is fair in his submission that in view of the fact that the Junior Engineers, who were appointed and working for number of years, need not be disturbed, but, at least in future the Board is to be directed to follow the quota Rule, so that the category of Assistant Engineers need not further be put to unfair disadvantage in the matter of subject promotion.

14. The stand of the Board, as disclosed in their latest instruction, which was produced before this Court, appears to be ill advised and without any justification. Normally when an appointment is made in violation of the Recruitment Rules, such appointment cannot be allowed to stand under any circumstances and the Courts invariably set aside such appointments. Since a fair submission has been made by the learned counsel for the petitioners not to disturb the past appointments, this Court is not inclined to go any further into the appointments earlier made by the Board in violation of the Recruitment Rules.

However, at the same time, the category of Assistant Engineers cannot be denied their due share as their claim is not on the basis of any speculation, but clearly on the basis of the quota Rule provided in the Recruitment Rules. When such is the position, the claim of the Assistant Engineers cannot be ignored to the exclusion of the Recruitment Rules, at least in future appointments. Obviously today, the Junior Engineers are in excess of their quota, occupying the post of Assistant Executive Engineers and though their occupation is against the Recruitment Rules, this Court refrains from disturbing their appointments in view of the peculiar facts and circumstances of the present case. At the same time, the petitioners, who were from the Assistant Engineers category, cannot be denied their due share in the appointment, as their claim is fully supported by the Recruitment Rules and this Court is of the considered view that they have made out a case for grant of relief to them.

15. This Court, on an equitable consideration, in view of the long pendency of the dispute and also due to the fact that the quota Rule has broken down in the last 2/3 decades, has to at least protect the interest of the Assistant Engineers for future appointments in order to make such appointments valid in terms of the statutory Rules. When adequate number of Assistant Engineers are available for appointment to the post of Assistant Executive Engineers, the Board cannot be allowed to resort to appointment of Junior Engineers as Assistant Executive Engineers in excess of their quota any more, as such attempt by the Board in future would once again result in negation of the statutory prescription of quota Rules.

16. For the above said reasons, the writ petition is allowed to the extent that the first and second respondents are directed to fill up the vacancies of the post of Assistant Executive Engineers in future by appointing as many Assistant Engineers as possible by promotion to bring the category of Assistant Engineers on par with the quota Rule provided under the Recruitment Rules. सत्यमेव जयते

17. In this regard, the Board is directed to fill up the post of Assistant Executive Engineers in future at least for three Recruitment years from among Assistant Engineers, so that, the quota of 3:1 as between Assistant Engineers and Junior Engineers is maintained in future in order to avoid any conflict between Assistant Engineers and Junior Engineers in the matter of promotion to the post of Assistant Executive Engineers.

18. The Board is also directed to intimate the petitioners as to the proposed action to be taken by them in regard to the implementation of the above direction by this Court within a period of three months from the date of receipt

of copy of this order. The Board shall indicate the number of future vacancies and its proposal to fill up the vacancies in terms of the directions passed by this Court as above.

The writ petition stands allowed as above. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msk

To

1.Tamil Nadu Slum Clearance Board,
rep.by its Managing Director,
No.5, Kamarajar Salai,
Chennai-5

2.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai-5

+1 cc to Mr.B.Kesavan, Advocate, Sr.No. 23937

+2 cc's to M/s.B.F.S.Legal Advocate Sr.No.24374

order in
W.P.No.3563 of 2011

GJ(CO)
CSL/25.04.2019

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