

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on:</i> 02.08.2019	<i>Delivered on:</i> 17.09.2019
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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No. 6627 & 6628 of 2018 &
W.M.P.Nos.8224 & 8225 of 2018

N.Natrayanasamy

.. Petitioner in
WP 6627 of 2018

R.Palanivel

.. Petitioner in
WP 6628 of 2018

versus

1. The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Municipal Administration & Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Commissioner of Municipal Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

3. The Commissioner,
Erode City Municipal Corporation,
Erode.

.. Respondents in
both Writ Petitions

PRAYER: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by 3rd respondent Corporation in Na.Ka.No.C1/8401/2011 dated 22.01.2018, Na.Ka.No.C1/8401/2011 dated 24.01.2018 and Na.Ka.No.8401/2011/C1 dated 29.01.2018 and quash the same and consequently direct the 3rd respondent Corporation to give promotion to the post of Junior Engineer based on the seniority and eligibility of the petitioners with effect from 16.09.2009 with all consequential monetary benefits including arrears of salary to them within a reasonable time to be fixed by this Court.

For Petitioners : Mr.L.Chandrakumar for
M/s.C.Mahendran

For Respondents : Mr.J.Pothiraj, Spl.G.P. for R1&R2
Mr.M.Rajamathivanan for R3

COMMON ORDER

These Writ Petitions have been filed by the petitioners, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings

issued by 3rd respondent Corporation in Na.Ka.No.C1/8401/2011 dated 22.01.2018, Na.Ka.No.C1/8401/2011 dated 24.01.2018 and Na.Ka.No.8401/2011/C1 dated 29.01.2018 and quash the same and consequently direct the 3rd respondent Corporation to give promotion to the post of Junior Engineer based on the seniority and eligibility of the petitioners with effect from 16.09.2009 with all consequential monetary benefits including arrears of salary to them within a reasonable time to be fixed by this Court.

2. Since the facts and the issue involved in both the Writ Petitions are common, they are taken up together and being disposed of vide this common order.

3. The petitioners were appointed as Electrician Grade II and Wiremen on 22.11.1991 and 20.12.1989 respectively in the erstwhile Erode Municipality. After the upgradation of the 3rd respondent as Erode Corporation, the Government issued

orders in G.O.(Ms.) No.206 Municipal Administration and Water Supply Department dated 22.10.2008 for the purpose of grouping of staff pattern and for promotion and creation of additional posts etc. On the basis of the Government Order, the 3rd respondent Corporation grouped the posts of Electrician Grade I as Technical Assistant Wireman as Skilled Assistant Grade-I from 16.09.2009. The petitioners, in the circumstances, submitted their representations to the 3rd respondent Corporation to promote them to the next higher post, i.e. Junior Engineer as per Service Rules notified in G.O.(Ms.) No.237 dated 26.09.1996. However, their representations were not disposed of, but they continued to work as Technical Assistants from 16.09.2009.

4. According to the petitioners, they completed Diploma in Electrical and Electronics Engineering and also B.Tech in Civil and Electrical Engineering respectively and therefore, they are fully qualified to be considered for promotion to the post of Junior Engineer. While so, it appears that the Local

Fund Audit raised objections regarding the grouping/postings undertaken by the Corporation by its Report, dated 14.3.2011. The sum and substance of the objections was that the posts held by the petitioners, viz., Electrician Grade-I and Skilled Assistant Grade-II were wrongly grouped as Technical Assistant. As per the Report, the Electrician Grade-I and the Skilled Assistant Grade II should have been grouped as Skilled Assistant Grade-I as envisaged under G.O.(Ms.) No.206 dated 22.10.2008. Therefore, the Report has indicated that the petitioners have to be reverted from the post of Technical Assistant to the post of Skilled Assistant Grade-I and their pay scales be fixed accordingly and if any excess payment made, shall be recovered. However, the 2nd respondent vide his proceedings, has stated that the posts held by the petitioners, should have been grouped only as Technical Assistant and Skilled Assistant Grade-1 respectively. Thereafter, pursuant to the audit objection, the 3rd respondent issued orders 23.5.2011 and 26.05.2011, reverting the petitioners to the post of Skilled Assistant Grade-1.

5. Having aggrieved by the orders of reversion dated 23.5.2011 and 26.05.2011, the petitioners approached this Court in W.P.Nos.18951, 18953 and 25066 of 2011, challenging the G.O.(Ms.) No.206, dated 22.10.2008 and the audit objection report dated 14.3.2011.

6. This Court, after adverting to the various submissions made on behalf of the petitioners, vide common order dated 3.11.2011, disposed of the Writ Petitions by quashing the impugned orders of the Corporation and further directed the respondents therein to consider the request of the petitioners for promotion to the next higher post, i.e. Junior Engineer. The grievance of the petitioners is that despite this Court's order passed in the above said writ petitions, the respondent Corporation issued proceedings dated 24.01.2018 rejecting the claim of the petitioners by stating that the petitioners had studied Diploma and Degree through Distance Education mode and the same cannot be considered as eligible

qualification since such Diploma and Degree obtained by the petitioners, could not be considered as equivalent to the regular Diploma and Degree as per G.O.Ms.No.149 Higher Education Department dated 22.07.2016. The rejection of the petitioners' claim for promotion as Junior Engineer is the subject matter of the challenge in the present Writ Petitions along with the other connected orders.

7. Mr.L.Chandrakumar, learned counsel appearing for the petitioners would submit that the petitioners herein have completed 20 years of service and in view of the latest promotion order dated 20.02.2019 issued by the 3rd respondent granting promotion to the petitioners to the post of Junior Engineer, the issue relating to the validity of the Diploma and Degree obtained by the petitioners through Distance Education, has become irrelevant for the purpose of regularizing the promotion. Therefore, the learned counsel would submit that the petitioners would be satisfied if the promotion granted to the petitioners on 20.02.2019 by the 3rd

respondent Corporation shall be treated as regular promotion for all purposes.

8. After notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for respondents 1 and 2 and Mr.M.Rajamathivanan, learned counsel entered appearance for respondent No.3. A counter affidavit has been filed on behalf of 3rd respondent Corporation, wherein, it is stated that the Diploma and Degree obtained by the petitioners through distance education made were not recognized as equivalent Diploma and Degree from the recognized University as per G.O.No.149 Higher Education dated 22.07.2016.

9. The learned counsel appearing for the 3rd respondent also reiterated the same objection as stated in the impugned order of rejection. According to him, since the petitioners did not possess required educational qualification, they were not entitled to be promoted as Junior Engineer. As far as the

promotion of these petitioners granted on 22.02.2019, he would submit that the said promotion was granted pending the outcome of the Writ Petitions and such promotion does not confer the petitioners a right for regular promotion.

10. This Court considered the submissions of the learned counsels appearing for the parties and perused the entire materials available on record.

11. As rightly contended by the learned counsel for the petitioners that without going into the issue whether the Diploma and Degree obtained by the petitioners through distance education, is valid or not, by sheer passage of time, the petitioners have completed 20 years of service as Technical Assistants and as per the observations of this Court, particularly in paragraphs 34 and 35 of the order dated 03.11.2011 passed in the above said Writ Petitions, viz., in W.P.Nos.18951, 18952, 18953 and 25066 of 2011, the qualification of Diploma and Degree may not be insisted upon

once the employee completed 20 years of service as Technical Assistant. The said paragraphs are extracted hereunder:

“34. If we look at these clarification as extracted above, one can easily find that in order to give credence to the long service rendered by various technical persons working in Municipal Corporation, it was directed by the Government, through the said clarifications that, no direct recruitment be made to the post of Skilled Assistant Grade-I and Technical Assistant post. The said clarification was issued on the sound reasoning that if direct recruitment are made to these posts, those who had been working in the post of Skilled Assistant Gr-II for 20 years and more would be compelled to work under these new entrants. Therefore, inorder to avoid that placing the seniors under the newly recruited juniors that too in technical posts, it was clarified by the Government that all those persons, depending upon the number of years of experience, i.e., those who have completed 20 years of Skilled Assistant Grade-II can be considered for one level jump promotion.

“35. The further clarification given as extracted above by the Government is that, those who have completed 20 years of service on the date of issue of G.O.(Ms).No.140, dated 27.5.1997 may be promoted as Skilled Assistant Grade-I i.e., in the scale of pay of Rs.1100-1660/-. Thereafter, on completion of one year service as Skilled Assistant Grade-I, they may be promoted as Technical Assistants in the scale of pay of Rs.1350-2200/-. It is further clarified that qualification that a pass in diploma, for the post of Technical Assistant, need not be insisted on them.”

12. In this case, the petitioners admittedly completed 20 years of service as Technical Assistant. The validity of Diploma or Degree obtained by them today have become irrelevant by virtue of their long years of continuous service as Technical Assistant for a period of 20 years and therefore, they became entitled to be promoted as Junior Engineer with or without Diploma or Degree. In view of the same, this Court

does not think that the 3rd respondent Corporation can insist upon regular qualification of Diploma or Degree from a recognized University once the petitioners have gained more than sufficient experience as Technical Assistant and their vast experience is far better than the regular Diploma and Degree qualification. In this case, as rightly observed by this Court that the Diploma and Degree may not be insisted upon if an employee completes 20 years of service as Technical Assistant. In any event, the 3rd respondent Corporation itself thought it fit to promote the petitioners and also vide order dated 22.2.2019 promoted the petitioners as Junior Engineers, without there being any specific direction from this Court and even if there is any specific direction was given, the fact of the matter is that the petitioners are working as Junior Engineers as on date.

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13. In the above circumstances, this Court is of the considered view that the petitioners having completed 20 years of service, cannot be forced to face the reversion once

again despite their long years of service. Hence, as held by this Court in the afore mentioned Writ Petitions, the petitioner are entitled to be granted promotion to the post of Junior Engineer on the basis of their experience for a period of 20 years as Technical Assistant on regular basis with all consequential and attendant benefits.

14. For the above said reasons, the Writ Petitions are allowed and the impugned orders, viz., Na.Ka.No.C1/8401/2011 dated 22.01.2018, Na.Ka.No.C1/8401/2011 dated 24.01.2018 and Na.Ka.No.8401/2011/C1 dated 29.01.2018 issued by the 3rd respondent Corporation are hereby set aside and the promotion granted to the petitioners by the 3rd respondent Corporation on 22.02.2019 shall be directed to be treated as regular promotion for all purposes and the petitioners are entitled to all the consequential and other attendant benefits of regular promotion as Junior Engineer. The 3rd respondent is directed to pass appropriate orders in this regard within a period of

four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMPs are closed.

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17.09.2019

Index: Yes/No

Internet: Yes/No

To

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Municipal Administration & Water Supply Department,
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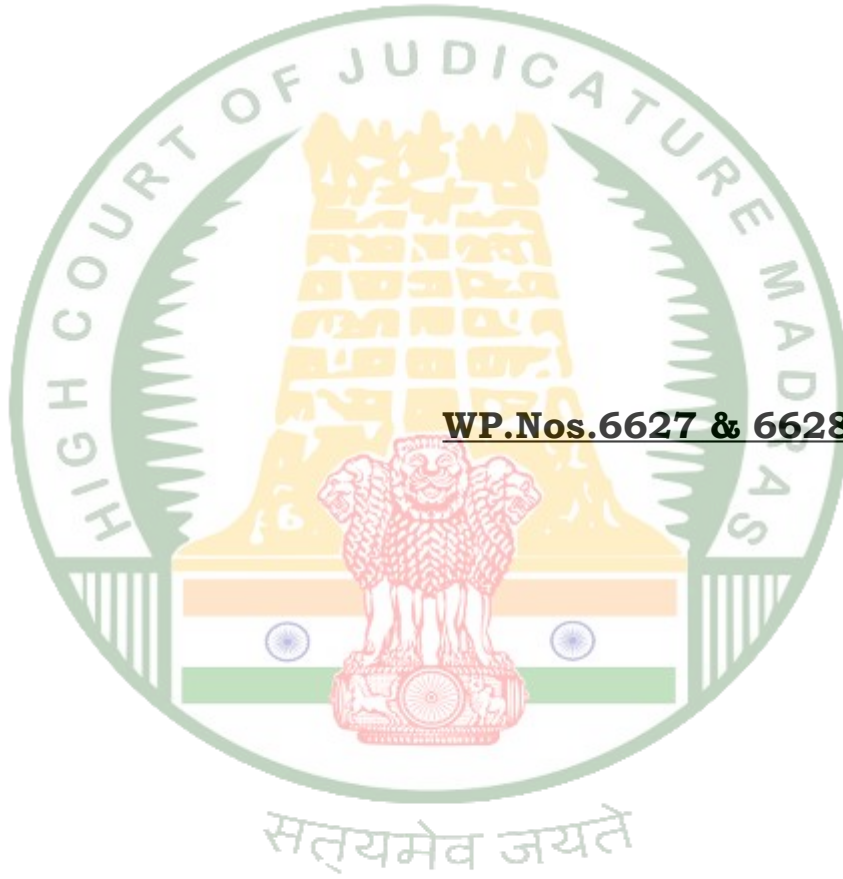
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