

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.32054 of 2013

K.Thirumurugan

... Petitioner

Vs

1. The Secretary to Government,
Micro Small & Medium Enterprises Department,
Secretariat,
Chennai 600 009.

2. Industrial Commissioner and Director
of Industries & Commerce,
36, South Canal Bank Road,
Mandaiveli, R.A.Puram,
Chennai 600 028.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 2nd Respondent issued R.C.No.48254/EE2/2007 dated 10.04.2013 and to quash the same and consequently direct the Respondents to grant promotion to the petitioner to the post of Deputy Director of Industries and Commerce based on his eligibility and seniority on par with juniors by including his name in the appropriate panel year as per the provisions of the Special Rules for Tamil Nadu Industries Service with consequential and other attendant benefits including arrears of salary within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.A.Zakir Hussain

O R D E R

The writ petition is one for Certiorarified Mandamus calling for the records relating to the proceedings dated 10.04.2013 passed by the Industrial Commissioner and Director of Industries & Commerce in R.C.No.48254/EE2/2007 and to quash the same and direct the respondents to grant promotion to the petitioner to the post of Deputy Director of Industries and

Commerce based on his eligibility and seniority on par with his juniors by including his name in the appropriate panel year as per the provisions of the Special Rules for Tamil Nadu Industries Service.

2.The petitioner was appointed as Supervisor(Testing) in the Department of Industries and Commerce on 21.05.1990 through Tamil Nadu Public Service Commission. He was promoted as Chemist Grade-I and was further promoted to the post of Assistant Director/Principal at Institute of Ceramic Technology, Virudhachalam on 11.07.1998. The petitioner has a diploma in Chemical Technology(three years) and he has later done his B.E. (Chemical Engineering).

3.Under the Special Rules for the Tamil Nadu Industries Service, for the post of Deputy Director of Industries and Commerce(Industrial Co-operatives) Technical Deputy Director of Industries and Commerce(Materials) Superintendent, TTC, Guindy Superintendent(Testing) CETL, Kakkalur appointment is done by promotion among the holders of the posts in Category 3 of the Tamil Nadu Industries Service and for special reasons, by recruitment by transfer from any other service. The relevant provision reads as under:

Posts	Methods of Appointment
Deputy Director of Industries and Commerce(Industrial Co-operatives) Technical Deputy Director of Industries and Commerce(Materials) Superintendent, TTC, Guindy Superintendent(Testing) CETL, Kakkalur. G.O.Ms.No.497, Industries (Estt. II.1) 28-9-1992.	1.Promotion from among the holders of the posts in Category 3 of the Tamil Nadu Industries Service or 2.For special reasons, by recruitment by transfer from any other service.

4.It is pertinent to mention that the post of Principal at Institute of Ceramic Technology, Virudhachalam is a post in category 3 of the Tamil Nadu Industries Service. The educational qualification required for appointment to the post of Deputy Director of Industries and Commerce(Industrial Co-operatives) Technical, Deputy Director of Industries and Commerce(Materials) is a Diploma in Mechanical or Electrical or Automobile or Chemical Engineering of State Board of Technical Education and Training, Chennai, or any other recognised Institution or Board or a degree in Mechanical, Electrical or Automobile or Chemical Engineering of any University or Institution recognized by the University Grants Commission for the purpose of its grant or Diploma in Automobile Engineering by the Madras Institute of

Technology.

5.The petitioner therefore has all the qualifications for being appointed as Deputy Director(Technical). The petitioner sent a representation on 14.05.2008 for promotion as Deputy Director(Technical).The Industries Commissioner and Director of Industries and Commerce addressed a letter on 28.06.2010 to the Additional Chief Secretary to Government, Micro, Small and Medium Enterprises Department. A perusal of the said letter would show that the petitioner could not be considered for the post of Deputy Director(Technical). The observations regarding the petitioner reads as under:

"2) Thiru.K.Thirumurugan

He has entered into Government service as Supervisor (Testing) on 21.05.1990. He has been promoted the post of Chemist, Gr-I w.e.f. 25.07.1995 then he was promoted as Principal of Institute of Ceramic Technology, Vridhachalam on 11.07.1998. The above post has been included in Cat-3 of TNIS. He has completed his probation in the post of Principal on 29.07.2000 A.N. He has passed Accounts Test for Executive Officers on 28.12.1997 and District Office Manual Test on during May 1999. He has completed the B Course Foundational Training at Anna Institute of Management on 28.09.2001. He is qualified in Diploma in Chemical Technology and B.E. (Chemical Engineering) As per Special Rules for the Post of Deputy Director (Technical) he is qualified for promotion to that post as far as educational and service qualifications are concerned.

In his representation dated 14.05.2008, Thiru. K.Thirumurugan has requested the Government to grant him promotion to the post of Deputy Director (Technical) as he is having required qualification and service of more than 3 years in the post of Principal in Cat-3 of TNIS. The Government in their letter No.6737/E.I.1/2009-2, MS&ME, dated 12.10.2009 have rejected the request of the individual stating that as per the existing rule there is no combined seniority to the posts in Ceramic Wing to that of Assistant Director (Technical)/manager (Material) Gr-1 and similar other posts.

The individual in his representation 04.11.2009 has again requested for promotion to the post of Deputy Director (Technical) as he is fully qualified as per Special Rules and has completed 11 (Eleven) years of service in Cat-3 post in TNIS. His case was recommended to the Government vide this Office letter No.48254/EE2/2007, dated 16.12.2009. The Government in their letter No.11189/E1.1/2009-2, MS&ME, dated

10.03.2010 has requested the IC&DI&C to examine the need for incorporating all the posts included in Cat-3 of TNIS as a feeder category to the post of Deputy Director (Technical) in detail considering the other promotion are also available and to send a report to the Government. The report is being sent to the Government in that life.

In this regard it is submitted that he has been awarded with a stoppage of increment for three months without cumulative effect vide IC&DI&C's Proc.No.12839/EG1/2004, dated 22.10.2005. Though the currency of punishment is over he has been inflicted upon the above punishment within the check period of 5 (Five) years i.e. from 15.04.2004 to 14.04.2009. Further charges are pending against him the Rule 17 (a) vide IC&DI&C's Memo No.17649/EG2/2010, dated 08.06.2010. Also another set of charges are under contemplation on the discreet enquiry conducted against him.

Though his name can be considered for promotion to the post of Deputy Director (Technical) by virtue of his educational qualification and experience, his name could not be included in the panel and should be passed over as he has suffered punishment during the check period of 5 years as this is the first time of consideration.

However, the question of inclusion of the name of Thiru. K.Thirumurugan may be examined after the issue of final orders by the Government."

6.A Perusal of the above letter shown that the case of the petitioner was already rejected. The letter also shows that the petitioner was suffering from punishments which had been imposed on him and also that he was facing charges under Rule 17(a) of the Discipline and Appeal Rules. The petitioner filed W.P.No.4855 of 2013 praying for a Writ of Mandamus directing the respondents to grant promotion to the petitioner to the post of Deputy Director of Industries and Commerce based on his seniority and eligibility on par with his juniors as per the provisions of the Special Rules for Tamilnadu Industries Service with consequential and attendant benefits including arrears of salary by considering the representation made by the petitioner dated 14.05.2008.

7.Pending the writ petition, the Government has passed the impugned order dated 10.04.2013. By the impugned order, the petitioner's representation was rejected. The reason for rejection of the representation of the petitioner are;

- a) The qualification, method of appointment and service Rules vary for each and every post included in Category 3 of

Tamil Nadu Industries Service. The feeder category to the post of Assistant Director(Technical) is Assistant Engineer (Industries)/Junior Engineer(Industries), and therefore, it is not feasible to keep all the posts which are included in Category 3 of Tamil Nadu Industries Service as feeder categories to the post of Deputy Director(Technical).

- b) The petitioner was appointed as Supervisor Testing at Principal at Institute of Ceramic Technology, Vridhachalam by Tamil Nadu Public Service Commission for having educational qualification as Diploma in Chemical Technology. Though the petitioner has completed his B.E. in Chemical Engineering, it is not a prescribed qualification for promotion to the posts of Chemist Grade-I and Principal, ICT, Vridhachalam. He has been promoted as Chemist Grade-I with effect from 25.07.1995 and as Principal(Assistant Director Cadre), Institute of Ceramic Technology, Vridhachalam with effect from 11.07.1998. The petitioner has therefore, within a span of 8 years has obtained two promotions in the Department which is not available to a person who joined as Assistant Engineer (Industries), who have not obtained a single promotion after putting 12 years of service in the inception post.
- c) The promotion in Ceramic wing is not available to the post of Deputy Director (Ceramic) as the post of Deputy Director (Ceramic) was discontinued in this Department as per G.O. (Ms).No.59, SID(E.I.1) Department dated 02.11.2006.
- d) The fixation of inter-se seniority among the officers working in the Ceramic Wing, General wing and all other posts included in Category 3 of Tamil Nadu Industries Service is not feasible as the mode of initial appointment, and regular line of promotion in the feeder category and educational qualification are different which cannot be treated on par.

8.It is this order which is under challenge in the instant writ petition.

9.The petitioner in the writ petition would contend that the reasons given in the impugned order dated 10.04.2013 are directly contrary to the Special Rules for Tamil Nadu Industries Service. It is stated that once Rules have been framed for promotion, they cannot be violated.

10.The respondents have filed a counter reiterating the reasons given in the impugned order dated 10.04.2013.

11.Heard, the learned counsel for the petitioner and the respondents.

12.The method of appointment and educational qualification for Deputy Director of Industries and Commerce(Industrial Co-operatives) Technical Deputy Director of Industries and Commerce (Materials) has been extracted supra. The appointment to the said post is from promotion from the category 3 of the Tamil Nadu Industries Service. The Post of Principle in the Institute of Ceramic Technology is a post under category 3 of the Tamil Nadu Industries Service. The educational qualification required for the post of Deputy Director of Industries and Commerce (Industrial Co-operatives) Technical, Deputy Director of Industries and Commerce(Materials) is a Diploma in Mechanical or Electrical or Automobile or Chemical Engineering of State Board of Technical Education and Training, Chennai, or any other recognised Institution or Board or a degree in Mechanical, Electrical or Automobile or Chemical Engineering from any recognized university. A perusal of the order would show that the petitioner was eligible to hold the said post.

13.As stated above, the second respondent by his letter dated 28.06.2010 has stated that the petitioner was not being considered primarily for the reason that he was suffering punishment within the check period of 5(Five) years ie., from 15.04.2004 to 14.04.2009 and charges were pending against him under Rule 17(a) of the Discipline and Appeal Rules. The request of the petitioner has been rejected by the Government by letter no.6737/E.I.1/2009-2, MS&ME, dated 12.10.2009 stating that as per the existing rule there is no combined seniority to the posts in Ceramic Wing to that of Assistant Director(Technical)/ Manager(Material)Gr-I and other similar posts, the same is against the Service Rules. In any event, the impugned order also, more or less, reiterates the same reasons. It is well settled that the Government cannot reject the case of the employee by giving a reason which is contrary to the Service Rules.

14.The learned counsel for the petitioner has drawn the attention of this Court to the Judgment of the Hon'ble Supreme Court in B.Amrutha Lakshmi Vs. State of Andhra Pradesh[(2013) 16 SCC 440], wherein the Hon'ble Supreme Court has observed as under:

"20. We have got to accept that, if the rules for selection contain a requirement, the same has to be applied uniformly and strictly, and none from the eligible group can be eliminated from being considered on any criteria, other than those which are provided in the rules. If there is a criteria laid down for selection, the administration has to confine to the same, and it cannot impose an additional criterion over and above whatever has been laid down. If that is done it will no longer remain an exercise of discretion, but

will result into discrimination. It will mean treating similarly situated employees dissimilarly, and denying equal opportunity to some of them in the matter of public employment on the basis of a criterion which is not laid down, resulting into violation of Article 14 and Article 16(1) of the Constitution of India. If the rules were to provide that in the event of large number of persons coming into the zone of consideration, the names of the seniormost alone will be forwarded, then it would have been a different situation. In the absence of any such restrictive rule, as in the present case, the decision of the respondents cannot be justified."

15. Similarly the Hon'ble Supreme Court in Jagdish Prasad Vs. State of Rajasthan[(2011) 7 SCC 789] has observed as under;

"29....Once the rules stand clear, the authority concerned is expected to act in accordance with law and not to defeat the law. One who defeats the law by his unjustifiable and unsustainable acts is liable for the consequences of such default. We fail to understand why the Government and its entire hierarchy had shut its eyes to this gross violation of statutory rules over such a long period."

16. Further, the Hon'ble Supreme Court in S.B.Bhattacharjee Vs. S.D.Majumdar[(2007) 10 SCC 513] has observed as under;

"Although a person has no fundamental right of promotion in terms of Article 16 of the Constitution of India, he has a fundamental right to be considered therefor. An effective and meaningful consideration is postulated thereby. The terms and conditions of service of an employee including his right to be considered for promotion indisputably are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India."

17. The learned counsel for the petitioner would contend that second proviso Rule 36 of the Tamil Nadu State and Subordinate Service Rules, which is applicable at that point of time, provides that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered. This answers the objection raised in the impugned order that it is not feasible to keep all the posts which are included in Category 3 of Tamil Nadu

Industries Service as feeder categories to the post of Deputy Director(Technical). The said objection apart from being contrary to the service rules, is covered by the second proviso of Rule 36 of the Tamil Nadu State and Subordinate Rules which reads as under:

" Provided further that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered "

18.The fact that the petitioner cannot be promoted in the Ceramic Wing is also no answer to deny the petitioner from being considered for the post of Deputy Director(Technical). The stand taken by the respondents is completely contrary to the Service Rules.

19.The writ petition as prayed has to be granted. The respondents are therefore directed to consider the petitioner for promotion to the post of Deputy Director of Industries and Commerce based on his eligibility and seniority, keeping in mind Second Proviso Rule 36 of the Tamil Nadu State & Subordinate Service Rules. The respondents are directed to complete this excise within a period of 8 weeks from the date of receipt of a copy of this Order.

20.The writ petition is allowed. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

tsg

To

1.The Secretary to Government,
Micro Small & Medium Enterprises Department,
Secretariat,
Chennai 600 009.

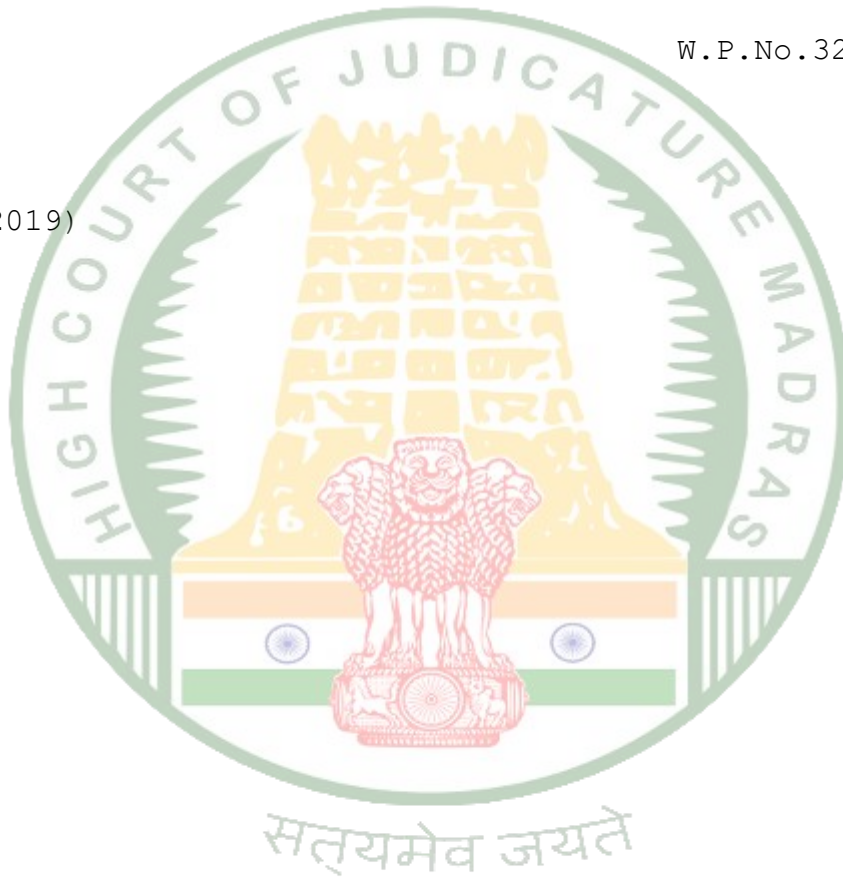
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2.Industrial Commissioner and Director
of Industries & Commerce,
36, South Canal Bank Road,
Mandaiveli, R.A.Puram,
Chennai 600 028.

+1 CC to Mr.G.Sankaran, Advocate sr 88645.

W.P.No.32054 of 2013

EV(CO)
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