



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**
AND

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.A. (MD)No.442 of 2019

and

C.M.P. (MD)No.3634 of 2019

R.Mohandoss : Appellant/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.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order dated 22.11.2018 passed in W.P.(MD) No.11219 of 2011.

Prayer in WP(MD).11219 of 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records pertaining to the G.O.Ms.No.45 Small Industries (Estt.1) Department, dated 10-07-1996 issued by the 1st Respondent and quash the portion of the Government Order in respect of the effective 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.1) 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 Respondents

: Mr.A.Muthukaruppan
Additional Government Pleader

JUDGMENT

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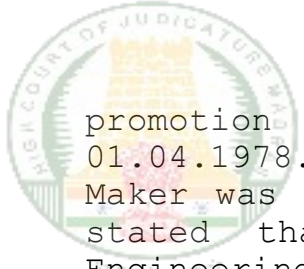
(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

This appeal has been preferred by the Writ Petitioner in W.P. (MD)No.11219 of 2011 aggrieved by the order dated 22.11.2018 dismissing the Writ Petition filed by the appellant for issuance of a Writ of Certiorarified Mandamus to quash the Government Order in G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996 issued by the first respondent in respect of the effective date of the Government Order and consequently to promote the appellant to the post of Junior Engineer (Industries) with effect from 11.03.1991 with all service benefits.

2.The brief facts that are necessary for the disposal of this appeal are as follow:

2.1.The appellant completed diploma in Mechanical Engineering (DME) in the year 1986. Subsequently, the appellant also completed a Certificate Course in "Tool and Die Maker" with three years duration. The appellant was selected and appointed to the post of Die Maker which is a post coming under Tamil Nadu Industrial Subordinate Service and posted in the Institute of Tool Engineering, Dindigul by the order of second respondent dated 27.02.1989. The appellant completed his probation on the afternoon of 10.03.1991.

2.2.It is admitted by the appellant himself in the affidavit that as per G.O.Ms.No.457, Industries Department, dated 04.04.1984, the post of Die Maker was constituted as a separate category in the Tamil Nadu Industrial Subordinate Service. It is further admitted that the rules though prescribe qualification for appointment, appointing authority, method of appointment, reservation in appointment, probation and pay applicable to the post of Die Maker, the rules did not prescribe any provision for further promotion from the post of Die Maker. It is the case of the appellant that vide G.O.Ms.No.850, Industries (F1) Department, dated 06.08.1986, common rules for appointment, qualification, method of appointment to the post of Assistant Engineer (Industries) and Junior Engineer (Industries) were framed and that the said rules were also given retrospective effect from 01.04.1978. As per this rule, the holders of the post of "Foreman (Engineering) Grade II", "Mechanical Draughtsman Grade-II" and "Foreman Assistant in the Chemical Testing and Analytical Laboratory, Guindy, Madras", with a diploma in mechanical or electrical or automobile engineering or chemical technology of the State Board of Technical Education and Training, Madras or of a recognised institution and who have put in not less than two years service in the lower post, were made eligible for



promotion to the post of Junior Engineer (Industries) from 01.04.1978. The grievance of the appellant is that the post of Die Maker was not made as a feeder category till 1996. It is further stated that the appellant who had a diploma in Mechanical Engineering could have been promoted in 1991 if the post of Die Maker also was made as a feeder category to the post of Assistant Engineer or Junior Engineer.

2.3. It is not in dispute that the Government issued G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996 amending the *ad hoc* rules for appointment to the post of Junior Engineer (Industries). By G.O.Ms.No.45, the post of Die Maker existing in the institute of Tool Engineering, Dindigul, was included as the feeder post for the first time. The grievance of the appellant is that the said Government Order was given only prospective effect i.e., its applicability came into effect only from 10.07.1996. Thereafter, the appellant was also promoted as Junior Engineer (Industries) by order dated 03.12.1997. Stating that the *ad hoc* rules vide G.O.Ms.No.45 ought to have been given retrospective effect to facilitate the regularisation of appointment/promotion of employees with retrospective effect and that such retrospective effect was not given while first respondent issued G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996, the Writ Petition was filed. It is further stated that if G.O.Ms.No.45, had been given retrospective effect, the appellant would have been promoted with effect from 11.03.1991 in stead of getting promotion in the year 1997.

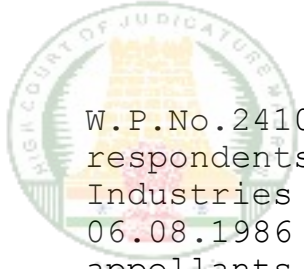
3. The respondents filed a detailed counter affidavit explaining that the post of Die Maker was not shown as the feeder post to any other higher post at the time of issuing G.O.Ms.No.457, Industries Department, dated 04.04.1984 for reasons. It is further stated that inasmuch as the appellant was not 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 promotion as a matter of right. The learned Single Judge after elaborately considering the facts dismissed the Writ Petition holding that it would be beyond the power and jurisdiction of the Writ Court to confer retrospective operation of a Government Order, when the Government had as a matter of policy made it prospective in its application and operation. Admittedly, it is not the case of the appellant that any one of his junior who was holding the post of Die Maker was promoted before the appellant. It was therefore held that the appellant cannot treat those persons working in other posts as juniors to the appellant, merely because they entered into service in later point of time. The learned Judge also found that the appellant is not entitled to any relief in view of the position that the appellant has come forward with the writ petition nearly after two decades and that therefore, he is not entitled to any relief. Aggrieved by the dismissal of Writ Petition, this appeal is filed by the Writ Petitioner.



4. We are perfectly in agreement with the learned Single Judge on all issues. The facts are not in dispute in this case. The appellant was appointed only in the month of February, 1989 and completed his probation successfully on the afternoon of 10.03.1991. The appellant also admits that the post of Die Maker in which the appellant was appointed was constituted as a separate category and the rules then in existence did not provide any promotional avenue to the appellant who was holding the post of Die Maker. When G.O.Ms.No.850, dated 06.08.1986 was issued making the holders of some other posts eligible for promotion to the post of Junior Engineer (Industries) with effect from 01.04.1978, the post of Die Maker was not made as a feeder category to the post of Junior Engineer. The petitioner whose probation was declared only in 1991 claims right to get promotion with effect from 1991 by stating that the Government Order in G.O.Ms.No.45, dated 10.07.1996 whereby the post of Die Maker was made as a feeder category to the post of Junior Engineer should be given retrospective effect. It is well settled that promotion is not a matter of right in all cases. As per the service rules which was in force when the appellant was recruited in 1989, the appellant was not eligible to get promotion to the higher post. For the first time in 1996, the post of Die Maker to which the appellant was appointed became a feeder category to the higher post. The appellant has no right to compel the first respondent to give retrospective effect to the amendment to get promotion with retrospective effect, that too, with effect from 1991. Hence, this Court is unable to find any reason in favour of the appellant to entertain this appeal.

5. That apart one more aspect also has to be looked into in this case. The appellant filed a Writ Petition in the year 2011 to quash the G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996 insofar as the said G.O. is in relation to the effective date of the Government Order as 10.07.1996 and consequently to promote the appellant. The Government Order impugned in the Writ Petition was issued in 1996. Though the inordinate delay in approaching this Court was explained by the appellant in the affidavit by referring to the previous Writ Petitions, there is something more in this case.

6. The appellant earlier submitted a representation for the first time on 02.02.2005 requesting the respondents to give him promotion from the year 1991. Thereafter, he filed a Writ Petition in W.P.No.22850 of 2005 before the principal seat and the Writ petition was dismissed by order dated 18.07.2005 observing that the appellant cannot claim promotion as a matter of right. However, in the Writ Appeal filed by the appellant in W.A.No.1701 of 2005, the Division Bench of this Court passed an order directing the respondents to consider the representation of the appellant dated 02.02.2005 and to dispose of the same on merits and in accordance with law without any reference to the observations made by this Court. Thereafter, the appellant filed a Writ Petition in

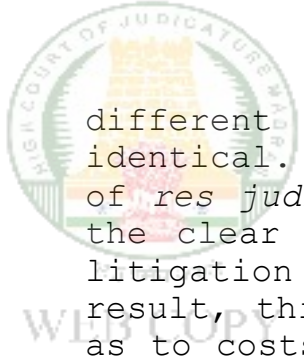


W.P.No.24106 of 2008 for issuing a Writ of Mandamus directing the respondents to give retrospective effect to G.O.Ms.No.45, Small Industries (Estt.1) Department, dated 10.07.1996 with effect from 06.08.1986 and to suitably modify the seniority list to include the appellants name and to grant all the subsequent benefits in service. When the writ petition was taken up for hearing, the learned Counsel for the appellant submitted before the learned Single Judge that the respondents had already passed an order on the representation of the petitioner and allowed the Writ Petition to be dismissed as infructuous. The prayer in the Writ Petition in W.P.No.24106 of 2008 is not different from the prayer that is now sought to be canvassed by the appellant in the present writ petition. Thereafter, the appellant filed another Writ Petition in W.P.No.7627 of 2011 for issuing a Writ of Certiorarified Mandamus to quash the Government letter dated 09.09.2010 issued by the first respondent and to direct the first respondent to amend the effective date of G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996 as 11.02.1991 and to give promotion to the appellant with effect from 1991 as he became eligible as per his qualification and experience. It is pertinent to mention that the appellant did not get any liberty either to challenge the Government Order or the order that was stated to have been passed when the earlier Writ Petition in W.P.No.24106 of 2008 was disposed of. Though the appellant has disclosed the filing of three writ petitions successively by the appellant earlier and its decisions, the legal implication of the second writ petition in W.P.No.24106 of 2008 was ignored by the appellant. It is well settled that the principles of *res judicata* also applicable in writ proceedings. Quiet interestingly the Writ Petition in W.P.No.7627 of 2011 was withdrawn. The order dated 11.07.2011 in W.P.No.7627 of 2011 read as follows:

"After making submissions on the validity of the impugned order, M.A.Thirumurthy, learned Counsel appearing for the petitioner seeks permission of this Court to withdraw the Writ Petition with liberty to challenge G.O.Ms.No.45, Small Industries, dated 10.07.1996.

2.Permission is granted to withdraw the writ petition. Hence, the Writ Petition is dismissed as withdrawn. No costs."

7.In effect, the earlier Writ Petitions filed by the appellant in W.P.No.24106 of 2008 and W.P.No.7627 of 2011 are one and the same. Though the prayer in the two writ petitions are couched in different language, the contention of the appellant in both the earlier Writ Petitions and the present Writ Petition are one and the same. After withdrawing the second writ petition in W.P.No.7627 of 2011 seeking liberty to challenge G.O.Ms.No.45, Small Industries (Estt.I) Department, dated 10.07.1996, the present Writ Petition has been filed, once again for identical relief. This practice of filing successive writ petition has to be deprecated. This Court is able to see that the three writ petitions are not



different in substance and the subject matter of the lis are identical. Having regard to the legal position that the principles of *res judicata* is not alien to this proceedings, this Court is of the clear view that the present Writ Petition is nothing but re-litigation and hence, it has to be dismissed *in limini*. As a result, this Writ Appeal is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The 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.

+1 CC to M/s.A.THIRUMURTHY, Advocate in SR-59324

W.A. (MD) No.442 of 2019
05.04.2019

srm

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