

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.659 of 2015
and M.P.Nos.1 and 2 of 2015

Raja Mahesh Kumar M.E. (Civil-Structural) .. Appellant

-vs-

1.The Secretary to Govt.,
Housing & Urban Development Dept.,
Secretariat, Chennai 600 009.

2.The Member Secretary,
Chennai Metropolitan Development
Authority, No.8, Gandhi-Irwin Road,
Chennai-8.

3.M.Balamurugan, B.E. (Electrical) .. Respondents

Appeal filed under Clause 15 of the Letters Patent against
the order dated 24.03.2015 passed in W.P.No.11590 of 2011 on the
file of this Court.

Prayer in WP.No.11590 of 2011: Writ petition filed under Art1
226 of Constitution of India praying for the issuance of a writ
of certiorarified Mandamus to call for the records relating to
the impugned order dated 12.08.2010 Ref.Proc.No.E2/11784/2010
and the consequential communication dated 12.04.2011 Ref.Memo
No.E2/5586/2011 and all further proceedings and quash the same
and consequently direct the second respondent authority to
follow the Madras Metropolitan Development Authority Service
Regulations 1980 and grant promotion to the petitioner for the
post of Executive Engineer.

Page numbers

For Appellant : Mr.S.Thanka Sivan

For Respondents : Mr.G.K.Muthukumar,
Spl.G.P. For R-1
: M/s.P.Veena Suresh for R-2
: Mr.L.Chandrakumar for R-3

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The appellant has already been promoted as an Executive Engineer and then, as Superintending Engineer, but his grievance is that his promotion was subverted, as a result whereof, he has been made junior to the third respondent, Mr.M.Balamurugan, who came to be promoted earlier to the appellant, which was subject matter of challenge before the learned single Judge.

2.It is urged that the learned single Judge held the draft Service Regulations pertaining to promotion and seniority to be applicable whereas it is the Madras Metropolitan Development Authority Service Regulations, 1980, that were applicable and had to be applied on the facts of the present case. It is urged that even assuming for the sake of arguments that same benefit had been extended to the appellant under the draft Service Regulations, the same cannot be an impediment on the issues raised by the appellant, namely, that he could not have been non-suited for promotion and secondly, the third respondent could not have been promoted as he was not eligible to occupy the post in question.

3.It is the further submission of the learned counsel for the appellant that the conclusion drawn by the learned single Judge that there was another post of Executive Engineer (Electrical) where the third respondent was placed which does not in any way affect the eligibility conditions is incorrect and therefore, the impugned judgment deserves to be set aside.

4.It is further submitted that it was an admitted position before the learned single Judge that the draft Service Regulations were never approved and were still engaging the attention of the State Government and therefore, in the given circumstances, the promotion claimed by the appellant could not have been denied by holding that the draft Service Regulations were applicable.

Page numbers

5.The said submissions were countered by the learned Special Government Pleader, who has invited the attention of the Court to the letter dated 22.03.2007 to urge that in terms of the said letter, the draft Service Regulations as approved by the Chennai Metropolitan Development Authority were rightly followed for promoting the third respondent, hence, no exception can be taken by the appellant in this regard.

6.Mr.L.Chandrakumar, learned counsel for the third respondent, however, contended that the appellant was 15 days short of experience of five years as required under the draft Service Regulations for being promoted as an Executive Engineer and therefore, it was the third respondent who, having fulfilled the conditions, was rightly granted the promotion over and above the appellant. It is urged that the appellant himself having taken advantage of the draft Service Regulations for promotion that has been recorded by the learned single Judge cannot now turn around and take a plea that the Regulations of 1980 would continue to apply and that the draft Service Regulations cannot be pressed into service. He, therefore, submits that none of the submissions raised by the learned counsel for the appellant are acceptable.

7.In rejoinder, learned counsel for the appellant has invited the attention of the Court to the judgments of this Court that have been enclosed along with the typed set of papers to urge that the draft Service Regulations do not have any statutory force. The first judgment is in the case of T.Ramanujam vs. The Madras Metropolitan Development Authority (W.P.No.12363 of 1994) decided on 27.03.1997. The other decision is in the case of R.Rudiramurthy vs. A.Balasubramaniyan (M.P.No.2 of 2007 in W.P.No.29992 of 2007) decided on 07.11.2007. He contends that there being complete absence of any approval of the Government in terms of Section 124 (1) of the Tamil Nadu Town and Country Planning Act, 1971, the Chennai Metropolitan Development Authority cannot on its own enforce unamended draft Service Regulations.

8.It has further been pointed out by the learned counsel for the appellant that the appellant had been found fit for promotion as is evident from the approval of the panel dated 19.06.2009, which places the appellant at Sl.No.2 and one Mr.N.Srinivasan Rao, who was then eligible, at Sl.No.1. He submits that the change was brought about the next year when the panel was prepared by inserting the third respondent at Sl.No.1, who did not even possess the minimum qualification of B.E. (Civil) that was required for occupying the post of Executive

Page numbers

Engineer on promotion, as he was an Electrical Engineer. To the contrary, the appellant was having B.E. (Civil) degree and was also in possession of the preferential Master's degree in Electrical as well. The promotion of the third respondent, therefore, was contrary to law and was only done with a view to accommodate him by eliminating the appellant who was entitled to be promoted in terms of the Service Regulations, 1980.

9. We have considered the submissions raised and one of the arguments advanced by the appellant's counsel is that by virtue of G.O.Ms.No.294, Public Works Department, dated 22.02.1977, the appellant was eligible having been re-designated as Assistant Executive Engineer on the existing scale of pay with the powers and functions of Assistant Engineers. Thus, the appellant was already an Assistant Engineer, who was re-designated as an Assistant Executive Engineer. This was not a promotion and it was a re-designation. This aspect may not be in strict conformity with the pleadings of the appellant in the writ petition, but the said Government Order does indicate that it was a re-designation and not a promotion.

10. Thus, if the appellant was a re-designated Assistant Executive Engineer, he was entitled to be promoted as an Executive Engineer as per the 1980 Regulations. The provisions relating to qualification under the 1980 Regulations for being promoted as Executive Engineer indicates that one must possess a B.E. degree (Civil or Highways) and must have experience as Assistant Engineer for a period of not less than five years, provided that preference shall be given to a person who has acquired in addition to the qualifications prescribed a Master's degree or an equivalent Diploma in Town and Country Planning or Engineering. The appellant admittedly was possessed of the educational qualifications as referred to above under the 1980 Regulations, whereas, the third respondent was admittedly an Electrical Engineer.

11. Secondly, the empanelment of 19.06.2009 does indicate that the appellant had been placed at Sl.No.2 in the panel when the name of Mr.N.Srinivasan Rao was recommended at Sl.No.1, who came to be promoted, which also substantiates the submissions of the appellant that he was considered eligible for being promoted as an Executive Engineer.

12. It is at this juncture that it will be appropriate to deal with the argument about the applicability of the draft Service Regulations. As is evident from the impugned judgment itself, the draft Service Regulations that had been introduced on 15.04.1997 had not superseded the 1980 regulations and were

Page numbers

to be applied only where there were no specific rules. This is also evident from the letter dated 22.03.2007, which is extracted hereinunder:-

" I am directed to refer your D.O. letter cited and to state that the draft Service Regulations for Chennai Metropolitan Development Authority is under consideration of the Government. I am to request you to follow the existing Service Regulations approved in G.O. Ms.No.210, Housing and Urban Development Department, dt.26.2.1980 and wherever the service conditions of the employees or provisions have not been made specifically in the existing regulations, the provisions as proposed in the draft service regulations as approved by the Chennai Metropolitan Development Authority and proposed in your D.O. letter cited may be followed, subject to satisfying the other orders of the Government in force.

2.I am also to request you to address the Government wherever clarification is required."

13.A perusal of the said letter would demonstrate that there was a clear indication of the continued application of the 1980 Regulations that was in force through G.O.No.210, dated 26.02.1980. It is the contention of the respondents that where there are no specific existing regulations, the provisions as proposed in the draft Service Regulations would continue to apply. In our assessment, there is no deficiency in the 1980 Regulations in the provisions for promotion. The qualification for promotion to the post of Executive Engineer did exist specifically and therefore, it is the said regulations that ought to have been followed.

14.Further, the judgments that have been cited by the learned counsel for the appellant and referred to hereinabove in the case of T.Ramanujam (supra) and S.Rudiramurthy (supra) also indicate that draft Regulations will not have a statutory force for applying it as a service regulation except with the prior approval of the Government. The letter dated 22.03.2007 clarifies the issue which has been extracted hereinabove and therefore, as reasoned out above, the 1980 Regulations continued to be in force which ought to have been observed by the respondents. The contention of the learned counsel for the respondents that the draft Service Regulations would be applicable in the present dispute cannot be accepted.

15.Apart from this, even if any benefit of promotion has been extended to the appellant as an Executive Engineer under the draft Service Regulations, the same cannot take away his

Page numbers

right to contest his consideration for promotion wayback when the third respondent came to be promoted in the year 2010 by eliminating the appellant, more so, when there was a clear dispute with regard to the qualification of the third respondent as well.

16. These aspects of the matter have been completely overlooked by the learned single Judge and therefore, the impugned judgment, in our opinion, does not correctly adjudicate the claim. The appellant ought to have been considered as he had made a representation that came to be rejected on erroneous considerations by the impugned communication dated 12.04.2011. It is the said communication which was assailed before the learned single Judge, but the writ petition came to be dismissed by the impugned judgment dated 24.03.2015.

17. For all the reasons stated hereinabove, we do not find the order dated 12.04.2011 to be sustainable in law and for the same reasons, the non-consideration of the relevant position as explained hereinabove renders the impugned judgment dated 24.03.2015 infirm.

18. Accordingly, the Writ Appeal is allowed, the impugned judgment dated 24.03.2015 is set aside and the order dated 12.04.2011 communicated to the appellant by the Member Secretary, Chennai Metropolitan Development Authority, is quashed.

19. The matter is remitted back to the Chennai Metropolitan Development Authority to re-consider the claim of the appellant and pass an appropriate order in the light of the observations made hereinabove, after analysing the correct position and status of the service of the appellant vis-a-vis the third respondent and in the event, the appellant is found entitled for such promotion, the respondent Authority shall appropriately grant such relief to which the appellant may be entitled to in the terms above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

Page numbers

To

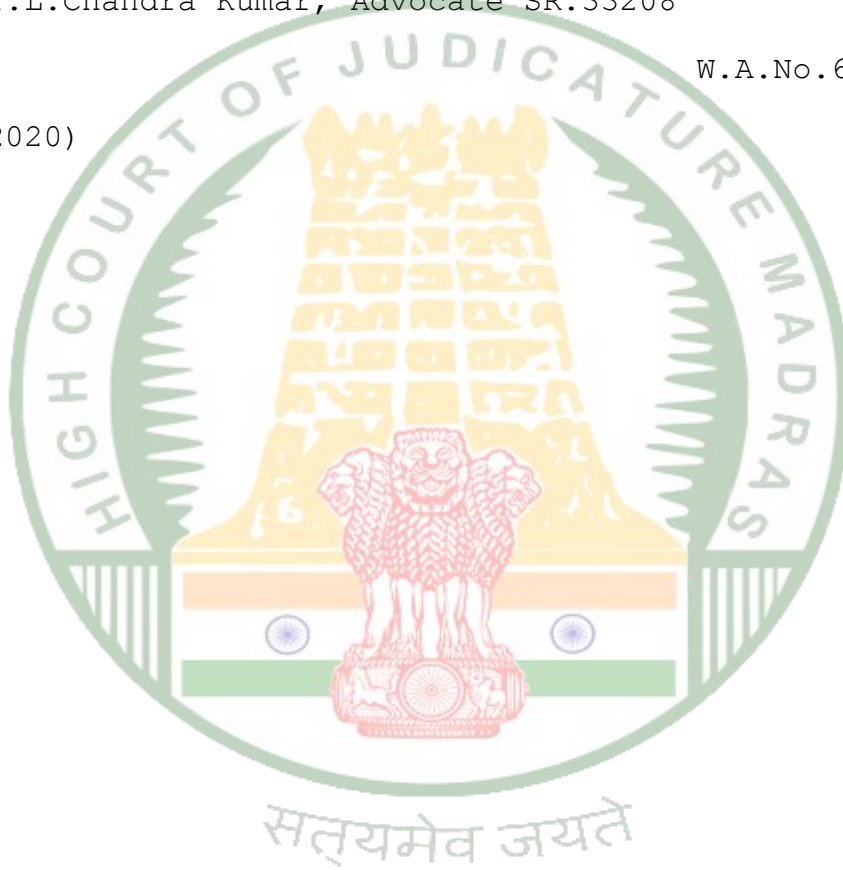
1.The Secretary to Govt.,
Housing & Urban Development Dept.,
Secretariat, Chennai 600 009.

2.The Member Secretary,
Chennai Metropolitan Development
Authority, No.8, Gandhi-Irwin Road,
Chennai-8.

+1cc to Mr.L.Chandra Kumar, Advocate SR.33208

W.A.No.659 of 2015

PP(CO)
CB(03/11/2020)



WEB COPY

Page numbers