

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.21130 OF 2004

P.Sridhar

... Petitioner

Vs.

1.The Secretary to Government
Public Works Department
Fort St. George,
Chennai - 600 009.

2.The Engineer - in - Chief, WRO
and Chief Engineer / General
Public Works Department
Chepauk, Chennai - 600 005.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned order passed by the second respondent in Proc.No.S2(2)/67818/2000 dated 20.05.2003 and quash the same and further direct the respondents to restore the original seniority of the petitioner as Assistant Engineer from 16.12.1986 and consider his claim for promotion for the year 2002-2003 as Assistant Executive Engineer on par with his junior.

For Petitioner : Mr.K.Venkatramani
Senior Counsel for M/s.M.Muthappan

For Respondents: Ms.R.Janaki
Additional Government Pleader

O R D E R

The writ petitioner was appointed as Junior Engineer in Public Works Department. Since he is a Diploma holder, he was designated as Junior Engineer. As per rules, if a person passes Degree in Engineering, he should be re-designated from Junior Engineer to Assistant Engineer. The petitioner acquired B.E. Degree from the date of his last examination on 15.12.1986.

Accordingly, his post was re-designated and appropriate seniority was assigned to him in the proceedings of the second respondent dated 06.03.2000. He was granted Selection Grade to the post of Assistant Engineer after completion of ten years with effect from 12.01.1997 by proceedings dated 25.08.2000 of the second respondent.

2. In the meanwhile, selection for appointment by direct recruitment was made during the year 1985-1986 to the post of Assistant Engineer. Even though persons were selected for appointment in 1986, the posting was continued till 1991. Since the petitioner had acquired his Degree in Engineering in the year 1986, the appointees by direct recruitment after 1986 should be construed as juniors to the petitioner. However, the second respondent, by the impugned proceedings dated 20.05.2003, had cancelled the order of re-designation given with effect from 16.12.1986 and placed him below all the direct recruits. That is, without issuing any notice to the petitioner, his seniority was revised. The cancellation of re-designation by the impugned proceedings, according to the petitioner is in violation of principles of natural justice and therefore, liable to be set aside.

3. The learned Additional Government Pleader relying on the contents of the counter affidavit filed by the respondents has argued that as per Rule 2(e) of Special Rules for the Tamil Nadu Engineering Services, the seniority of the petitioner was fixed at the appropriate place below the last candidate of the 1985-1986 selection list. Those candidates were selected to the post of Assistant Engineer by direct recruitment in the year 1986 against substantive vacancies. Once it is established that regular selection was made and persons were appointed accordingly, the re-designation made after that date will not confer any right on the petitioner, to place him over and above the direct recruits. It is clearly specified in the Rules that the re-designated candidates will be given seniority below the rank of Assistant Engineer (Civil) in the list of candidates selected by Tamil Nadu Public Service Commission to the category of Assistant Engineer (Civil) in that calendar year. Accordingly, guidelines were issued for fixation of interse seniority between the directly recruited Assistant Engineer (Civil) and re-designated Assistant Engineer (Civil) from the post of Junior Engineer (Civil) on acquiring B.E., vide G.O.Ms.No.268, Public Works Department, dated 01.03.1978, G.O.Ms.No.2070, Public Works Department, dated 30.12.1980 and G.O.Ms.No.662, Public Works Department, dated 24.03.1983. Hence, the petitioner shall be at the rank below the last directly recruited Assistant Engineer (Civil) on his re-designation on acquiring the Degree. Further, it is contended that the writ petition is not maintainable for non-joinder of necessary parties as well as hit by laches.

4. It is true to state that whenever revision of seniority is sought for, it is necessary to implead all the aggrieved individuals and opportunity of hearing should be given to them. However, the impugned order cancelled the re-designation of the petitioner, without issuing proper notice. Against which, the petitioner has made a representation dated 16.06.2003. Therefore, without going into the merits, a direction is issued to the respondents to consider the representation of the petitioner in view of the Government Orders issued in G.O.Ms.No.268, Public Works Department, dated 01.03.1978, G.O.Ms.No.2070, Public Works Department, dated 30.12.1980 and G.O.Ms.No.662, Public Works Department, dated 24.03.1983 and the relevant rules with regard to the Tamil Nadu Engineering Services, after affording opportunity to all the parties concerned within a period of twelve weeks from the date of receipt of a copy of this order.

5. The learned counsel for the petitioner would submit that the petitioner has attained the age of superannuation and retired from service.

6. Since the petitioner has attained the age of superannuation, the respondents are directed to consider his representation for re-designation in accordance with law and if he is entitled, to pay all monetary and terminal benefits along with backwages, within a period of twelve weeks from the date of receipt of a copy of this order.

7. The Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

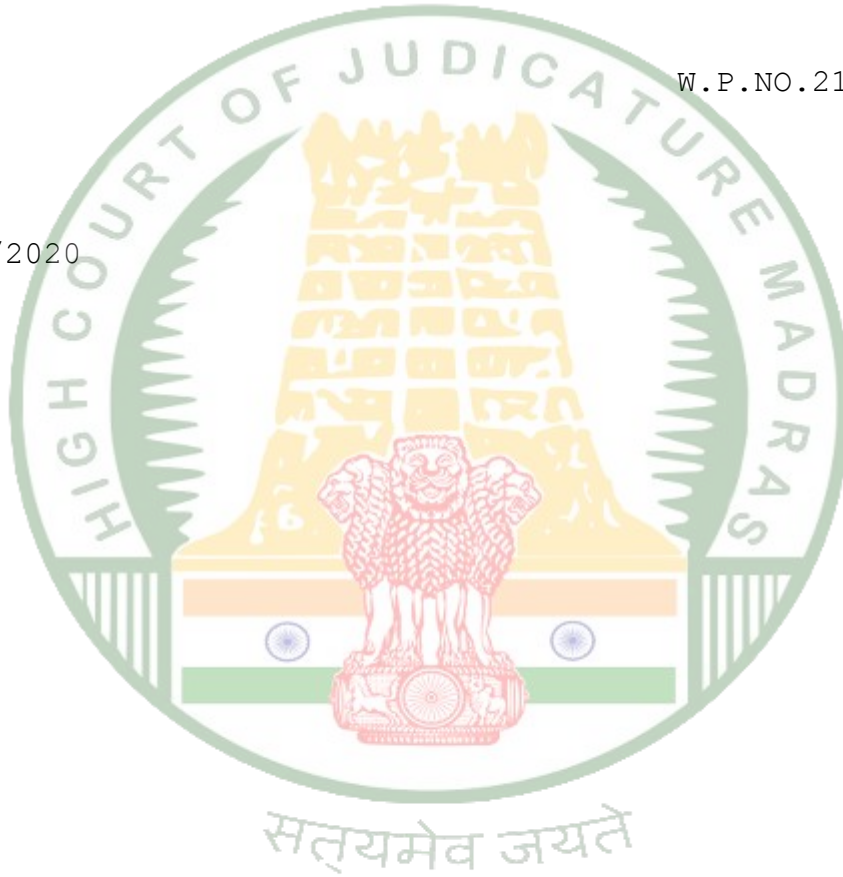
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+1cc to the Government Pleader sr.4757

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