

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2020

PRONOUNCED ON : 09.10.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.10973 of 2020
and W.M.P.Nos.13340 of 2020

M.Balamurugan

...Petitioner

-Vs-

1. The Principal Secretary
Housing and Urban Development
Department and Vice Chairman
I/c CMDA, Secretariat, Chennai 600 009.

2. The Member Secretary
Chennai Metropolitan Development
Authority, Egmore, Chennai 600 008.

3. Mr.Rajamagesh kumar

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondents 1 and 2 from promoting the 3rd respondent to the post of Superintending Engineer without preparing panel and without promoting the petitioner on the basis of his seniority and direct the 1st and 2nd respondents to consider the representation of the petitioner dated 07.08.2020 in accordance with law within a time frame fixed by this Court.

For Petitioner : Mr.K.Doraiswamy, Senior Counsel
for M/s.S.Arunachalam Associates

For Respondents: Mr.Karthik Rajan - for RR 1 and 2
Mr.V.Vijay Shankar - for R3

O R D E R

The matter was taken up through web hearing.

2. The facts and circumstances which gave raise to the filing of this writ petition are stated hereunder.

3. The petitioner was originally appointed as Assistant Engineer in the Chennai Metropolitan Development Authority (hereinafter referred to as 'Authority'), the second respondent herein. The petitioner is a graduate in Engineering (B.E) in Electrical and Electronics Engineering. According to the petitioner, he was appointed in the Construction Wing of the second respondent Authority on 23.07.1996. Thereafter he was promoted to the post of Assistant Executive Engineer on 21.06.2002 and further promoted as Executive Engineer on 01.04.2015. According to the petitioner, the promotions granted to the petitioner were on the basis of the common seniority list maintained by the authority as between Engineers from both Civil and Electrical disciplines.

4. The next avenue of promotion from the post of Executive Engineer in the administrative hierarchy of the respondent Authority is to the post of Superintending Engineer. The third respondent was appointed as Assistant Engineer on 15.04.1997 after the appointment of the petitioner in 1996 and therefore from the beginning, the third respondent was junior to the petitioner. When promotion took place to the post of Assistant Executive Engineer in 2002, the third respondent was lacking in service eligibility, but however was given exemption by the authorities and was promoted as Assistant Executive Engineer. According to the petitioner, the third respondent being junior to him all along till both of them were promoted as Executive Engineer, is an admitted fact and cannot be disputed at all.

5. The service conditions of the employees of the second respondent Authority have been regulated in terms of Service Regulations dated 26.02.1980. According to the petitioner, number of amendments have been brought about over the years in the Regulations and number of amendments are pending approval with the Government till date. In order to provide career growth and prospects to the officers of the Authority due to all round development in the activities of the Authority, the Authority, has been passing various Resolutions from time to time regulating the service requirements and consequent Regulations of such requirements together with the conditions for effecting promotion at various levels in different categories.

6. According to the petitioner, the Government in fact has clarified in its letter dated 22.03.2007 that pending approval by the Government sought over the years, the Resolutions passed by the Authority from time to time will have the same legal force as that of the approved Service Regulations. The overall scenario of the Service Regulations of the officers of the second respondent Authority is that the Authority is under the

obligation to follow the approved Regulation in G.O.Ms.No.210, Housing and Urban Development Department dated 26.02.1980 and wherever there are no specific provisions made in the said Regulations, the Draft Regulations / Amendments etc., have to be followed by the Authority pending approval by the Government.

7. Insofar as maintaining of the common seniority as between Civil and Electrical Engineering Graduates, a Resolution was adopted by the Authority on 11.01.1999 providing for such common seniority list for both Civil and Electrical Engineers and to operate promotion on the basis of common seniority list and further the Resolution provides for suitable amendments in including Electrical Engineers or Electrical and Electronics Engineers for direct recruitment to the post of Assistant Engineer and suitable amendments to be made in that regard and to forward such amendments to the Government for its approval.

8. According to the petitioner, on the basis of the Resolution above, common seniority has been maintained by the respondent Authority as between Civil and Electrical Engineers. According to the petitioner, in fact earlier when the petitioner was shown senior to the third respondent in the category of Assistant Executive Engineer, the third respondent has approached this Court in W.P.No.11950 of 2011 challenging the inter-se seniority and also questioning the legal force of the Draft Regulations. The writ petition however was dismissed by this Court on 24.03.2015 refusing the relief sought by the third respondent herein. Therefore, the seniority as between the petitioner and the third respondent is settled and beyond the pale of dispute. As against the dismissal of the writ petition, the third respondent filed W.A.No.659 of 2015 and the same is pending before this Court. Thereafter, the third respondent was promoted as Executive Engineer on 26.08.2015 as against the promotion of the petitioner herein on 01.04.2015. According to the petitioner, all along from the post of Assistant Engineer and till the post of Executive Engineer, the third respondent was always promoted after the petitioner and the third respondent in fact was granted relaxation in respect of one promotion when he was promoted from the post of Assistant Engineer to the post of Assistant Executive Engineer.

9. While so, as far as the issue raised in this writ petition is concerned, according to the petitioner that recently on the basis of a decision taken by the competent Authority, the second respondent Authority is proposing to fill up an existing vacancy in the category of Superintending Engineer by appointing the third respondent overlooking the seniority of the petitioner in the feeder grade of Executive Engineers. When the petitioner herein is admittedly senior to the third respondent in the feeder grade, the proposed action of the second respondent

Authority in attempting to promote the third respondent to the post of Superintending Engineer cannot be countenanced in law as well as on facts. The inter se contest as between the petitioner and the 3rd respondent for the subject promotion is thus far briefly narrated above.

10. On behalf of the petitioner, the learned Senior Counsel Mr.K.Doraiswamy appeared and would strenuously contend that all along the petitioner has been shown senior to the third respondent as Assistant Engineer, Assistant Executive Engineer and Executive Engineer. As per the original Service Regulations as well as the amended Regulations, promotion to the post of Superintending Engineer is from the feeder grade of Executive Engineer and the work experience that is prescribed for the said promotion is five years in the cadre of Executive Engineer. According to the learned Senior Counsel this qualification of five years of experience has been included in the Draft Regulation, which is pending approval by the Government. In any case, the learned Senior Counsel would submit that it is an admitted position that the Draft Regulation pending approval by the Government has to be acted upon as the Government has, as early as in 2007 has clarified that the Draft Regulations of the Authority will have the same legal force as of the Approved Service Regulations.

11. Learned Senior Counsel would submit that the petitioner herein has completed five years of service as Executive Engineer as he was appointed as Executive Engineer on 01.04.2015 as against the third respondent was appointed on 26.08.2015 as Executive Engineer. On the date when the Committee of the Authority constituted for the said purpose which had taken a decision to fill up the post in July 2020, the petitioner was the lone eligible Executive Engineer as being the senior most waiting in the line for consideration to be appointed to the post of Superintending Engineer. According to the learned Senior Counsel the second respondent Authority is in fact proposing to grant relaxation of service qualification once again to the third respondent to make him eligible as per the Draft Regulations for being promoted to the post of Superintending Engineer. In this regard, the learned Senior Counsel would submit that the second respondent Authority in respect of similar promotions had resolved that second time relaxation of short fall service experience cannot be considered. He would refer to the Resolution of the Authority dated 04.08.2015 in the matter of promotion to the post of Administrative Officer. He would also refer to another communication dated 02.01.2017 wherein a Circular was issued by the Authority directing the officers to desist from making any representation seeking second time relaxation. Therefore, the second respondent Authority has taken conscious decision not to

entertain any representation seeking second time relaxation. In the wake of such definite decision, the learned Senior Counsel would submit that presently in the subject promotion, the recommendation of the Administrative Finance Committee while recommending the promotion of the third respondent has observed that the third respondent being short of service experience of 4 months and 26 days as on the crucial date of 31.03.2020 may be granted relaxation. Such recommendation is per se contrary to the Authority's own decision taken in respect of the other officers of the Authority as referred to above and also the Circular issued by the Authority itself on 02.01.2017. In fact the learned Senior Counsel would also refer to the Service details of Executive Engineers as per seniority wherein the petitioner is shown to have completed five years as on 31.03.2020 the crucial date for consideration of the promotion and the third respondent is shown to have completed 4 years, 7 months and 5 days as on 31.03.2020.

12. Learned Senior Counsel would also refer to a Circulation Note issued to the Administrative and Finance Committee, wherein the qualification and experience for promotion to the post of Superintending Engineer is mentioned as follows.

- a) Must possess a Bachelor's Degree in Civil Engineering / ~~Mechanical Engineering~~ from a recognized University, and
- b) Must have experience of not less than 5 years as Executive Engineer in CMDA.

Therefore, the present exercise in seeking to promote the third respondent by giving relaxation of service qualification is tainted with malafides, smacks of arbitrariness and calls for interference by this Court.

13. Per contra, the learned counsel Mr. Karthik Rajan appearing for the second respondent Authority would submit that the writ petition is not maintainable for the simple reason that for promotion to the post of Superintending Engineer, the petitioner herein being an Electrical Engineer is not qualified at all in terms of the Draft Regulations. In fact, he would refer to the same undated Circulation Note relied on by the learned Senior Counsel which provided the qualification for promotion to the post of Superintending Engineer that the Executive Engineer must possess a Bachelor's Degree in Civil Engineering and therefore the petitioner admittedly being a Electrical and Electronics Engineer is not even in the reckoning for consideration. Learned counsel would elaborate the issue of qualification by contending that the present vacancy in the cadre of Superintending Engineer which is the subject matter of the writ petition is created only for the Construction Wing of the second respondent Authority. He would in fact refer to

G.O.Ms.No.44, Housing and Urban Development Department dated 02.03.2020 which provided for creation of additional post of Superintending Engineer for Construction Wing and in continuance of the same for construction work undertaken by the second respondent Authority with huge finance outlay of several hundred crores. A Superintending Engineer with Civil Engineering background alone would be able to oversee such construction projects, as delineated and mentioned in the said Government Order. In the above circumstances he would submit that the petitioner being an Electrical Engineer, he is first of all not eligible to be considered for promotion to the post of Superintending Engineer. In that regard, he cannot be heard to complain about whether the third respondent has sufficient qualifying service as Executive Engineer or not for being considered for the subject promotion, as he has no locus standi to question such consideration.

14. In regard to his legal objection as to the maintainability of the writ petition on the issue of locus standi, learned counsel would refer to a decision reported in 2003 (12) SCC 477 (Sudershan Singh -vs- Harinder Mohan Sharma and Others). In this case, the Hon'ble Supreme Court has overruled the decision of the High Court concerned on the ground that the High Court had simply overlooked and failed to see whether the writ petitioner therein was qualified in the first place to question the appointment of the party respondent. According to the Hon'ble Supreme Court, if the writ petitioner was not found to be qualified there was no occasion for the High Court to entertain the writ petition against a selected candidate. Learned counsel would further refer to another decision of the Honourable Supreme Court in "Mohd.Shafi Pandow -Vs- State of J&K. And Others" reported in 2001 (10) S.C.C.47. In this case also the Hon'ble Supreme Court had ultimately held that when an appointment was questioned that the appointees were not qualified and the person questioning the appointment must be qualified first, otherwise he would have no locus standi. He would therefore submit that in this case admittedly the petitioner is not qualified and the question of challenging the consideration of the third respondent for the promotion is misplaced and misconceived and hence the writ petition deserves to be dismissed, as being not maintainable.

15. As regards the merits of the challenge, the learned counsel for the second respondent Authority would submit that it is indeed a fact that a proposal was placed before the Authority for combined seniority list for promotion between Civil and Electrical Engineers, but such proposal was only upto the level of Assistant Executive Engineer. He would in fact refer to the resolution dated 11.09.1999.

"In Chennai Metropolitan Development Authority the category of Engineers is kept as a single category without segregating it into civil and electrical. But, in Public Works Department, Civil and Electrical Engineers are considered as two distinct categories with separate seniority and channels of promotion. A Civil Engineer joining as Junior Engineer / Assistant Engineer in PWD can come upto the level of Chief Engineer subject to availability of posts and satisfying the qualifications and experience prescribed. (In CMDA upto the level of S.E). Similarly, an Electrical Engineer joining as Junior Engineer / Assistant Engineer (Electrical) can come upto the level of Superintending Engineer (Electrical). There is no interchanging of these categories and separate seniority is maintained for both the class of Engineers.

2. Keeping in view the position prevailing in PWD, the issue of maintaining separate channels of promotion / seniority for Civil and Electrical Engineers was examined in detail. Normally in the budget of any works executing agency, electrical works would be 25% of the total budget and hence a ratio of 3:1 between Civil and Electrical Engineers has been suggested by the Construction Wing of this Organization so that filling of the engineers' vacancy can be in that ratio in future.

3. Presently, the Construction Wing of CMDA has the following Engineers (Civil & Electrical).

a) Junior Engineer / Assistant Engineer :	15
b) Assistant Executive Engineer :	4
c) Executive Engineer :	3
d) Superintending Engineer :	1

4. Applying the ratio suggested above, for the existing 15 Junior Engineer/Assistant Engineer there can be 3 Electrical Engineers and 12 Civil Engineers, and for the 4 Assistant Executive Engineers, there can be 1 Electrical Engineer and 3 Civil Engineers and if new posts of Junior Engineer/Assistant Engineer or Assistant Executive Engineer are created at a later date due to taking up of new projects, they will have to be filled up by following the above ratio. It is proposed to follow- the above ratio and segregate the engineer posts in Construction Wing in Civil and Electrical upto the level of Assistant Executive Engineer in the ratio of 3:1 (incidentally, at present Construction Wing has one AEE (Electrical)

on deputation from PWD, 2 AEs (Elec.):— one deputationist and one departmental staff). Enough care has been taken to ensure that the vacancies of electrical engineers filled up by adopting the above ratio are not rendered surplus at a future date because of reduction of electrical works as these electrical engineers would also be needed for routine maintenance works of the completed projects like KWMC, CMDA Tower-I and Tower-II etc.

5. For the present, CMDA may not need a separate Executive Engineer (Electrical) or Superintending Engineer (Electrical) on long term basis though CMDA has" since from an Electrical Engineer From PWD for the post of Executive Engineer on deputation basis considering the electrical wor the tune or 5.crores to be executed in Torer-II building. If the Torer-II Project is completed CMDA may no need an electrical engineer in the level of Executive Engineer and he will have to be reverted back to PWD. In order to have better flexibility in filling up the post of Executive Engineer by a Civil / Electrical Engineer depending upon the volume of Civil / Electrical works at a particular point of time, it is proposed not to segregate the posts of Executive Engineer into electrical or civil. As superintending Engineer is the head of the Construction Wing, the post will always have to be filled by a Civil Engineer.

6. So far CMDA is maintaining common seniority both civil and electrical engineers. In order to provide separate channels of promotion, it is proposed to maintain separate seniority electrical and civil engineers so that their promotions can be regulated based on the length in the particular category.

7. The CMDA Service Regulations 1980 prescribe a qualification of B.E.Degree (Civil or Highways) for direct recruitment to the post of Assistant Engineer and an Assistant Engineer (Civil) with 5 years of experience can be promoted as Assistant Executive Engineer (Civil). It proposed to follow the same rule for recruitment and promotion to the post of Assistant Engineer (Electrical) and Assistant Executive Engineer (Electrical) but with a qualification of a degree in Electrical Engineering or in Electrical and Electronics Engineering and to send proposal to Government for amending the CMDA Service Regulations suitably.

8. It is also proposed to follow the above proposals

suggested, pending amendments to Service Regulations 1980, as exceptional administrative requirement though in other general cases we cannot do in anticipation.

9. The above proposals are placed before the Authority for approval."

16. Learned counsel would further submit that in the same proposal in the above resolution (para 5) of the Authority, would make it clear, according to the learned counsel that the post of Superintending Engineer being treated as Head of the Construction Wing, the post is always to be filled only by a Civil Engineer. He would also refer to a recent Government Order in G.O.Ms.No.95 dated 17.07.2020 that the additional post created in the rank of Superintending Engineer shall be continued for a further period of three years for civil construction work to the tune of Rs.254 Crores. On the basis of the Government Order, Administrative and Finance Committee has taken a decision to fill up the post of Superintending Engineer exclusively to oversee the various Civil Construction Works which need technical clearance that are to be issued by the Superintending Engineer with exclusive Civil Engineering background. Therefore, he would submit that the issue of seniority of the petitioner over the third respondent is of no significance or relevance to the present appointment to the post of Superintending Engineer.

17. According to the learned counsel all other communications and amendments which are contemplated over the years in regard to consideration of Electrical Engineers for promotion to the higher posts are only upto the level of Assistant Executive Engineer or utmost to the post of Executive Engineer and not above the post of Executive Engineer. Unless the Authority takes a conscious decision in this regard as to whether the Electrical Engineers are also qualified to be promoted as Superintending Engineer, as on date the petitioner herein is not qualified for consideration to the post of Superintending Engineer.

18. Learned counsel for the second respondent Authority also relied on Service Regulations (Revised) 2015 which is again Draft Regulations which provided for consideration for the post of Superintending Engineer with only one year service as qualifying experience in the post of Executive Engineer apart from Civil Engineering degree. He would therefore submit that the question of obtaining any relaxation in considering the third respondent in terms of the revised Regulations does not arise at all. He would therefore submit that the writ petition completely lacks merit and substance and therefore liable to be rejected.

19. Mr.V.Vijay Shankar, learned counsel for the third respondent would submit that in addition to what is pleaded and argued by the learned counsel for the second respondent Authority, that right from 1992 and upto the year 2015, till the latest amendment to the Service Regulations were notified, Civil Engineering qualified candidates alone were considered for promotion to the post of Superintending Engineers. According to the learned counsel, Superintending Engineer is a high end post and exclusively entrusted with the task of overseeing civil construction work and therefore the second respondent Authority, in terms of the Regulations has been promoting only Executive Engineers with Civil Engineering background as Superintending Engineers. Likewise, when the present vacancy has arisen and particularly in view of the statement made by the second respondent Authority that huge civil construction works are underway to the tune of more than 200 Crores, the second respondent Authority has taken the right decision to fill up the vacancy by senior most qualified Executive Engineer viz., the third respondent. He would therefore submit that both in terms of the mandatory requirement of the second respondent Authority and also in terms of the Service Regulations, the third respondent is the automatic choice to be considered for promotion to the post of Superintending Engineer.

20. According to the learned counsel for the third respondent, the submissions made by the learned Senior Counsel on behalf of the petitioner that the second relaxation is not permissible, cannot be countenanced for the simple reason that as per the Revised Regulations 2015, only one year service experience is prescribed apart from the educational qualification and therefore, the said submission is without any merit and contrary to the Regulations and hence liable to be rejected outright. The learned counsel would in this regard specifically refer to the relevant Regulations (Revised) 2015.

"2. CONSTITUTION : The service shall consist of the following categories of posts, namely :-

Category 1 - Chief Engineering
Category 2 - Superintending Engineer
Category 3 - Executive Engineer (Civil)
Category 4 - Executive Engineer (Electrical)
Category 5 - Assistant Executive Engineer (Civil)
Category 6 - Assistant Executive Engineer (Electrical)

3. Method of Appointment and Qualifications

No person shall be appointed to any category

specified in Column (1) of the Table below by the method specified in the corresponding entries in Column (2) unless he/she possesses the qualifications specified in the corresponding entries in Column (3) thereof:-

THE TABLE

NAME OF THE POST	METHOD OF APPOINTMENT	QUALIFICATION	
(1)	(2)	(3)	
Category - 1	CHIEF ENGINEER	By promotion from the post of SE	Must have served as SE for not less than three years in CMDA
		By Deputation from any Engineering Organization of Govt/Boards	--
Category - 2	SUPERINTENDING ENGINEER	By promotion from the post of Executive Engineer	Must possess Bachelor Degree / B.Tech in Civil Engineering from a recognized University (and) Must have an experience of not less than ONE year as Executive Engineer in CMDA
		By deputation from any Engineering Organization of Govt/Boards	--

NAME OF THE POST	METHOD OF APPOINTMENT	QUALIFICATION	
Category - 3	EXECUTIVE ENGINEER (CIVIL)	By promotion from the post of Asst.Exe.Engr (Civil)	Must possess Bachelor Degree / B.Tech in Civil Engineering from a recognized University and must have served as Assistant Executive Engineer (Civil) for five years in CMDA
		By deputation from any Engineering Organization of Govt/Boards	--
Category - 4	EXECUTIVE ENGINEER (ELECTRICAL)	By promotion from the post of Assistant Executive Engineer (Electrical)	Must possess Bachelor degree / B.Tech in Electrical and Electronics Engineering from a recognized University and must have served as Assistant Executive Engineer (Electrical) for five years in CMDA.

NAME OF THE POST	METHOD OF APPOINTMENT	QUALIFICATION	
		By deputation from any Engineering Organization of Govt/Boards	--

21. The learned Senior Counsel, by way of reply would refer to several communications and instructions in order to impress upon the Court that the second respondent Authority has been proposing to include Electrical Engineers also in the matter of promotions from the cadre of Assistant Engineer to higher posts progressively. In that view of the matter, the petitioner herein is also to be considered for promotion, as admittedly he is the senior most Executive Engineer waiting to be promoted as Superintending Engineer. The learned Senior Counsel would also submit that it is unfortunate that the career progression of the petitioner cannot come to a halt at a particular level of posting in the absence of Service Regulations, as that would be against the fundamental rights of the officers like the petitioner who cannot be discriminated against in the matter of promotion.

22. In fact, the learned Senior Counsel would also attempt to argue that even in Civil Construction works, there would always be a scope for Electrical Engineers and therefore the petitioner's qualification cannot be completely disregarded particularly when the petitioner has been promoted as Executive Engineer and has been functioning successfully with Electrical Engineering background. Finally the learned Senior Counsel would add to his submission that the petitioner has been posted as in-charge Superintending Engineer twice for some time. At this, the learned counsel for the third respondent would submit that merely because the petitioner was made in-charge Superintending Engineer on two occasions for a very brief period of one week each, it cannot confer him any right to seek regular appointment against the Regulations.

23. This Court has considered the submissions of the learned Senior Counsel for the petitioner, Mr.Karthik Rajan for the second respondent and Mr.Vijay Shankar for the third respondent, perused the materials and pleadings placed on record.

24. At the outset, this Court finds that the seniority of the petitioner as against the third respondent in the rank of Executive Engineer is not in dispute. However, what is to be

considered in this case is, whether the petitioner herein is otherwise qualified for promotion to the post of Superintending Engineer in terms of the Service Regulations which are admittedly applicable and governing the service conditions of the officers of the second respondent Authority.

25. In that view of the matter, on behalf of the second respondent Authority it has been clearly demonstrated that the post of Superintending Engineer is dominantly entrusted with the task of overseeing and carrying out civil engineering work undertaken by the second respondent Authority. The Authority, in consideration of the Civil projects to be executed, has brought in Regulations and prescribed qualification for promotion to the post of Superintending Engineer only with Civil Engineering background. The prescription of such qualification is on the basis of the overall functional requirement of the second respondent Authority at a particular level. Therefore, the prescription of Civil Engineering as the educational qualification for promotion to the post of Superintending Engineer cannot said to be arbitrary or unjust. This is more so when the Authority has chosen to fill the present vacancy in the post of Superintending Engineer which is created and sanctioned solely for the Construction Wing of the Authority. In terms of the two Government Orders referred to both by the learned counsel for the second respondent as well as by the learned Senior Counsel for the petitioner i.e., G.O.Ms.No.95 dated 19.07.2020 and the earlier G.O.Ms.No.44 dated 02.03.2020, it could be vividly discerned that the Authority had undertaken various projects in relation to the construction of Multistoreyed Office Complex, construction of Dormitory, construction of Transfer Station, construction of Additional Parking Area, construction of Food Grain Godown etc., The various works which are listed in G.O.Ms.No.44 would indisputably fortify the case of the second respondent Authority that in terms of their dominant functional requirement and in public interest, the post of Superintending Engineer is to be filled up only by the eligible person from the feeder cadre with Civil Engineering background. Therefore, the proposed action by the second respondent in seeking to fill up the subject vacancy by the third respondent cannot be a subject of any controversy, at the instance of the petitioner as in the opinion of this Court, the third respondent herein is the senior most eligible candidate waiting in the wings to be considered for the promotion. The petitioner who is admittedly not eligible as on date and out of contention cannot claim to suffer from any heart burn as against the third respondent being considered for promotion.

26. So much so is canvassed by the learned Senior Counsel about the third respondent being considered for grant of second

relaxation, as he has been already granted one relaxation when he was considered for promotion from the post of Assistant Engineer to Assistant Executive Engineer, the said submission of the learned Senior Counsel may not merit serious consideration by this Court in view of the Revised Service Regulations, 2015 wherein this Court's attention was specifically drawn to the relevant eligibility criteria, which is extracted supra. In the Revised Service Regulations, 2015 service qualification of one year as Executive Engineer alone is prescribed for appointment to the post of Superintending Engineer apart from B.Tech / B.E., in Civil Engineering as the educational qualification. Moreover, as rightly contended by the learned counsel for the second respondent Authority, the submissions painstakingly made by the learned Senior Counsel regarding the action of the second respondent in maintaining common seniority list as between Civil and Electrical Engineers, from the materials as relied on by the learned Senior Counsel in support of the writ petition, this Court did not see that anywhere there was any iota of suggestion to include the Electrical Engineers in the combined seniority list for the purpose of promotion to the post of Superintending Engineer excepting a vague reference on that aspect in the Authority's Resolution dated 11.09.1999 in paragraph one. Therefore, the second respondent Authority has very consciously excluded the category of Electrical Engineers from the ambit of consideration for promotion to the post of Superintending Engineer, rightly so on the basis of the dominant functional requirement of the Authority. The other factual submission regarding the petitioner's posting on two occasions to act as in-charge Superintendent, as rightly objected by the learned counsel for the third respondent, such transitory arrangement cannot give rise to any right to seek regular appointment outside the framework of the Regulations.

27. In regard to the issue of locus standi of the petitioner to maintain the present challenge raised on behalf of the second respondent by the learned counsel, the two decisions cited supra of the Hon'ble Supreme Court of India are to be squarely applied to the present case as well. In consideration of the objection as to the maintainability of the writ petition, the observations of the Hon'ble Supreme Court in this regard in both the decisions are extracted hereunder.

(a) 2003 (12) SCC 477 (Sudershan Singh -vs- Harinder Mohan Sharma and Others).

4. We also feel that the other aspect of the matter as to whether the appellant Harinder Mohan Sharma possessed the requisite qualification or

not, is also quite important, if not, there was no occasion to entertain the petition against the selected candidates. Learned counsel for the appellant Sudhershnan Singh submits that he had done only some five months' course in computer from a private institution. The High Court refused to enter into that aspect observing that once it was found that the appellant Sudhershnan Singh did not possess the required qualification it was not necessary to look into the qualification of the petitioner. It was not a correct approach. One challenges the appointment complaining that he was duly qualified for the post and for being considered for the same his qualification would normally be examined so as to find out whether he is entitled to challenge the selection of the selected candidates. In case he himself lacks the qualification, the selected candidate at least has the opinion of the Expert Committee which considered the selected candidate and found him quite fit for appointment in answer to the qualification for the appointment. We, however, need not go further into the matter, since the respondent Harinder Mohan Sharma is not present before us nor is he represented through any counsel and also for the reason that the High Court was not right in holding otherwise to the effect that the appellant Sudershnan Singh did not possess the required qualification.

(b) "Mohd.Shafi Pandow -Vs- State of J&K. And Others"
reported in 2001 (10) S.C.C.47

"Further, the appellant did not possess the minimum qualification required for direct recruitment, namely TDC (Final) Medical, and therefore, he was ineligible for being considered as a direct recruit. In that view of the matter, he had no locus standi to assail the appointment made in favour of others who pursuant to the advertisement, did make application and did possess the requisite qualification, and were ultimately appointed. In this view of the matter, we see no infirmity with the impugned judgment of the Division Bench requiring our interference with the same. The appeal fails and is accordingly dismissed."

28. The petitioner herein being admittedly not qualified in terms of the original Regulations or Draft Revised Regulations of 2015 or with reference to other Instructions issued from time to time by the Authority on the subject aspect, he cannot stake claim for consideration in the first place and in that event, he becomes a non-stakeholder and loses his right to question the consideration of the third respondent for the present promotion. Therefore, this Court has to come to an inexorable conclusion that the writ petition is not maintainable upholding the contention of the second respondent as to the locus standi of the petitioner to maintain and sustain the present assailment. Even otherwise, this Court has to hold that in terms of the 2015 Revised Regulations only one year service experience is prescribed as Executive Engineer and the third respondent appears to have fulfilled the service qualification, apart from the educational qualification, as well.

29. Even if there is any cloud over the service eligibility as to whether one or five year experience in the feeder grade, this Court finds that the power of relaxation is always available with the Authority / Government and the curtailment of such power with reference to the Circular dated 02.01.2017 relied on by the learned Senior Counsel for the petitioner cannot operate at all contingencies even in cases of appointment to meet the requirements of the Authority in furtherance of the larger public interest. After all in this case, the third respondent is short of a few months service. Even otherwise, the third respondent by now would have completed the experience of 5 years also.

30. In the conspectus of the above narrative and discussion, this Court is of the considered view that the writ petition is devoid of any merits and substance and the same is dismissed both on merits as well as on the plea of locus standi as being not maintainable.

31. Before parting with this case, this Court felt impelled to make certain observations due to the facts and circumstances of the case pleaded by the petitioner herein. The petitioner herein is an Executive Engineer with Electrical and Electronics Engineering background and in the Service Regulations followed by the second respondent Authority, unfortunately no provision has been made as on date to provide career advancement to officers like the petitioner herein, who have Engineering Degrees other than Civil Engineering. This Court finds that as averred in the affidavit, the petitioner is only 47 years old and he has lot more years of service left. In the absence of any channel for further promotion, the petitioner's further progression upwards from the post of Executive Engineer has come to an abrupt halt. Although this Court is conscious of the fact

that the second respondent Authority's major focus is on the Construction Wing, however the role of Electrical Engineers or other Engineers in relation to the construction work cannot be completely disregarded. The very fact that the Electrical Engineers have also been appointed upto the level of Executive Engineers would show that they also have a part in the functional requirement of the second respondent Authority, in which case, as a matter of fair play in action, the Authority can explore a viable avenue for further promotion to the rank of Superintending Engineer and Chief Engineer in respect of the Engineers other than from Civil Engineering background like the petitioner herein. In Public Service, every officer would nurture hope to climb up the ladder as a legitimate means of career advancement, if that advancement hits a road block at a particular level, it will not only result in stymying the efficiency of the officers concerned and would also imperil effective administration. Provision for periodical career progress is imperative in any service Regulation as otherwise, the administration, at some point of time, would be saddled with dead woods.

32. In the above circumstances, it is incumbent upon the second respondent Authority to explore a channel for promotion of Senior Engineering officers with non-Civil Engineering background to advance their career as in the case of the Civil Engineers in order to avoid forced stagnation at a particular level in the absence of Regulations. This Court earnestly hopes that the second respondent Authority considers the above observations of this Court and takes it forward in future in order to appreciate the legitimate expectation of the petitioner for career prospects in the administrative hierarchy of the second respondent Authority.

33. However, notwithstanding the above observations the present writ petition is dismissed. Interim order granted by this Court is vacated forthwith. No costs. Consequently, connected miscellaneous petitions are also dismissed.

WEB COPY

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

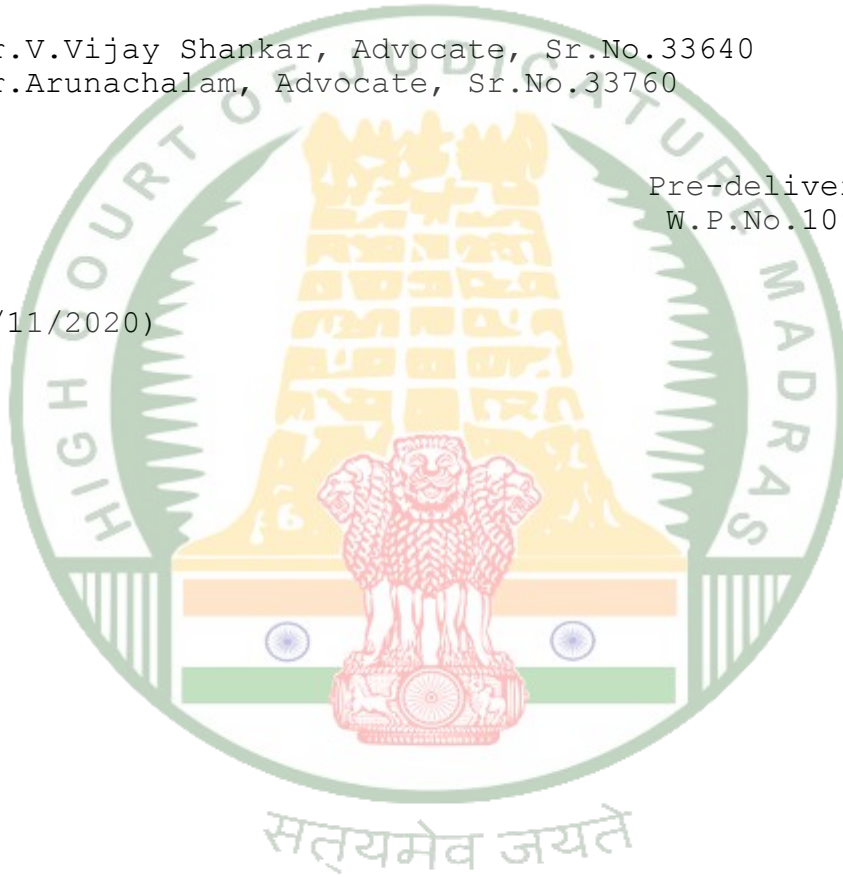
1. The Principal Secretary
Housing and Urban Development
Department and Vice Chairman
I/c CMDA, Secretariat
Chennai 600 009.
2. The Member Secretary
Chennai Metropolitan Development
Authority, Egmore, Chennai 600 008.

+1cc to Mr.V.Vijay Shankar, Advocate, Sr.No.33640

+1cc to Mr.Arunachalam, Advocate, Sr.No.33760

Pre-delivery Order in
W.P.No.10973 of 2020

rr ii (19/11/2020)



WEB COPY