



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) NO.10582 OF 2012

and

M.P (MD) No.1 of 2012

WEB COPY

P.Pitchaimani

:Petitioner

.vs.

1.The Secretary,
Public Works Department,
Fort St.George,
Chennai-9.

2.The Chief Engineer and Engineer in Chief,
Public Works Department,
Chepauk,
Chennai-5.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the second respondent dated 15.10.2010 issued in his proceedings 2(4)32009/2006-1 and quash the same and direct the respondents to promote the Petitioner as Assistant Engineer with effect from 25.11.1993 in the light of the promotion given to the Petitioner's Junior V.Sathuragiri and refix the pay of the Petitioner accordingly and pay the consequential arrears arising thereon.

For Petitioner

:Mr.R.Rajaraman

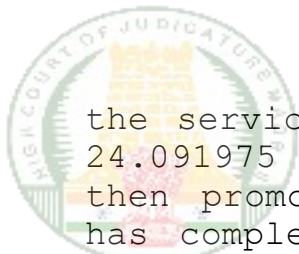
For Respondents

:Mr.J.Gunaseelan Muthiah
Addl.Govt.Pleader

O R D E R

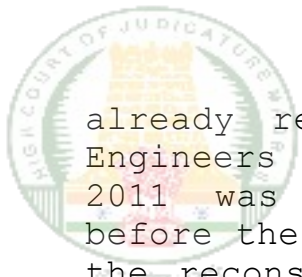
This Writ Petition is filed seeking issuance of a Writ of Certiorarified Mandamus to quash the impugned order of the second respondent dated 15.10.2010 issued in his proceedings 2(4) 32009/2006-1 and direct the respondents to promote the Petitioner as Assistant Engineer with effect from 25.11.1993 in the light of the promotion given to the Petitioner's Junior V.Sathuragiri and refix the pay of the Petitioner accordingly and pay the consequential arrears arising thereon.

<https://hcservices.courtservice.in/hcservices/> of the Petitioner is that the Petitioner joined



the service in Public Works Department as Assistant Draftsman on 24.09.1975 and promoted as Draftsman Grade III on 15.09.1976 and then promoted as Draftsman Grade-II on 16.7.1984. Thereafter he has completed his B.E.Degree in November 1993. Since he was a senior, the Petitioner has to be promoted as Assistant Engineer, but his junior, one V.Sathuragiri who joined service on 10.4.1978 and R.Selvaraj joined the service on 2.11.1997 were promoted as Assistant Engineers. It is further submitted that after four years in the post of Draftsman, he is eligible for promotion to the post of Junior Engineer and as such he was promoted as Junior Engineer on 16.3.1988. However his juniors V.Sathuragiri and R.Selvaraj were promoted as Assistant Engineers on 13.12.1984 and 28.5.1988 respectively. The above V.Sathuragiri and R.Selvaraj were promoted as Assistant Engineers on 13.12.1984 and 28.5.1988 respectively, the date on which they have passed the B.E. Degree Course. Hence the Petitioner has also to be promoted as Assistant Engineer on 25.11.1983, the date on which he has completed his B.E.Degree course. In this regard the Petitioner has submitted his representation, but there was no response. On 15.10.2010 the Petitioner has received the impugned order of the second respondent stating that they are going to reconsider the promotion granted to V.Sathuragiri. But the promotion granted to V.Sathuragiri was upheld by this Court by order made in W.P.No.2448 of 2007, dated 7.4.2011. The Petitioner would further submit that what is applicable to Sathuragiri is applicable to him and hence the Petitioner has come forward with this Writ Petition for the relief stated supra.

3.The second respondent has filed a counter affidavit wherein, it is stated that as per G.O.Ms.No.1957/PWD, dated 8.12.1988, one Sampath and 7 others, who are continuously working as Draftsman Grade-III/Overseer for four years were promoted as Junior Engineers. All the individuals who were included in the above G.O were initially appointed as Technical Assistants/Work Assistants through Employment Exchange and they were subsequently appointed as Draftsman Grade-III/Overseer. While working in the said post they were promoted as Junior Engineers. While so the TNPSC has called for application to the post of Junior Engineers. Though the above said persons applied for the same, their candidature were rejected on the ground that they were approved probationers in the post of Draftsman Grade-III/Overseer. Considering the plight of the above candidates, the Government relaxed the rules in favour of the individuals and regularize them in the post of Junior Engineer from the date on which they have completed four years of service in the post of Draftsman Grade-III/Overseer. Comparing those whose services were regularised as per the Government Order, dated 8.12.1988, V.Sathuragiri and A.Selvaraj have obtained retrospective appointment as Junior Engineers. Since their cases are something different from the candidates

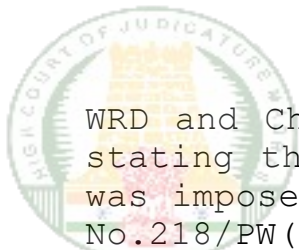


already regularized, their retrospective appointment as Junior Engineers were taken up for reconsideration. Since W.A.No.917 of 2011 was filed challenging their retrospective appointment before the Principal Bench of this Court and the same was pending, the reconsideration proposal was also kept in abeyance. In the case of the Petitioner, he was appointed as Assistant Draftsman in the year 1975 and he was promoted as Junior Engineer in the year 1988. The case of the Petitioner is entirely different from the case of the Junior Engineers whose services were regularised as per Government Order dated 8.12.1988 and that of V.Sathuragiri. The applicant who entered Government service in the year 1975 cannot compare him with the persons who entered service in the year 1970. Further the Junior Engineers will be appointed as Assistant Engineers with reference to the date of passing B.E/AMIE and notwithstanding their seniority in the post of Junior Engineer. The Petitioner had acquired B.E.Degree in the year 1983 and had joined the service in the year 1988. Since the Petitioner had acquired B.E degree much before the date of entering into service as Junior Engineer, the Petitioner is not eligible to be appointed as Assistant Engineer. Because of this rule position the Junior Engineers who have completed B.E course much prior to their date of appointment could not get appointment /Re-designation as Assistant Engineers. Though the Petitioner has obtained B.E Degree course in 1983, the Petitioner has obtained appointment as Junior Engineer in the year 1988 on the strength of his Diploma qualification. Now the petitioners claim to appoint him as Assistant Engineer is illegal. Further the appointment of Junior Engineers as Assistant Engineers is not based on seniority but with reference to the date of passing of the B.E.degree after entering into service as Junior Engineers as per Rule 5 of the Special Rule for Tamil Nadu Engineering Services. Moreover the retrospective appointment granted to V.Sathuragiri and A.Selvaraj are kept in abeyance because of the pendency of W.A.No.917 and hence prayed for dismissal of the Writ Petition.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. The non-selection of the Petitioner to the post of Assistant Engineer is challenged by the Petitioner. A counter affidavit has been filed stating that the retrospective appointment granted to V.Sathuragiri and another was under challenge in W.A.No.917 of 2011 and four years of service is required in the feeder category for appointment to the post of Junior Engineers subject to the availability of vacancy.

6. When the matter is taken up for final disposal today, the learned Additional Government Pleader appearing for the respondents produced a letter written by the Engineer in Chief,



WRD and Chief Engineer(G1) PW.D, Chepauk Chennai, dated 11.3.2020 stating that the Petitioner Thiru.P.Pitchaimani, Junior Engineer was imposed with a punishment of Removal from service vide G.O(MD) No.218/PW(E2) Department, dated 4.7.2018 for the proven charge of failure to hand over the Hard Rock and causing loss to the tune of Rs.1,13,58,207/- to the Government. As per Rule 21 of the Tamil Nadu Pension Rules, dismissal or removal of Government servant from a service or post entails fore-feiture of his past service. Since the Petitioner has been removed from service, his past service stands forfeited as per the above rule position. Therefore the Writ Petition is liable to be dismissed on the ground that the past services of the Petitioner is forfeited as per Rule 21 of Tamil Nadu Pension Rules and he can no longer claim any service right on the basis of his forfeited past service.

7.The learned Additional Government Pleader has also produced a letter of the Deputy Secretary, Tamil Nadu Public Service Commission, TNPSC Road, Chennai-3 to the Principal Secretary to the Government of Tamil Nadu, dated 23.4.2019 wherein, it is found that the Inquiry Officer has filed an Inquiry Report, dated 24.8.2017 and submitted his report to the Government and as per his report both the charges framed against the Petitioner was proved and after this Government has considered the report of the Commission and after going through the materials and the Inquiry Report and Review Petition, the Officer/Petitioner is placed under suspension and the Petitioner had stated that he is not in a position to hand over the charges due to his illness and further stated that the Petitioner has visited the site on 2.8.2013 along with Assistant Executive Engineer and he informed that hard rock stock was buried under sand excavated during the execution of work and sought two months time to unearth them. But till date he failed to do so. Hence the Government had taken a decision to impose punishment of removal from service.

8.Considering the above opinion given by the Tamil Nadu Public Service Commission, the Government has issued a Government Order in G.O(D)No.193, Public Works(F2)Department, dated 11.7.2019, stating that the charges levelled against the Petitioner was proved in the disciplinary proceedings initiated under 17(b) of the Tamil Nadu Civil Services(Discipline and Appeal)Rules for his failure to protect and hand over the hard rocks excavated during the work of formation of flood carrier canal from Kannadian Channel thereby causing a loss to the Government to the tune of Rs.1,13,58,207/- and held that punishment imposed on the Petitioner for removal from service is just and proper. Hence the Principal Secretary to Government, Government of Tamil Nadu has passed an order that the Review Petition filed by the Petitioner is rejected as devoid of merits. In view of the above order, the Petitioner's prayer to direct the second respondent to promote the



Petitioner to the post of Assistant Engineer w.e.f. 25.11.1993 in the light of promotion given to his junior V.Sathuragiri and the consequential prayer to disburse the consequential arrears in lieu of the above promotion has to be rejected. Since the Petitioner is dismissed from service, he is not entitled to receive any service benefits from the Department, as his services were forfeited due to dismissal from service. While so, the learned counsel seeks liberty to challenge the Government Order mentioned above. He also submitted that if he succeeds in the said litigation, he can pray for granting the service benefits, as sought for in this Writ Petition. This Court need not grant any liberty and it is upto the Petitioner to challenge the same, if he is aggrieved.

9. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (AD I)

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/ /2020

Sub Assistant Registrar(CS)

vsn

To

1.The Secretary,
Public Works Department,
Fort St.George,
Chennai-9.

2.The Chief Engineer and Engineer in Chief,
Public Works Department,
Chepauk,
Chennai-5.

+1 CC to MR.R.RAJARAMAN, Advocate (SR-11412[F] dated 12/03/2020)

+1 CC to SPL.GP (SR-11544[F] dated 13/03/2020)

ORDER MADE IN
W. P (MD) NO. 10582 OF 2012
and
M. P (MD) No. 1 of 2012
12.03.2020

KM(28.05.2020) 5P 5C

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