



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.14483 of 2007

1.S.Balamurugan
2.B.R.Maheswaran

..Petitioners

Vs

The Government of Tamil Nadu,
Represented by its Secretary,
Highways Department,
Fort St.George,
Chennai - 600 009.

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorarified mandamus to call for the records relating to impugned letter No.17855/HK1/2006-4 dated 16.3.2007 issued by the respondent and quash the same and consequently direct the respondent to prepare the panel for promotion to the post of Assistant Divisional Engineer to fill up the 106 vacancies for the year 2006-2007 only with the Assistant Engineers for the first 94 places (without including any Junior Engineer in the first 94 places) as per the orders of the Tamil Nadu Administrative Tribunal dated 11.01.1995 in O.A.No.4663/92.

For Petitioners : Mr.N.Subramaniyan

For Respondent : Mr.K.Magesh
Special Government Pleader

O R D E R

This writ petition has been filed seeking for issuance of writ of certiorarified mandamus to quash the impugned letter No.17855/HK1/ 2006-4 dated 16.3.2007 issued by the respondent with a consequential direction, directing the respondent to prepare the panel for promotion to the post of Assistant Divisional Engineer to fill up 106 vacancies for the year 2006-2007 only with the Assistant Engineers for the first 94 places (without including any Junior Engineer in the first 94 places) as per the orders of the Tamil Nadu Administrative Tribunal dated 11.01.1995 in O.A.No.4663/92.



2.1 According to the petitioners, the Engineers of Highways Department are governed by Special Rules to the Tamil Nadu Highways Engineering Service and the Tamil Nadu Highways Engineering Subordinate Service. The petitioners were appointed as Assistant Engineers in the Highways Department through TNPSC. The next avenue of promotion for Assistant Engineer is Assistant Divisional Engineer. The Assistant Divisional Engineers are appointed in two ways i.e. (i) By promotion from Assistant Engineers with a minimum service of 5 years as Assistant Engineers; and (ii) By recruitment from Junior Engineer with a minimum service of 10 years as Junior Engineer; with the ratio of 3:1 between Assistant Engineers and Junior Engineers. It is further stated that as per Rule 4(a) of General Rules, the panel of Assistant Divisional Engineers shall be prepared annually from the post of Assistant Engineers and Junior Engineers, but, the respondent did not prepare the said panel every year. In the year 1972-1973, the respondent continuously appointed 33 Junior Engineers as Assistant Divisional Engineers by relaxing the said ratio stating that the excess appointment of Junior Engineers would be adjusted in the subsequent panels. However, the same was not carried out by the respondent and the said panels were neither notified in the Tamil Nadu Government Gazette nor communicated to the individuals. Aggrieved over the same, one Er.K.S.Krishnamoorthy had filed O.A.No.4663 of 1992 before the Tamil Nadu Administrative Tribunal. The Tribunal by order dated 11.01.1995 allowed the said application and directed the respondent to prepare the notional panels for the post of Assistant Divisional Engineers every year from 1971 onwards and revise(d) the seniority. Thereafter, the respondent prepared the notional panels for the said posts from 1971 to 1979 vide G.O.Ms.No.217 dated 9.9.1999, however, the panel had not been prepared for the year 1980.

2.2 It is further stated that the panel prepared for the year 1973, 31 Junior Engineers in Sl.Nos.20 to 50 were included continuously without following 3:1 ratio and they were adjusted by including continuously 93 Assistant Engineers in the panel for the post of Assistant Divisional Engineer for the year 1978 and 1979, but, the same has not been carried out from the year 1980 onwards till date. As per the said orders of the Tribunal 94 Assistant Engineers (including 93 Assistant Engineers (formerly Junior Engineers) to compensate the said 31 Junior Engineers (formerly supervisors) continuously promoted without following 3:1 ratio plus 1 Junior Engineer that has not been included in between at Sl.No.18 and 19 in the panel for the year 1973) are required to be continuously included in the subsequent panels without including any Junior Engineer. It is further stated that the said panels for the year 1978 and 1979 totally 91 Assistant Engineers (63 Assistant Engineers for 1978 and 28 Assistant Engineers for 1979) were included continuously without



including any Junior Engineer to compensate the excess Junior Engineers already promoted as aforesaid. Further, 94 Assistant Engineers including the petitioners would be included continuously without including any Junior Engineer in the ensuing panel for filling 106 vacancies in the post of Assistant Divisional Engineers. However, the same has not been carried out by the respondent.

2.3 It is further stated that non preparation of the panels for Assistant Divisional Engineers as ordered by the Tribunal from the year 1980 till date, the vested rights of the Assistant Engineers to be considered for promotion as Assistant Divisional Engineer continuously for 94 vacancies to satisfy the quota rule of 3:1, which is being denied by the respondent. It is further stated that 106 vacancies are estimated for preparation of panel for the year 2006-2007. Therefore, as per the orders of the Tribunal, 94 vacancies shall be continuously filled only with Assistant Engineers and the balance 12 vacancies shall be filled up by the Assistant Engineers and the Junior Engineers by following 3:1 ratio.

2.4 It is further stated that the second petitioner is placed at Sl.No.393 in the seniority list of Assistant Engineers as on 01.01.2004, further, up to Sl.No.297 were already promoted as Assistant Divisional Engineers in the year 2005-2006. The estimated vacancies for the year 2006-2007 was approved by the respondent as 106. As per the order of the Tribunal dated 11.1.1995, the second petitioner would be considered for promotion as Assistant Divisional Engineer. However, non implementation of the said order, the petitioners right to be considered for the said promotion was delayed by one year. Hence, the petitioners, who are the members of the Association of Tamil Nadu Highways Engineers have made a representation to the respondent on 07.10.2006 requesting to promote continuously Assistant Engineers, so as to adjust already excessively appointed Junior Engineers in the ensuing panel for the post of Assistant Divisional Engineer under preparation for the year 2006-2007 as ordered by the Tribunal and the same was not considered by the respondent. Therefore, they approached this Court by way of filing W.P.No.43590 of 2006 praying to direct the respondent to consider the representation dated 07.10.2006. By order dated 13.11.2006, this Court directed the respondent to pass orders within eight weeks.

2.5 It is further stated that the respondent in his impugned letter dated 16.03.2007 rejected the representation of the petitioners' Association and has stated that the excess promotion of Junior Engineers were only 31 and the same were already adjusted in the panel as found in the Annexure-IV of G.O.217 dated 09.09.1999. It is further stated that no such



fresh promotions were made by the respondent in the year 1999 as the panels were drawn only up to the year 1979. The respondent adjusted the excess Junior Engineers in the year 1978 and 1979 by continuously promoting 91 Assistant Engineers, but has not stated that what happened to the 31 Junior Engineers promoted along with the said 91 Assistant Engineers by following 3:1 ratio for the year 1978 and 1979. Therefore, the reasons stated in the impugned letter of the respondent for rejecting the representation of the petitioners' Association is arbitrary, malafide and irrational and hence, the said impugned letter is liable to be set aside.

3.1 When the matter was taken up for hearing on 13.10.2020 the learned counsel for the respondent submitted that the petitioners were already promoted and hence, nothing survives for adjudication in this writ petition. In response to the above submission, the second petitioner filed an additional affidavit before this Court on 29.10.2020, in which, it has been averred that the petitioners filed the present writ petition seeking direction to the respondent to prepare panel for promotion to the category of Assistant Divisional Engineer, containing only the Assistant Engineers for 93 places without including any Junior Engineers as directed by the Tamil Nadu Administrative Tribunal. It is further submitted that the second petitioner was promoted as Assistant Divisional Engineer as per G.O.(Ms).No.13, dated 08.01.2008 and joined in the said post on 12.01.2008. As per the said Government Order totally 74 persons, viz., 56 Assistant Engineers and 18 Junior Engineers are included in the panel by following the ratio of 3:1. The 2nd petitioner finds place at Sl.No.17 in the said panel. It is further stated that if the panel has been prepared by including the Assistant Engineers alone continuously for 93 places, then the 2nd petitioner would have got advancement of 31 places occupied by the Junior Engineers from the present place and his present position being 17, naturally he would have been included in the previous promotions.

3.2 It is further stated that as per said Government Order the 2nd petitioner and the persons promoted along with him in the year 2008 are enlisted from Sl.Nos.373 to 447 and the 2nd petitioner is enlisted at Sl.No.390. As per the direction of the Tribunal, he is entitled to get his promotion as Assistant Divisional Engineers fixed notionally on 22.06.2007 and hence, the 2nd petitioner is entitled to be treated as Assistant Divisional Engineer and fix his pay in the said category with effect from 22.06.2007 and also to consequentially revise the pay of the 2nd petitioner in the category of Divisional Engineer and pay the arrears therefor with effect from 22.06.2007 to till the date of payment.



3.3 It is further stated that 1st petitioner was promoted on 06.08.2019 in G.O.(Ms).No.20, dated 04.03.2019 and he was placed at Sl.No.54 and any advancement of his position by 31 numbers will not make any difference and hence, the 1st petitioner will not get any benefit in allowing the writ petition.

4. The respondent filed counter affidavit submitting that excess 31 Junior Engineers promoted as Assistant Divisional Engineers relaxing the ratio 3 : 1 is adjusted by promoting 63 Assistant Engineers as Assistant Divisional Engineers without considering the name of any of the Junior Engineers. In the panel for the year 1972-73, the ratio of 3 :1 prescribed for appointment to the post of Assistant Divisional Engineer from the post of Assistant Engineer/Junior Engineer was relaxed but it was neither relaxed nor violated in the subsequent panels. It is submitted that as per the direction of this court, the representation of the petitioner was taken into consideration and appropriate reply was sent stating that since the excess number of Junior Engineers has already been adjusted, the Department has to revert to the normal ratio for promotion between Assistant Engineers and Junior Engineers.

5. It is further submitted by the respondent that since the excess number of Junior Engineers has already been adjusted, the Department has to revert to the normal ratio for promotion between Assistant Engineers and Junior Engineers and hence the vested rights of Assistant Engineers to be considered for promotion as Assistant Divisional Engineer continuously for 94 vacancies to satisfy the quota rule of 3 : 1 does not arise. The earlier deviation of 3 : 1 ratio has already been regulated and set right by promoting continuously 63 Assistant Engineers.

6. The respondent also submitted that as per the Tamil Nadu Administrative Tribunal in O.A.No.4663 of 1992 the presumptive panels for the year 1972 to 1978 has been complied with and regulating the excess appointment of Junior Engineers by violating the ratio 3 : 1 prescribed for promotion/appointment to the post of Assistant Divisional Engineer from the post of Assistant Divisional Engineer from the post of Assistant Engineer/Junior Engineers.

7. It is further pointed out by the respondent that excess 41 Junior Engineers promoted as Assistant Divisional Engineers relaxing the ratio 3 : 1 is adjusted by promoting 93 Assistant Engineers as Assistant Divisional Engineers without considering the name of any of the Junior Engineers. Therefore, the question of promoting 94 Assistant Engineers without considering any name of Junior Engineer does not arise. It is also submitted that preparation of presumptive panels is time



consuming ad therefore, for immediate relief, temporary panels are prepared annually and the candidates are not affected at the next promotion level and therefore, there is no violation of General Rule 4(a). According to the respondent, exceeding the ratio of 3 : 1 were adjusted and the same was approved by the Government with the concurrence of Tamil Nadu Public Service Commission vide G.O.(Ms).No.217, Highways Department, dated 09.09.1999 by promoting 63 Assistant Engineers as Assistant Divisional Engineers without considering the name of any Junior Engineers in the said panel.

8. On a perusal of the entire materials available on record and particularly the affidavit and additional affidavit filed by the petitioners, it is admitted by the 2nd petitioner that the 1st petitioner was promoted on 06.08.2019 in G.O.(Ms).No.20 dated 04.03.2019 wherein he is placed at Sl.No.54 and any advancement of 1st petitioner's position by 31 nos., will not make any difference and he will not get any benefit. In such view of the matter, the writ petition is dismissed as far as 1st petitioner is concerned, as the 1st petitioner has got promotion on 06.08.2019 and placed at Sl.No.54.

9. As far as 2nd petitioner is concerned, it is submitted in the affidavit that he was promoted as Assistant Divisional Engineer and joined the promoted post on 12.01.2008, and further promoted and joined as Divisional Engineer on 03.08.2018. The 2nd petitioner was promoted as Assistant Divisional Engineer as per the orders of 1st respondent issued in G.O.(Ms).No.13 dated 06.01.2008 and joined on 08.01.2008. The 2nd petitioner finds place at Sl.NO.17 in the said order. According to the learned counsel for the 2nd petitioner, if the panel had been prepared including Assistant Engineers alone continuously for 93 positions, without including any Junior Engineer, the 2nd petitioner would have got advancement of 31 positions occupied by the Junior Engineers. The present position being 17, he would have been included in the previous promotions.

10. Further, as per the orders of the Tamil Nadu Administrative Tribunal, the 2nd petitioner is entitled to be placed in the list of Assistant Divisional Engineers promoted during the year 2007. The Assistant Divisional Engineers promoted from Assistant Engineers in 2007 are found to be enlisted from Sl.Nos.271 to 372. The said seniority list would go to show that the 2nd petitioner is entitled to get his promotion as Assistant Divisional Engineer fixed notionally on 22.06.2007 and hence, the 2nd petitioner is entitled to be treated as Assistant Divisional Engineer notionally with effect from 22.06.2007 and get his pay fixed in the category of Assistant Divisional Engineer notionally on 22.06.2007.



11. In view of the above position and the respondent also in their counter admitted that excess 31 Junior Engineers were promoted as Assistant Divisional Engineers relaxing the ratio 3 : 1 and that they deviated the prescribed ratio in the panel for the year 1972-1973, the respondent is directed to give notional promotion to the 2nd petitioner as Assistant Divisional Engineer with effect from 22.06.2007 and fix his pay in the category of Assistant Divisional Engineer with effect from 22.06.2007 and give consequential benefits to the 2nd petitioner as per the rules. The writ petition is disposed of with the above direction as far as the 2nd petitioner is concerned.

12. In the result, the writ petition is dismissed in respect of 1st petitioner and the Writ petition is disposed of with the above said direction as far as 2nd petitioner is concerned. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ms/nvsri

To

The Secretary,
The Government of Tamil Nadu,
Highways Department,
Fort St. George,
Chennai - 600 009.

+2ccs to Mr.N.Subramaniam, Advocate, S.R.No.57255

+1cc to the Government Pleader, S.R.No.57710

W.P.No.14483 of 2007

AD(CO)
SU(22/11/2021)