

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.27434 of 2008

R.Singaravelu

... Petitioner

-Vs-

- 1.The State of Tamil Nadu rep.by the
Secretary to Government,
Public Works Department, Fort.St.George
Chennai - 600 009.
- 2.The Engineer-in-Chief and Chief Engineer
(General),Public Works Department
Water Resources Organisation, Chepauk
Chennai - 600 005.
- 3.B.Muthu, Draughting Officer
Public Works Department, Water Resources
Organisation, Middle Cauvery Basin Circle
Trichy-20.
- 4.Sundarraaj, Draughting Officer
Public Works Department, Buildings
(Construction & Maintenance Circle)
Tanjore.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the 1st and 2nd respondents to re-fix the seniority of the petitioner in the post of Draughting Officer and fix above the name of juniors the 3rd and 4th respondents (i.e.) serial No.315 consequently direct the respondents to promote the petitioner in the post of Senior Draughting Officer and all other service and monetary benefits.

For Petitioners :Mr.K.Sanjay

For Respondents :Mrs.K.Bhuvaneswari,
Additional Government Pleader-
for RR 1&2

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the 1st and 2nd respondents to re-fix the seniority of the petitioner in the post of Draughting Officer and fix above the name of juniors the 3rd and 4th respondents (i.e.) serial No.315, consequently direct the respondents to promote the petitioner in the post of Senior Draughting Officer with all other service and monetary benefits.

2. That the petitioner had entered into service in the respondent Department as Assistant Draughtsman with effect from 05.07.1976, whereas the private respondents entered into the same service on 21.07.1980. Subsequently, the petitioner was promoted as Junior Draughting Officer with effect from 01.08.1981, whereas the private respondents were promoted to the said post on 25.05.1981 and 26.05.1981 respectively.

3. Thereafter, for the post of Senior Draughting Officer, seniority list was drawn. However, the name of the petitioner was not considered either in the temporary list fit for promotion or the revised seniority list for the year 2008-09, whereas the name of the private respondents, though they had been juniors to the petitioner, had been considered and included. Therefore, in order to set right the anomaly and to place the petitioner in correct position in seniority ie., above the private respondents in the post of Junior Draughting Officer, though the petitioner has given a representation to the respondents, since the same has not been considered, the petitioner has approached this Court by filing this writ petition with the aforesaid prayer.

4. Heard Mr.K.Sanjay, learned counsel for the petitioner, who would submit that, all along from day one ie., from the post of Assistant Draughtsman till he reached the present designation, the petitioner had been senior and he had travelled all along as senior to the other two private respondents. However, all of a sudden, the petitioner's name was not considered while preparing the list for promotion to the post of Senior Draughting Officer, whereas the names of the private respondents were included, even though they were juniors and subsequently after filing of the writ petition, that post was given to the private respondents. Therefore, the grievance of the petitioner is that, he should have been placed above the private respondents 3 and 4 in the seniority and correspondingly the Senior Draughting Officer post has to be conferred to him at least along with the private respondents.

5. Learned counsel for the petitioner would also submit that, during the pendency of the writ petition, the petitioner had attained superannuation and retired on 30.09.2016. Therefore, as of now, the petitioner can claim only notional benefit if he has been correctly placed in the seniority list for the post of Senior Draughting Officer and subsequent promotional avenues also, based on which monetary benefits can be calculated and paid to him, for which the learned counsel seeks the indulgence of this Court.

6. Heard Mrs.K.Bhuvaneswari, learned Additional Government Pleader, who has relied upon Para 7 of the counter affidavit and would submit that, the petitioner, though claimed to be senior to the other private respondents, the fact remains that, he was not senior and he was only senior as promotee to the post of Junior Draughting Officer and the other two respondents are fresh entrants. Hence, as the petitioner is not senior to the private respondents in this regard, she has relied upon the averments made in Para 7 of the counter affidavit, which reads thus,

" 7. I submit that the comparative study of the petitioner with that of Thiru.B.Muthu and Sundararaju is devoid of merit as the petitioner was appointed as AD Man on 5.7.76 and the petitioner got his promotion as JDO, on 1.8.81 as the petitioner had put in 5 years service in the post of AD Man as admissible as per rules, the petitioner has not possessed the required educational qualification as per service rules, the petitioner to compare with the seniority of officials have requisite qualification. The petitioner is only a promotee in the post of JDO, whereas Thiru.B.Muthu and K.Sundararaju are fresh entrants as JDO. The petitioner has, therefore, to compare his seniority only if any juniors in the post of AD Man has got their seniority fixed above him. The petitioner has no grievances legitimately over Thiru.B.Muthu and K.Sundarraju."

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and have perused the materials available on record.

8. It is not in dispute that, in the post of Assistant Draughtsman, the petitioner was posted on 05.07.1976, whereas the private respondents were posted on 21.07.1980.

9. Subsequently also, to the post of Junior Draughting Officer, the petitioner had been given promotion on 01.08.1981, whereas the other private respondents were given such promotion on 25.05.1981 and 26.05.1981 respectively. When that being so, the averments made by the respondents in the counter affidavit as quoted above to state that, the petitioner was promotee whereas the other two respondents are direct appointees to the said post and therefore, the seniority of the petitioner cannot be compared with the private respondents cannot hold much water because, assuming without admitting that, the petitioner was a promotee, whereas the other two respondents are directly appointed to the post of Junior Draughting Officer, the date of joining in the promoted post, according to the petitioner, for the petitioner is 01.08.1981 whereas the private respondents joined in the said post either by way of promotion or by way of direct appointment on 25.05.1981 and 26.05.1981 respectively. Therefore, even from the inter-se seniority fixed between the petitioner and others including the private respondents in the feeder category ie., Assistant Draughtsman, it is evident to show that the petitioner is senior than the other two private respondents.

10. Therefore, correspondingly the subsequent promotion was also given to the post of Draughting Officer on 22.4.2005 and he has been placed in the seniority list in Sl.No.188 and the other two respondents were placed in Sl.Nos.261 and 262. When that being the position, the claim made by the official respondents by citing the reason at Para 7 of the counter affidavit as quoted herein above, cannot be accepted.

11. Moreover, since the petitioner has retired from service in the year 2016 and this Court has been informed that, the other two respondents also have since retired from service on superannuation, if at all the petitioner is considered to be placed above the private respondents in the position of Draughting Officer or Senior Draughting Officer and accordingly the notional benefit is conferred on the petitioner, that would not in any way prejudice the interest of the private respondents and for conferring such notional benefit, the respondents cannot have any plausible reason to repulse, as even if the petitioner is placed above the private respondents and accordingly he is considered for other promotional avenues, all those benefits would be conferred only for notional purpose and that the petitioner would be entitled to receive the pensionable benefits alone and not any other benefits.

12. In that view of the matter, this writ petition is disposed of with the following orders.

13. That there shall be a direction to the respondents especially the second respondent to consider the grievance of the petitioner and accordingly place him in the correct position in his inter-se seniority in the post of Draughting Officer above the private respondents 3 and 4 and consequently, whatever service benefits can be conferred to him, shall be conferred, of course on notional basis. However, such a benefit to be conferred on notional basis would definitely be deemed to be taken into account for the purpose of revising his pensionable benefits since he has retired in 2016. Accordingly, his revised pensionable benefits can be calculated and paid to the petitioner. The needful as indicate above shall be undertaken by the second respondent within a period of twelve weeks from the date of receipt of a copy of this order.

With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KST
To

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

2.The Engineer-in-Chief and Chief Engineer
(General),Public Works Department
Water Resources Organisation, Chepauk
Chennai - 600 005.

+1cc to Mr.K.Sanjay, Advocate Sr.18113
+1cc to the Government Pleader Sr.17745

sr-II[co]
srg 08/04/2021

W.P.No.27434 of 2008

WEB COPY