

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.25498 of 2005

L.Sridharan

...

Petitioner

-Vs-

The Managing Director
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai - 600 006.

...

Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records connected to the proceedings of the respondent in Letter No.24025/A2/SC/HO/2003, dated 14.05.2003 and quash the same and further direct the respondent to revise the seniority in the post of Junior Assistant, Assistant and Superintendent and consequently promoting the petitioner to the post of Administrative Officer from the date on which his juniors were promoted as Administrative Officers duly permitting the petitioner to draw arrears of pay and allowances and all terminal benefits etc.,

For Petitioner : Ms.G.P.Arivuchudar

For Respondent : Mrs.R.Gandhimathi
Standing counsel for TWAD

O R D E R

The prayer sought for herein is for a issuance of writ of certiorarified mandamus, calling for the records connected to the proceedings of the respondent in Letter No.24025/A2/SC/HO/2003, dated 14.05.2003 and quash the same and further direct the respondent to revise the seniority of the petitioner in the post of Junior Assistant, Assistant and Superintendent and consequently promote the petitioner to the post of Administrative Officer from the date on which his juniors were promoted as Administrative Officers duly permitting the petitioner to draw arrears of pay and allowances and all terminal benefits.

2. The respondent TWAD Board was constituted from 14.04.1971 and accordingly, various employees, who had been in the erstwhile PWD Department, had been brought to the TWAD Board, i.e., Tamil Nadu Water supply and Drainage Board. Accordingly, the petitioner as Junior Assistant had been appointed or brought to the TWAD Board with effect from 17.07.1971. Though the petitioner initially was appointed as such in PWD on 20.09.1967 and had been working there, but he was brought to the TWAD Board only w.e.f., 17.07.1971, therefore his probation was treated from that date and he completed the same by 17.07.1973.

3. Thereafter for the further promotion, the Accountant test is a must, which a Junior Assistant must have passed and after qualifying the same only, he would be considered for further promotion, which the petitioner has successfully completed in May 1974, for which result was published in August 1974.

4. However, the petitioner's name had not been included in the panel for promotion for the Financial Year 1975-76. Even though in the said financial year panel of 1975-76, those who have completed the Accountant Test who have written the same either in May 1974 or November 1974 were included, the petitioner though had written the examination and become successful in August 1974, whose name had not been included in the 1975-76 panel because of which his promotion had been delayed.

5. Even though the petitioner on regular basis had been promoted as Assistant, w.e.f. 07.08.1975 and Superintendent with effect from 04.07.1985, his further promotion to the post of Administrative Officer had not been effected or could not be given effect to because of the belated promotion, he earned in the feeder categories, for which the petitioner attribute reasons on the respondents in not including his name in the panel for the financial year 1975-76 despite the fact that, the petitioner successfully completed the Accountant Test by writing the examination in May 1974, for which the result was published in August 1974.

6. When these factors were brought to the notice of the respondent and a representation was given, that was rejected by passing the impugned order, dated 14.05.2003. Therefore challenging the same, the present writ petition has been filed.

7. Heard, Ms.G.P.Arivuchudar, learned counsel appearing for the petitioner, who has reiterated the aforesaid facts and would submit that, in the panel for financial year 1975-76, the name

of the petitioner ought to have been included, but wrongly it has not been included, even though she has qualified to be included, since he has completed successfully the Account Test in May 1974, for which result was published in August 1974. Therefore the learned counsel appearing for the petitioner would seek indulgence of this Court to quash the order and remand the matter back to the respondent for reconsideration.

8. Per contra, Mrs.R.Gandhimathi, learned standing counsel appearing for the respondent, by relying upon the instruction of the respondent as well as by relying upon the reasons stated in the impugned order would contend that, though the petitioner had been brought to the TWAD Board as regular employee w.e.f. 17.07.1971, for further promotion since it was a necessity or essential to complete the Accountant Test, which the petitioner had admittedly completed only in August 1974, therefore his name could not be considered for inclusion for the financial year 1975-76. Therefore, such a non-inclusion cannot be found fault with or cannot be agitated by the petitioner.

9. In this regard, the learned Standing counsel relied upon the reasons stated in the impugned order and would try to sustain the impugned order stating that, the petitioner is not entitled to get inclusion in the panel for 1975-76 financial year and correspondingly, he would not be eligible to be considered for any promotion as such, therefore before his turn comes for promotion to the post of Administrative Officer, since the petitioner retired from service on superannuation by 31.03.2002, his plea to get a promotion as Administrative Officer, that too, retrospectively does not arise, therefore the said plea raised by the petitioner has been rightly turned down through the impugned order, hence, the learned standing counsel appearing for the respondent would submit that, the impugned order would sustain and it does not warrant any interference from this Court.

10. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. The dates given in the narration of facts as submitted by both sides are not in dispute. Though the petitioner was appointed initially in the erstwhile PWD Department on 20.09.1967, after the TWAD Board was constituted w.e.f. 14.04.1971, the petitioner along with other employees were brought in and accordingly, the petitioner as Junior Assistant has been brought in regular post w.e.f., 17.07.1971, where he has completed the probation successfully and thereafter, he has also passed out the Accountant Test successfully in May 1974, for which result was published in August 1974, therefore he was

eligible to be considered for inclusion in the panel for the financial year 1975-76 but without any plausible reason, it seems that the petitioner's name had not been included.

12. Probably, this non-inclusion would have triggered the deferment of promotion consequently given to the petitioner and ultimately the petitioner could not be considered for promotion to the post of Administrative Officer as he reached superannuation on 31.03.2002.

13. Since these factors cannot be disputed by citing any plausible or acceptable reason on behalf of the respondent Board before this Court, this Court is not in a position to accept the defence taken by the respondent, though the learned standing counsel by relying upon the reason stated in the impugned order as absolutely, there is no reason on the part of the respondent in not considering the petitioner's name to be included in the 1975-76 financial year panel, though the petitioner admittedly had completed the Accountant Test successfully by August 1974. In this regard, it is the further contention of the petitioner's counsel that, those who completed the Accountant Test, which was conducted in November 1974 also since had been included, as to what reason and why the name of the petitioner who completed the Test in May 1974 examination was not included, has not been properly explained by the respondent, therefore for all these reasons, this Court is inclined to quash the impugned order and remand the matter back to the respondent for reconsideration.

14. Accordingly, the impugned order is quashed and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, the plea raised by the petitioner that, whether he would be entitled to be included in the panel for the financial year 1975-76 in view of the fact that, he has successfully completed the Accountant Test, which is the essential qualification for further promotion in May 1974 itself, for which the result was published in August 1974 shall be decided on merits and in accordance with law and accordingly, pass a revised order to that effect.

15. In the revised order, if the plea of the petitioner is accepted, the consequential relief of notional benefits including promotion and other attendant benefits can be conferred on the petitioner. However, such notional benefit no doubt shall be taken into account only for the purpose of pensionable and other retiral benefits, for which the petitioner is entitled to, as per the relevant regulations. The needful as indicated above shall be undertaken by the respondent within a period of three months from the date of receipt of a copy of this order.

16. With these direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tsvn

To

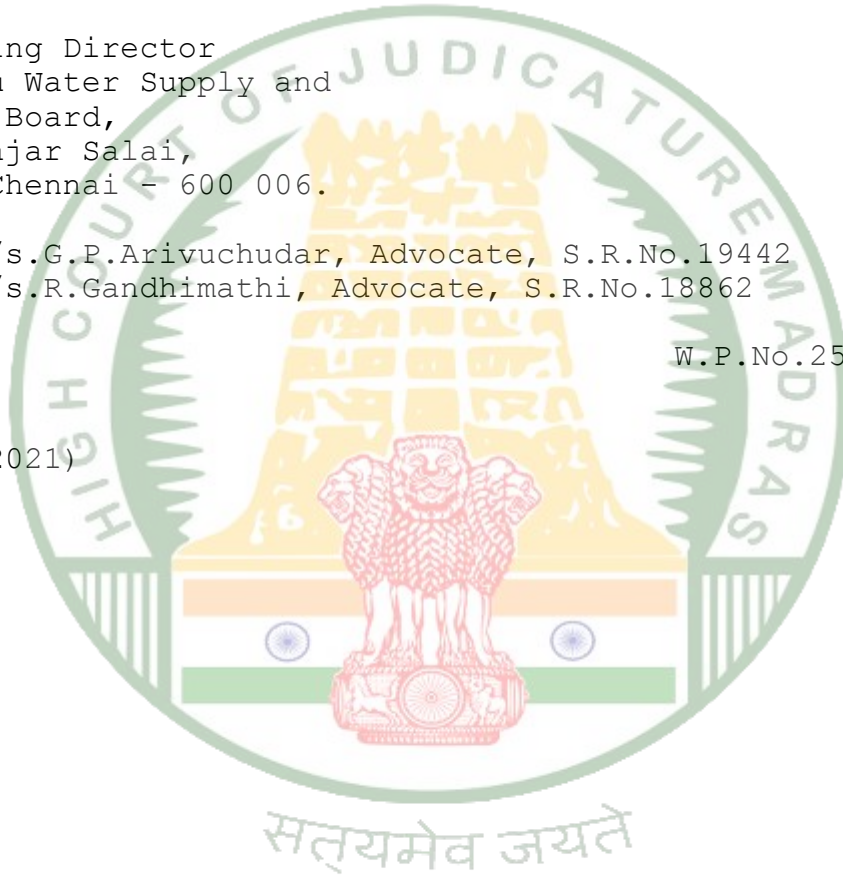
The Managing Director
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai - 600 006.

+1cc to M/s.G.P.Arivuchudar, Advocate, S.R.No.19442

+1cc to M/s.R.Gandhimathi, Advocate, S.R.No.18862

W.P.No.25498 of 2005

LN(CO)
CB(09/07/2021)



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