



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2021

PRONOUNCED ON : 26.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.16450 of 2017

and

WMP.No.17795 of 2017

S.Somasundaram

... Petitioner

Vs.

1.The State of Tamil Nadu
rep.by Secretary to Government,
Municipal Administration &
Water Supply Department,
Fort St. George,
Secretariat,
Chennai-600 009.

2.The Commissioner,
Erode Corporation,
Erode.

3.M.Gobinath,
Asst. Executive Engineer (Addl. Charge)
cum Assistant Engineer,
Zone-3,
Corporation of Erode,
Erode-638 001.

4.P.Anandan, Asst. Engineer,
Corporation of Erode,
Erode-638 001.

[R3 & R4 are impleaded vide orders
dated 27.07.2021 in WMP.14517/2021
& WMP.14930/2021 resp.
in W.P.No.16450 of 2017 by MSRJ]

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorarified



Mandamus, calling for the records relating to the proceedings dated 31.05.2007 in Na.Ka.No.1481/17/C1 of the second respondent herein and quash the same and consequently, direct the respondents herein to forthwith promote the petitioner as Assistant Executive Engineer in the Erode Corporation with all attendant benefits with effect from 18.09.2009, the date on which the petitioner's juniors were promoted as Assistant Executive Engineer.

For Petitioner : Mrs.A.L.Gandhimathi

For Respondent-1: Mr.K.Tippusulthan, GA

For Respondent-2: Mr.M.Rajamathivanan

For Respondent-3: Mr.V.P.Sengottuvel

For Respondent-4: Mr.P.Kannan Kumar

O R D E R

This Writ Petition is heard through Video Conferencing on 27.07.2021.

2. The petitioner herein was originally appointed as an Electrician Grade-II on 21.03.1988 at Mettupalayam Municipality and subsequently, promoted as Electrician Grade-I and Electrical Superintendent Grade II in the second respondent Corporation on 22.09.2005. Subsequently, the Erode Municipality was upgraded as a Corporation from 01.01.2008 and all the existing employees in the various departments were absorbed into Erode Corporation.

3. At the time of merger, the petitioner's post was redesignated as Junior Engineer and his post was also regularized with effect from 01.01.2009, through an order dated 17.02.2009. In view of his additional qualification of B.E Degree in Electrical Engineering, he was redesignated as an Assistant Engineer on the same date, with effect from 01.01.2009.

4. It is the case of the petitioner that the second respondent herein had issued Temporary Seniority List on 19.08.2014 and though he was entitled to be promoted to the post of Assistant Executive Engineer, the respondents have not considered his request/contention on the ground that the clarification issued by the Government in G.O.Ms.No.140,



Municipal Administration and Water Supply Department, dated 27.05.1997, does not entitle him for such promotion. The present impugned order dated 31.05.2017, rejecting the petitioner's claim for promotion to the post of Assistant Executive Engineer is also on the same ground.

5. Mrs.A.L.Gandhimathi, learned counsel appearing for the petitioner would submit that the clarification in G.O.Ms.No.140 dated 27.05.1997 issued by the Government would not apply to the petitioner's case, since it does not pertain to the post of Assistant Engineer, who seeks for promotion to the post of Assistant Executive Engineer. It is further stated by the learned counsel that the rules governing promotions to the post of Assistant Executive Engineer is through the Tamil Nadu Municipal Engineering Service Rules, 1997, which prescribes the qualifications for promotion to the post of Assistant Executive Engineer. Since the petitioner possesses a B.E. Degree in Electrical Engineering with five years of experience as an Assistant Engineer, he is eligible to the post of Assistant Executive Engineer.

6. The learned counsel also placed reliance on G.O.Ms.No.206, Municipal Administration and Water Supply Department dated 22.10.2008, which also ratifies the qualifications prescribed under the Tamil Nadu Municipal Engineering Service Rules, 1997 for promotion. In this background, the learned counsel submitted that the reasons assigned by the respondents by placing reliance on G.O.Ms.No.140, dated 27.05.1997, is totally irrelevant to the claim made by the petitioner.

7. The learned counsel appearing for the second respondent placed reliance on the averments made in the counter affidavit dated 31.07.2017 and submitted that as per the Tamil Nadu Municipal Corporation Service Rules, 1996, the appointment to the post of Assistant Executive Engineer shall be made by way of promotion from the post of Assistant Engineers and Junior Engineers in the ratio of 3:1. Therefore, his claim to be promoted without adhering to the ratio, cannot be sustained. It is also submitted that the Temporary Seniority List dated 19.08.2014, on which the petitioner places reliance was subsequently cancelled on 03.06.2016, on the ground that the petitioner was not entitled to be included in the list, in view of the clarification issued in G.O.Ms.No.140 dated 27.05.1997.

8. Mr.V.P.Sengottuvel and Mr.P.Kannan Kumar, learned counsel appearing for the impleaded parties/respondents 3 & 4 would submit that, their names have already been included in the seniority list and they are entitled for promotion. Therefore,



they seek for dismissal of the Writ Petition.

9. I have given careful consideration to the submissions made by the respective counsels.

10. As rightly pointed out by the learned counsel for the petitioner, the post of Assistant Executive Engineer requires to be filled up by way of promotion from the post of Assistant Engineers/Junior Engineers in the ratio of 3:1 and as such, the petitioner herein, who is in the post of Assistant Engineer, would be eligible for promotion. The only impediment, which the petitioner faces is that, the second respondent herein has relied upon the clarification issued by the Government in G.O.Ms.No.140, Municipal Administration and Water Supply Department, dated 27.05.1997, stating that the person, who becomes Junior Engineer from the post of Electrical Superintendent need not be considered for promotion to the post of Assistant Executive Engineer and that they should be retained as Assistant Engineer, till their retirement.

11. The Tamil Nadu Municipal Corporation Service Rules, 1996 does not specifically prescribe the qualifications of an Assistant Engineer, for the purpose of promoting him to the post of Assistant Executive Engineer. Hence, regulations governing the promotion of an Assistant Engineer to the post of an Assistant Executive Engineer would be under the Tamil Nadu Municipal Engineering Service Rules, 1997 which provides that a person who possess a B.E. Degree in Civil or Mechanical/Electrical with an experience of not less than 5 years as Assistant Engineer, is entitled to be promoted as an Assistant Executive Engineer. It is not in dispute that the petitioner herein possesses the required qualification in B.E. Degree (Electrical Engineering) and also has served as an Assistant Engineer for more than 5 years. In view of the same, the petitioner is deemed to have possessed the required qualification for the purpose of being promoted to the post of Assistant Executive Engineer.

12. The clarification issued by the first respondent in G.O.Ms.140 dated 27.05.1997, which is relied upon by the second respondent is totally irrelevant to the claim made by the petitioner. For the sake of convenience, the said clarification, as found in the impugned order, is extracted hereunder:

APPENDIX

CLARIFICATIONS



Request of the Association or individuals of the Corporation (1)	Clarification issued by the Government (2)
6.The Superintendents (Water Works), (Drainage), (Sewage Farm), (Mechanical), and Junior Engineer (Mechanical) who have completed 20 years of service and who are now drawing pay of more than Rs.2200/- have represented that they may be promoted as Assistant Executive Engineer/ Executive Engineer of the Engineering and Water Supply Service of the Corporation.	These Superintendents and Junior Engineer (Mechanical) have not worked in the Corporations as regular Junior Engineers. Since all of them have completed more than 20 years of service, if their services are merged with the Engineering and Water Supply Service of the Corporations, they will become senior to all the existing Engineering personnel of the Corporations. They will then claim promotion to the post of Executive Engineer/City Engineer in the Corporations. They cannot be considered for promotion to the post of regular Assistant Executive Engineer. Further, under the new Corporation service Rules, provisions have not been made for these posts. Therefore, these posts will have to be kept separately for the present. Since they are in two different scales of pay, they will be redesignated as indicated below:- a) Superintendent (Water Works) (Drainage Works). Assistant (Motor Mechanic) Engineer (Sewage Farm) etc. (Special) those who have Grade.I. completed 20 years (no change of service as on the in pay date of issue of this scale) order. b) Superintendent (Water Works) (Drainage). Assistant (Sewage) Engineer (Motor Mechanic) (Special) Junior Engineer Grade.II. (Mechanical) etc. (no change those who have in pay completed 10 years scale) of service as on the date of issue of this order.



13. A mere reading of the aforesaid clarification, would reveal that the clarification does not relate to the incumbents, who are holding the post of Assistant Engineers and are aspiring to be promoted to the post of Assistant Executive Engineer. On the other hand, the Tamil Nadu Municipal Engineering Service Rules, 1997, prescribes the qualification to be possessed by an Assistant Engineer to be promoted to the post of Assistant Executive Engineer. By adopting these qualifications prescribed under the Tamil Nadu Municipal Engineering Service Rules, the Government had also issued orders in G.O.(Ms)No.206, Municipal Administration and Water Supply Department, dated 22.10.2008, relating to promotions at Erode Municipal Corporation, wherein similar qualifications were prescribed for the Assistant Engineers to be promoted to the post of Assistant Executive Engineers. While doing so, the Government had not adhered to the clarification issued by them in the present impugned order. Above all, the Tamil Nadu Municipal Corporation Service Rules, does not specifically prescribe the qualifications to be possessed by an Assistant Engineer for being considered for promotion to the post of Assistant Executive Engineer. Thus, the only inevitable conclusion that could be arrived is that the procedure to be adopted for promoting an Assistant Engineer in a Municipal Corporation to the post of Assistant Executive Engineer, would be in accordance with the qualifications prescribed under the Tamil Nadu Municipal Engineering Service Rules. If that be so, the present impugned order, placing reliance on the Government clarification, cannot be sustained.

14. In the result, the impugned order passed by the second respondent in Na.Ka.No.1481/17/C1 dated 31.05.2017, is hereby quashed. Consequently, there shall be a direction to the respondents to promote the petitioner as Assistant Executive Engineer in Erode Corporation with all service and monetary benefits with effect from the date on which the petitioner's immediate Junior was promoted to the post of Assistant Executive Engineer. The respondents shall endeavor to pass such promotional orders, atleast within a period of four weeks from the date of receipt of a copy of this order.

15. The Writ Petition stands allowed accordingly. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

DP



To

1.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St. George, Secretariat,
Chennai-600 009.

2.The Commissioner,
Erode Corporation,
Erode.

3.Mr.M.Gobinath,
The Asst. Executive Engineer (Addl. Charge)
cum Assistant Engineer, Zone-3,
Corporation of Erode,
Erode-638 001.

4.Mr.P.Anandan,
The Asst. Engineer,
Corporation of Erode,
Erode-638 001.

+1cc to Mr.AL.Gandhimathi, Advocate, S.R.No.43284

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.43337

+1cc to Mr.M.Rajamathivanan, Advocate, S.R.No. 43446

W.P.No.16450 of 2017
and

WMP.No.17795 of 2017

PL(CO)
GN(14/09/2021)