



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.14803 of 2012

and

M.P(MD)No.1 of 2012

WEB COPY

1.Shanmugasundaram(died)
2.Janaki
3.Sangareswari
4.Arunadevi
5.Karthika ... Petitioners
(P.2 to P.5 are substituted vide Court order
dated 28.01.2020 made in M.P.(MD)No.1
of 2013)

Vs.

1.The Chief Engineer(General),
Highways and Rural Works Department,
Chepauk, Chennai.

2.The Divisional Engineer(Highways),
Operation and Maintenance,
Pudukkottai-2.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent in his proceedings in Na.Ka.No.1837/2011/Aa.3, dated 25.11.2011 and quash the same as arbitrary and illegal and consequently to direct the respondents to take necessary steps to give all promotional benefits to the petitioner promoting him as Junior Engineer within a stipulated time as fixed by this Court.

For Petitioner : Mr.Jamal Mohammed
for Mr.K.Balasundaram

For Respondents : Mr.M.Muthugeethaiyan
Special Government Pleader
* * * * *

ORDER

This Writ Petition is filed seeking for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent in his proceedings in Na.Ka.No.1837/2011/Aa.3, dated 25.11.2011 and quash the same as arbitrary and illegal and consequently to direct the respondents to take necessary steps to give all promotional benefits to the petitioner promoting him as Junior Engineer within a stipulated time as fixed by this Court.



2. During the pendency of the writ petition, the original writ petitioner passed away and to represent the deceased petitioner, his legal heirs were substituted.

3. The case of the original writ petitioner is that originally he was appointed as a Survey Assistant on 20.03.1972 and thereafter, he was promoted as Works Clerk in Pudukkottai Highways Workshop on 02.07.1973, which was under the control of Divisional Engineer(T&M), Pudukkottai. Thereafter, the petitioner was promoted as Time Keeper on 05.02.1975 and his services were regularized in the year 1977 and he worked for more than 30 years in the said Time Keeper post. During his employment, he also possessed a Diploma in Mechanical Engineering. Thereafter, the petitioner submitted repeated representations to appoint him as Junior Engineer even in the year 1999 onwards, based on his qualification acquired during his employment. Thereafter, he sent a representation to the Honourable Chief Minister's Cell for promoting him as Junior Engineer. His date of retirement was fell on 28.02.2007. Even then his promotion was not considered by the first respondent. At last, he was retired as Record Clerk on 28.02.2007 without promotion to the post of Junior Engineer. Thereafter, the petitioner made a representation to the Hon'ble Chief Minister's Cell in the month of October 2011 requesting promotion benefits. However, the second respondent, vide impugned order dated 25.11.2011 informed the petitioner that his request has been rejected. Challenging the same, the present writ petition is filed.

4. Learned Counsel appearing for the petitioners would submit that though the original petitioner was promoted from the post of Survey Assistant and hold the post of Time Keeper, for the past 33 years he worked in the same post without any promotion. Since the original petitioner possessed the qualification of Diploma in Mechanical Engineering, he was eligible to the promotion of Junior Engineer. Since the petitioner was promoted as Timer Keeper, he had been denied to the promotional post of Junior Engineer. The similarly placed persons like that of the original petitioner, were given promotions in pursuant to the order of Administrative Tribunal in O.A.No.1779 of 1999. Hence, the impugned order passed by the second respondent is arbitrary and illegal and therefore, the learned Counsel for the petitioners would pray for appropriate orders.

5. Learned Special Government Pleader appearing for the respondents would submit that the post of Junior Engineer is belonged to the Engineering Wing and the petitioner was not in the Engineering Wing and he had not worked in the post, which was a feeder category to the promotional post of Junior Engineer and the original petitioner was retired in the year 2007 itself as Record Clerk. Thereafter only, in the year 2011, he made a representation to the Hon'ble Chief Minister's cell and the petitioner had not



initiated any step during his employment. The petitioner has to establish that he was in the feeder post and he was eligible to the promotion post of Junior Engineer and in the absence of the said claim, the rejection order passed by the second respondent is in perfect, which does not warrant interference. Accordingly, the learned Special Government Pleader would pray for dismissal of the writ petition.

6. Heard the learned Counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents and perused the materials placed on record.

7. The facts in the present case are not in dispute. The original petitioner was appointed as Survey Assistant in the year 1972 and subsequently he was promoted as Time Keeper and finally was promoted as Record Clerk and retired in the year 2007 itself. On a perusal of the impugned order passed by the second respondent, dated 25.11.2011, it makes it clear that the Junior Engineer promotion is given only at Engineer Wing, however the petitioner belonged to another wing. Unless the petitioner established that he was in the feeder category to the promotional post of Junior Engineer, he was not entitled to claim to the promotional post of Junior Engineer. Even in the representation of the petitioner dated 21.10.1991, he made a request to fix the Time Keeper post as a feeder post to the promotional post of Junior Engineer. In his representation itself, the petitioner admitted that the Time Keeper post is not the feeder category to the promotional post of Junior Engineer. The power of relaxation is conferred upon the Government (or the Governor), Relaxation granted cannot be cited as a precedent and each case is to be decided based on its sole merits and in accordance with law. The Hon'ble Supreme Court of India also reiterated that the comparison of the cases are impermissible in normal circumstances and each case has to be decided based on the facts and in accordance with law. Thus, no further adjudication on the grounds raised in this writ petition needs to be under taken.

8. In view of the above discussions, this writ petition is devoid of merit and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

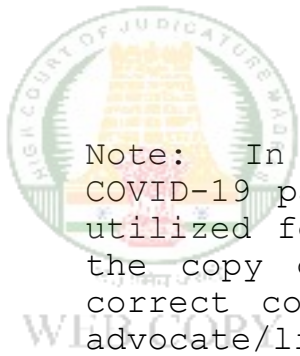
Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chief Engineer(General),
Highways and Rural Works Department,
Chepauk, Chennai.

2.The Divisional Engineer(Highways),
Operation and Maintenance,
Pudukkottai-2.

+1 CC to M/s.SPL GP (SR-10111[F] dated
10/03/2021)

W.P (MD) No.14803 of 2012

08.03.2021

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DKS (CO)
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