



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) No.4243 of 2020

and

W.M.P (MD) Nos.3578 & 3580 of 2020

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R.Alexander

... Petitioner

vs.

1. The Principal Secretary to Government,
Municipal Administration and Water Supply,
(MCIV) Department,
Secretariat,
Chennai.

2. The Commissioner,
Madurai City Municipal Corporation,
Aringar Anna Maligai,
Madurai-2.

3. S.Sekar

4. M.V.Murugesu Pandian

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned seniority list prepared by the second respondent in his proceedings in Ma.Ni2/32446/2014, dated 13.11.2014 and the impugned order passed by the first respondent in his proceedings in letter No.6839/MC IV/2015-2 dated 16.04.2015 in respect of the direction to cancel panel of Assistant Engineers fit for promotion as Assistant Executive Engineers for the year 2014-2015 and the consequential impugned order passed by the second respondent in his proceedings Ma.Ni2/32446/14, dated 23.04.2015 and quash the same in respect of the petitioner alone as illegal, arbitrary and in violation of principles of natural justice and consequently direct the second respondent to prepare a fresh seniority list for the year 2014-2015 and thereby promote the petitioner as Assistant Executive Engineer from the date on which the third respondent was promoted as Assistant Executive Engineer with seniority as maintained in the seniority list published by the second respondent, dated 12.01.2007, within a time limit as stipulated by this Court.



For Petitioner : Mr.P.Gunasekaran
For R - 1 : Mr.P.Subbaraj
Government Advocate
For R2 : Mr.T.S.Mohammed Mohideen
For R3 & R4 : Mr.B.Saravanan

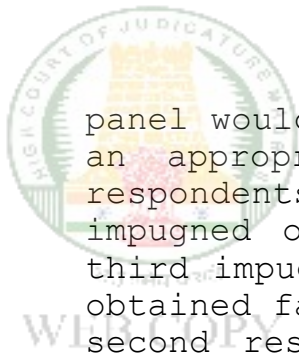
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ORDER

This Writ Petition is filed to quash the impugned seniority list prepared by the second respondent, dated 13.11.2014 and the impugned order passed by the first respondent in letter No.6839/MC IV/2015-2, dated 16.04.2015 in respect of the direction to cancel panel of Assistant Engineers fit for promotion as Assistant Executive Engineers for the year 2014-2015 and the consequential impugned order passed by the second respondent, dated 23.04.2015 and for a direction to the second respondent to prepare a fresh seniority list for the year 2014-2015 and thereby, promote the petitioner as Assistant Executive Engineer from the date on which the third respondent was promoted as Assistant Executive Engineer.

2. The case of the petitioner is that he is an Engineering Graduate. Initially, he was appointed as Assistant Engineer in the second respondent Corporation by direct recruitment, vide proceedings, dated 01.06.2001. According to the petitioner, the respondents 3 & 4 are juniors to him and they are Diploma holders and they were promoted as Junior Engineers. In the seniority list prepared by the second respondent on 12.01.2007, the petitioner's name was shown at Sl.No.12 and the names of the respondents 3 & 4 are shown at Sl.Nos.19 & 23. The next promotional post is Assistant Executive Engineer. In the impugned seniority panel prepared by the second respondent dated 13.11.2014, the petitioner's name was bypassed and the third respondent was placed above the petitioner. The second respondent did not follow 3:1 ratio of promoting three Assistant Engineers and one Junior Engineer. The first respondent by the impugned order, dated 16.04.2015, cancelled the seniority list prepared by the second respondent for the year 2014-2015 as the same was found to be defective. Even after cancellation of seniority list by the first respondent, the respondents 3 & 4 are permitted to work as Assistant Executive Engineer and the petitioner alone was reverted and hence, the petitioner gave representation, dated 03.02.2018 to the second respondent and filed a writ petition in W.P(MD)No.7660 of 2018. This Court, by order, dated 10.04.2018, directed the second respondent to consider the representation of the petitioner. Till date, the representation of the petitioner is not considered by the second respondent.

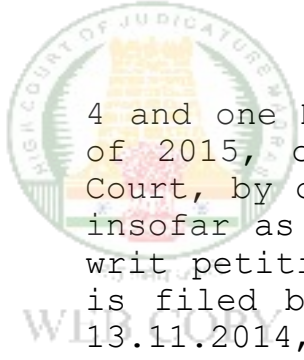
3. The learned counsel appearing for the petitioner submitted that the petitioner did not challenge the seniority list, dated 13.11.2014, as the same was cancelled by the first respondent vide proceedings, dated 16.04.2015 and the second respondent vide his proceedings, dated 23.04.2015 informed the petitioner that fresh



panel would be prepared and the petitioner's name would be placed in an appropriate place. The petitioner came to know that the respondents 3 & 4 filed a writ petition challenging the second impugned order of the first respondent, dated 16.04.2015 and the third impugned order of the second respondent, dated 23.04.2015 and obtained favourable orders. Only due to malpractice committed by the second respondent, the said seniority list was cancelled by the first respondent. By cancelling the seniority list, the petitioner's promotion was also cancelled and he was reverted to the post of Assistant Engineer, but the respondents 3 & 4 retained in the promotional post. The petitioner is fit for promotion to the post of Assistant Executive Engineer and due to some ineligible persons included in the seniority list, the first respondent cancelled the same on 16.04.2015 and for that, the petitioner cannot be penalised. The respondents 1 & 2 did not give any opportunity to the petitioner before passing the said order and prayed for allowing the writ petition.

4. The second respondent filed counter affidavit. The learned counsel appearing for the second respondent reiterated the averments made in the counter affidavit and submitted that due to pendency of the writ petitions in W.P(MD)Nos.7048 to 7050 of 2015, the panel could not be prepared and the petitioner's name will be considered in the next panel. This Court, by common order dated 21.10.2019, granted relief only to the petitioners in W.P(MD)Nos.7048 to 7050 of 2015. The petitioner has not challenged the impugned order in the year 2015 itself. Now, it is not open to the petitioner to challenge the said order. The seniority list will be prepared at the earliest and the petitioner's name will be considered as per the seniority, merit and eligibility and prayed for dismissal of the writ petition.

5. The respondents 3 & 4 filed counter affidavit. Mr.B.Saravanan, learned counsel appearing for the respondents 3 & 4 submitted that a draft seniority list was issued by the second respondent by the proceedings, dated 17.10.2014 in the post of Junior Engineer for promotion to the post Assistant Executive Engineer and called for objection, if any, on or before 28.10.2014. Subsequently, final seniority list was issued on 13.11.2014, wherein, the third respondent's name shown was at Sl.No.3 and the fourth respondent's name was shown at Sl.No.4. On the same day, the second respondent issued a panel for promotion to the post of Assistant Executive Engineer, wherein, the third respondent's name was shown at Sl.No.1 and the fourth respondent's name was shown at Sl.No.9. Both were promoted to Assistant Executive Engineer. The first respondent, by proceedings, dated 16.04.2015, directed the second respondent to cancel the panel, dated 13.11.2014, as irregularities had been committed and some ineligible persons were included in the panel. Based on the orders of the first respondent, dated 16.04.2015, the second respondent, by the impugned order, dated 23.04.2015, cancelled the panel dated 13.11.2014, consisting of Assistant Executive Engineers and Junior Engineers. The respondents 3 &



4 and one Manoharan filed writ petitions in W.P(MD) Nos.7048 to 7050 of 2015, challenging the orders of the respondents 1 & 2. This Court, by common order, dated 21.10.2019, allowed the writ petitions insofar as the respondents 3 & 4 and one Manoharan, who has filed a writ petition in W.P(MD) No.7049 of 2015. The present writ petition is filed belatedly in the year 2020 challenging the orders dated 13.11.2014, 16.04.2015 and 23.04.2015 and therefore, the same is liable to be dismissed on the ground of delay. In the seniority list prepared by the second respondent on 12.01.2007, consisting of both Assistant Engineers and Junior Engineers, in which, the petitioner was placed at Sl.No.12, the third respondent was placed at Sl.No.19 and the fourth respondent was placed at Sl.No.23, subsequently, the Commissioner of Municipal Administration, by proceedings, dated 27.08.2008, issued a direction to the second respondent to revise and prepare two separate *inter se* seniority list, based on the date of appointment of the incumbent i.e., prior and after 01.10.1996. As per the directions of the Commissioner of Municipal Administration, the seniority list had been separately prepared for Assistant Engineers and Junior Engineers. The writ petitioner has not challenged the seniority list, whereas, he has only challenged the consequential panel, dated 13.11.2014, which is illegal. Without challenging the seniority list, dated 13.11.2014, mere challenging the panel for promotion to the post of Assistant Executive Engineer, is not valid. In the matter of seniority, the aggrieved party should approach the Court at the earliest point of time. The present writ petition is filed after the delay of 5 years. The respondents 3 & 4 have already been promoted to the post of Assistant Executive Engineer and Executive Engineer in-charge in the second respondent Corporation and prayed for dismissal of the writ petition on the ground of delay.

6. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the first respondent, learned counsel appearing for the respondents 2 to 4 and perused the materials available on record.

7. The petitioner is seeking three reliefs in the present writ petition. The first relief is challenging the panel, dated 13.11.2014 for the promotion to the post of Assistant Executive Engineer. In the said panel, the third respondent's name was shown at Sl.No.1, the petitioner's name was shown at Sl.No.2. The first respondent instructed the second respondent to cancel the said panel, as there were some irregularities in preparation of the said panel. Based on such instructions of the first respondent, the second respondent, by the impugned order, dated 23.04.2015 cancelled the panel, dated 13.11.2014, on the ground that against one Kamaraj, Assistant Engineer at Sl.No.6, Balamurugan, Assistant Engineer at Sl.No.10 and Tmt.Malliga, Assistant Engineer at Sl.No.12 and 5 others 8(2) charges were framed and the same are pending and cancelled the promotion of the third respondent, the petitioner, fourth respondent and one Manoharan and Kamaraj. Challenging the said cancellation, the third respondent, one M.P.Manoharan and the fourth respondent filed writ petitions in W.P(MD) Nos.7048 to 7050

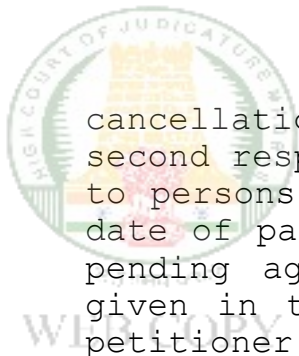


of 2015. This Court, by order dated 21.10.2019, set aside the order of cancellation of panel and cancellation of promotion of the respondents 3 & 4 and Manoharan. The operative portion of the said order is reads as follows:-

"11. For the above reasons, this Court is unable to sustain the order passed by the first respondent and the consequential order passed by the second respondent. Accordingly, these writ petitions are allowed and the impugned order passed by the first respondent, dated 16.04.2015 and the consequential order passed by the second respondent, dated 23.04.2015 are set aside insofar as it relates to the petitioners. The impugned orders shall be treated as void insofar it relates to the petitioner's promotion and unenforceable to affect their promotion. With regard to the other persons, who have not challenged the impugned orders, it is open to the respondents to prepare a new panel in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed."

8. In view of the above said order, the promotion of respondents 3 & 4 as Assistant Executive Engineer was confirmed and they are working as Assistant Executive Engineer from the date of their promotion. According to the respondents 3 & 4, the respondents 3 & 4 are subsequently promoted as Executive Engineer In-charge.

9. From the above materials, it is seen that the respondents 3 & 4 were vigilant enough to challenge the proceedings of the first respondent, dated 16.04.2015, and proceedings of the second respondent, dated 23.04.2015 as early as in the year 2015 itself. This Court granted relief as prayed for on the facts and circumstances of the case. The petitioner did not challenge the seniority panel, dated 13.11.2014, which was cancelled subsequently by the proceedings, dated 23.04.2015. The proceedings of the first respondent directing the second respondent to cancel the panel, dated 13.11.2014, is dated 16.04.2015. For more than 5 years, the petitioner did not challenge the panel, dated 13.11.2014, for promotion to the post of Assistant Executive Engineer, wherein, he was placed below the third respondent. The said panel was cancelled by the proceedings dated 23.04.2015 as per the direction of the first respondent. The reason given by the petitioner that he did not challenge the panel, dated 13.11.2014, as the same was cancelled, is not acceptable and is without merits. No explanation was given by the petitioner for not challenging the seniority panel, dated 13.11.2014 in time. Therefore, the petitioner is not entitled for the relief of placing him above third respondent based on the seniority list, dated 12.01.2007. In the writ petitions filed by the third respondent one M.P.Manoharan and the fourth respondent in W.P(MD) Nos.7048 to 7050 of 2015, this Court, by common order, dated 21.10.2019, considering the fact that no disciplinary proceeding was pending against the respondents 3 & 4 and Manoharan, held that



cancellation of entire panel is erroneous. This Court held that the second respondent ought to have cancelled the panel only with regard to persons against whom disciplinary proceedings are pending on the date of panel. On the date of panel, no disciplinary proceeding was pending against the petitioner. In view of the same, the reason given in the common order, dated 21.10.2019, is applicable to the petitioner also.

10. For the above reasons, the proceedings dated 16.04.2015 and 23.04.2015 are quashed in respect of the petitioner alone. The petitioner is entitled to promotion as per the panel, dated 13.11.2014.

11. In the result, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)

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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 Principal Secretary to Government,
Municipal Administration and Water Supply,
(MCIV) Department,
Secretariat, Chennai.

2. The Commissioner,
Madurai City Municipal Corporation,
Aringar Anna Maligai, Madurai-2.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-22425[F] dated 14/07/2021)

+1 CC to M/s.T.S.MOHAMED MOHIDEEN, Advocate (SR-22573[F] dated 14/07/2021)

+1 CC to M/s.SPL GP (SR-22667[F] dated 15/07/2021)

W.P (MD) No.4243 of 2020

14.07.2021

RC (27.07.2021) 6P-6C