



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.14671 of 2022

S.Madhana Musabar

..Petitioner

Vs

1. The Government of Tamil Nadu,
rep. by its Additional Chief Secretary
to Government,
Highways and Minor Ports (HK1) Department,
Fort St. George,
Chennai - 9.

2. The Government of Tamil Nadu,
rep. by its Secretary to Government,
Human Resources Management Department,
Fort St. George,
Chennai - 9.

..Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari to call for the records passed by the first respondent amending Rule 9 and 10 of the Tamil Nadu Highways Engineering Service Rules and quash the same in so far as Rule 9 and the qualification prescribed in clause (b) in column 3 specified as against the method of recruitment (b) prescribed under column (2) of Rule 10 of the Tamil Nadu Highways Engineering Service Rules in fixing 10 years of required service for junior engineers as amended in G.O.Ms.No.49, Highways and Minor Ports (HK1) Department, dated 02.04.2018.



WEB COPY

For the Petitioner : Mr.Ravi Shanmugam
for M/s.M.Padmavathy

For the Respondents : Mr.P.Muthukumar
State Government Pleader
assisted by
Mrs.R.Anitha
Spl. Government Pleader

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

By this writ petition a challenge is made to the amendment made to the Special Rules for the Tamil Nadu Highways Engineering Service vide government order dated 2.4.2018, notified in the gazette on 4.4.2018.

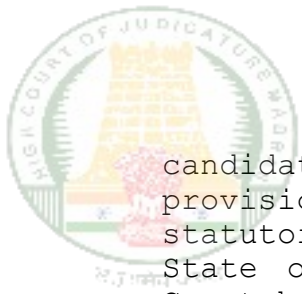
2.Learned counsel submits that as per the unamended Rule a candidate was eligible for promotion to the post of Assistant Divisional Engineer if he has completed five years of service as Junior Engineer. However, by way of amendment, the period of five years has been raised to 10 years, making the petitioner ineligible for promotion till he completes ten years of service as Junior Engineer and, therefore, the challenge to the validity of the notification has been made.

3.It is submitted that earlier writ petitions, being W.P.Nos.9093 and 8870 of 2008, were filed by Assistant Engineers seeking amendment to the Rules, as brought in by the impugned notification. The said writ petitions were strongly contested by the Government and the same were dismissed. The writ appeals challenging the said order were also dismissed. However, the Government has now made amendment to the Rules in compliance of the demands made by the Assistant Engineers in the earlier writ petitions.

4.We have considered the submission made by learned counsel for the petitioner and perused the record.

5.The unamended Rule provides eligibility for promotion to the post of Assistant Divisional Engineer from and amongst those who completed five years of service as Junior Engineer. In view of the amendment by the notification under challenge, the required length of service for promotion to the post in question is now ten years.

6.It is settled law that fixing of the qualification, required length of service and experience for promotion of a



candidate remains in the domain of the Executive and unless the provision is shown to be unconstitutional or going against the statutory provision, interference therein cannot be made. In State of J&K v. Shiv Ram Sharma, (1999) 3 SCC 653, the Apex Court held as under:

"6. The law is well settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts. The case put forth on behalf of the respondents is that when they joined the service, the requirement of passing matriculation was not needed and while they are in service, such prescription has been made to their detriment. But it is clear that there is no indefeasible right in the respondents to claim for promotion to a higher grade to which qualification could be prescribed and there is no guarantee that those rules framed by the Government in that behalf would always be favourable to them. In Roshan Lal Tandon v. Union of India [AIR 1967 SC 1889] it was held by this Court that once appointed, an employee has no vested right in regard to the terms of service but acquires a status and, therefore, the rights and obligations thereto are no longer determined by the consent of the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The High Court has also noticed that there was an avenue provided for promotion but the prescription of the qualification was not favourable to the respondents. The principle of avoiding stagnation in a particular post will not be with reference to a particular individual employee but with reference to the conditions of service as such. As long as the rules provide for conditions of service making an avenue for promotion to higher grades, the observations made in T.R. Kothandaraman case [(1994) 6 SCC 282] stand fulfilled. In that view of the matter, we do not think the High Court was justified in allowing the writ petitions filed by the respondents."

[emphasis supplied]

7. In view of the above, the challenge to the Rule brought by way of amendment cannot be sustained and it cannot be in reference to proviso under Rule 10, so amended to save those in possession of the required qualification and were serving as Assistant Engineers or Junior Engineers as on 2.4.2018. The proviso aforesaid cannot be made applicable even regarding length of service required, but has been brought to save those



who were in possession of the required qualification before the amendment and thus to be saved.

For the reasons given above, we do not find any merit in the writ petition and, accordingly, the same is dismissed. There will be no order as to costs. Consequently, W.M.P.No.13868 and 13869 of 2022 are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sasi

To:

1. The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Highways and Minor Ports (HK1) Department,
Fort St. George,
Chennai - 9.
2. The Secretary to Government,
Government of Tamil Nadu,
Human Resources Management Department,
Fort St. George,
Chennai - 9.

+1cc to M.Padmavathy, Advocate, S.R.No.35010

+1cc to the Government Pleader, S.R.No.35553

W.P.No.14671 of 2022

JPL(CO)
RGA(21/06/2022)