

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.03.2022  
Pronounced on : 30.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN  
AND  
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.1143 of 2020  
and C.M.P. No.14037 of 2020

The Commissioner,  
Corporation of Chennai,  
Ripon Buildings,  
Chennai-600 003.

...Appellant/2<sup>nd</sup> Respondent

Vs.

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

..Respondent/1<sup>st</sup> Respondent

2.R.Vasu,  
Assistant Executive Engineer (Regd.),  
No.7, B.B.Road,  
Vyasarpadi,  
Chennai-600 039.

... Respondent/Petitioner

Prayer:Writ appeal is filed under Clause 15 of the Letter Patents Act praying to set aside the order in W.P.No.5627 of 2010 dated 14.02.2020.

Prayer in W.P.No.5627 of 2010: Writ Petition filed under Article 226 of the Constitution of India Praying to issue a Writ of Certiorarified Mandamus to call for the record relating to the Government Order in G.O.Ms.71 Municipality & Water Supply Department dated 31.30.2001 issued by the 1st respondent and the subsequent Proceedings in G.D.C. No.E1/36102/98 dated 17.08.2002 passed by the 2nd respondent in regularizing the service of the Petitioner in the Post of Assistant Executive Engineer with effect 15.04.1993 quash the same as far as the Petitioner is concerned and to direct the 2nd respondent to modify the date of regularisation in the Proceedings G.D.C. No.E1/36102/98 dated 17.08.2002 from 15.04.1993 as 06.11.1992 Viz. the date of his Promotion to the Assistant Executive Engineer and direct the

respondents herein to re-fix the scale with the Consequential re-fixation of the pensionary benefits, from the said date and disburse all the arrears accrued on account of the modified order of regularisation within the short date that may be fixed by this Court.

[Prayer amended as per court Order dated 07.07.2013  
by TRJ in M.P.1/13 W.P.5627/2010]

For Appellant : M/s.Karthikaa Ashok

For Respondent 1: Mr.K.Suresh  
Government Advocate

For Respondent 2: M/s.G.Sri Devi

#### JUDGMENT

S.VAIDYANATHAN, J.  
and  
MOHAMMED SHAFFIQ, J.

This intra-court appeal is filed against the order of the learned Single Judge in W.P.No.5627 of 2010 dated 14.02.2010 whereby the learned Single Judge had set aside the impugned order giving promotion to the 2nd respondent herein only with effect from 15.04.1993 vide G.D.C.No.E1/36102/98 dated 17.08.2002 and further directed the respondents to count the services of the 2nd respondent in the post of Assistant Executive Engineer with effect from 06.11.1982.

2. The learned counsel for the appellant/ Corporation submitted that based on the Hon'ble Supreme Court's order dated 03.02.1993 in S.L.P.No.10595 of 1992 (Civil Appeal No.406/93), a panel consisting of 101 Junior Engineers were promoted as Assistant Executive Engineers with retrospective date along with monetary benefits from the date of joining. Though, the 2nd respondent in terms of his seniority would have been accommodated in the panel of 101 Junior Engineers, however, the 2nd respondent was not considered for appointment in the said panel as there were disciplinary proceedings against the 2nd respondent and punishment was imposed on the 2nd respondent which will have an impact on the 2nd respondent's right to claim promotion to the post of Assistant Executive Engineer with retrospective effect. The above fact was suppressed. In other words, it is the submission of the appellant that the respondents had suppressed the above fact relating to disciplinary proceedings which would have a material bearing on the decision made by the learned Single Judge directing the respondents therein to count the services of the 2nd respondent in the post of Assistant Executive Engineer with effect from 06.11.1982.

3. To a pointed question, that there is no pleading to the said effect, it was submitted by the learned counsel for the appellant in response that a request was made to the learned Single Judge to verify the records which was rejected. The appellant was thus not in a position to produce the relevant records to demonstrate that the reason for the appellant not being promoted as Assistant Executive Engineer and being accommodated in the panel of 101 Junior Engineers, was only the disciplinary proceedings and the consequent imposition of punishment. We would not have entertained the above plea normally, since the petitions were disposed of after almost 10 years from the date of filing. However, as the above aspect goes to the root of the right of the 2nd respondent to be considered for promotion, we deem it fit that the matter be remanded back to the learned Single Judge for examination of the above aspect.

4. For all the reasons stated above, this writ appeal stands disposed of and the matter is remanded back to the learned Single Judge to examine the above aspect of disciplinary proceedings and its impact on the 2nd respondent's claim to be promoted to the post of Assistant Executive Engineer with retrospective effect from 06.11.1982. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To:

1.The Commissioner,  
Corporation of Chennai,  
Ripon Buildings,  
Chennai-600 003.

2.The Secretary to Government,  
Municipal Administration,  
Water Supply Department,  
Fort.St.George, Chennai-600 009.

+1cc to Mrs.Karthikaa Ashok, Advocate, S.R.No.41498

+1cc to M/s.G.Sridevi, Advocate, S.R.No.41125

W.A. No.1143 of 2020

and

C.M.P.No.14037 of 2020

AJS(CO)  
SB(25/07/2022)