



W.P.(MD)No.816 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.816 of 2020

and

W.M.P.(MD)No.596 and 597 of 2020

S.Natarajan

... Petitioner

Vs.

Tamilnadu Construction Workers Welfare Board,
Rep by its Secretary,
Valluvar Kottam High Road,
Nungambakkam,
Chennai – 34.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned communication in No:A1/26680/2018 dated 10.10.2019 issued by the respondent and quash the same as illegal and consequently, direct the respondent to revise the panel for the post of superintendent following the requirements and qualifications set-forth in the Tamilnadu Ministerial Service Rules, especially Section 40 (The Tamilnadu Labour Subordinate Service) and the Tamilnadu Construction Workers Welfare Board Employees Service Rules, 1994.



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For Petitioner : Mr. P.Thoothai Muniasamy
For Respondents : Mr.V.Kannadasan

ORDER

This Writ Petition has been filed challenging the impugned communication, dated 10.10.2019, issued by the respondent and to quash the same and consequently direct the respondent to revise the panel for the post of Superintendent, following the requirements and qualifications set-forth in the Tamilnadu Ministerial Service Rules, especially Section 40 (The Tamilnadu Labour Subordinate Service) and the Tamilnadu Construction Workers Welfare Board Employees Service Rules, 1994.

2. The case of the petitioner is that he was appointed as Junior Assistant in the year 2010 and promoted as Assistant in the year 2018, after passing departmental tests and working as Assistant in the Assistant Commissioner of Labour (SSS), Virudhunagar. While so, the respondent has prepared a promotion panel list for the post of Superintendent. As per Section 40 of the Tamil Nadu Ministerial Service Rules, to be eligible for



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the promotion as Superintendent, a person must have served for not less than eight years as Typist including Steno Typist and Assistant, out of which they should have served as Assistant in the Labour Department at least for four years. But, without following the requirements and qualifications set forth in the Tamil Nadu Ministerial Rules, the promotion panel list was prepared by the respondent. If the respondent has followed the Rules for preparing the panel list, the petitioner's name will find place as Serial No.22. Hence, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the issue arise in the present writ petition is squarely covered by two Rules viz., the Tamil Nadu Construction Workers Welfare Board Employees Service Rules, 1994 r/w. Tamil Nadu State and Subordinate Service Rules. The requirement of serving as Assistant for at least four years is a mandatory condition to become eligible for the promotion as Superintendent. But the impugned order without any legal basis waived the requirement of serving as Assistant for four years and arbitrarily sets the eligibility as eight years of total service as computer operator or Junior



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Assistant and Assistant, which is not sustainable one. Hence, he prayed for allowing this writ petition.

4. The learned counsel appearing for the respondent would submit that the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Rules were framed in the year 1986. By virtue of Section 3, the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme was framed in the year 1994, under which the Tamil Nadu Construction Workers Welfare Board was constituted in the year 1994, to implement various welfare scheme to the registered construction workers of the Board. The petitioner was appointed to the Board as Junior Assistant in September 2010. The Tamil Nadu Construction Workers Welfare Board is a Statutory Board and it has its own service rules “Tamil Nadu Construction Workers Welfare Board Employees Service Rules, 1994”, which was approved by the Government on 03.08.2015 and came into force with retrospective effect from 30.11.1994. Section 10 of Tamil Nadu Construction Workers Welfare Board Employees Service Rules, 1994, provided the method of promotion, as per the provisions of Tamil Nadu



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State and Subordinate Service Rules. Therefore, the provisions of Tamil Nadu Labour Subordinate Service Rules are not applicable to the employees of the Board. Section 40 of the Tamil Nadu Labour Subordinate Service dealt with the categories of Assistant Inspectors of Labour, Statistical Inspectors and Stamping Inspectors under the Labour and Factories Department, wherein the Commissioner of Labour is an appointing authority. The provision of Section 40 of the Tamil Nadu Labour Subordinate Service not at all dealing with the Superintendent Panel. Since the provision of Section 40 does not applicable to the Board staffs, there is no question of comparing the qualifications mentioned thereof and appointments and promotions of the Board Staff are made as per the provisions of Tamil Nadu Construction Workers Welfare Board Employees Service Rules, 1994. Hence, he prayed for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.



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6. The grievance of the petitioner is that he was appointed as Junior Assistant in the year 2010 and after passing departmental tests, he was promoted as Assistant in the year 2018. The Department of Labour is the parent organisation of the Tamil Nadu Construction Workers Welfare Board. There are 17 Welfare Boards are affiliated with the Labour Department. The Welfare Board is constituted for the welfare of the construction workers. There are approximately 25 lakhs members in the construction workers welfare board and as per Section 6 of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982, the Board was constituted in the year 1994. As per Section 10 of Part II of the Tamil Nadu Construction Workers Welfare Board Employees Service Rules, 1994, promotion to the categories 6, 7 and 8 constituted (Superintendent (6), Assistant (7) and Typist (8) shall be made as per Tamil Nadu State and Subordinate Service Rules. The persons, who are working as Assistant, Typist and Junior Assistant are entitled for promotion to the post of Superintendent. However, in respect of typist and steno typist, they must possessed eight years of experience, out of which four years they worked as Assistant. Hence, the present writ petition has been filed.



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7. The learned counsel for the petitioner vehemently contended that the petitioner is entitled to be considered for promotion. However, his name was not included in the panel. A perusal of the impugned order reveals that a tentative panel list for the post of Superintendent was issued. He has to ventilate his grievance before the appellate authority. For better appreciation, Rule 10 of the Tamil Nadu Construction Workers Welfare Board Employees Service Rules, 1994, reads as follows:

“10. Method of Promotion.- Promotion to the categories 6, 7 and 8 constituted (Superintendent (6), Assistant (7) and Typist (8)) shall be made as per the Tamil Nadu State and Subordinate Service Rules.”

8. The four years limitation is available only in Section 40 of the Tamil Nadu Labour Subordinate Service. However, the Labour Subordinate Service is not applicable to the case on hand, whereas the Tamil Nadu Construction Workers Welfare Board Employees Service Rules, 1994 makes it clear that promotion to the categories 6, 7 and 8 constituted (Superintendent (6), Assistant (7) and Typist (8)) shall be made, as per the



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Tamil Nadu State and Subordinate Service Rules and not in terms of Tamil Nadu Labour Subordinate Service. However, there is no bar for considering the promotion of the Steno Typist and Typist in terms of Rule 36 of the Tamil Nadu State and Subordinate Service Rules. Rule 36 makes it clear that if there are more than one feeder category, the ratio and the scale of pay prescribed in the very same Rule should be taken into consideration, if the scale of pay of the feeder categories are different.

9. The above said Rule makes it clear that there is no bar for considering the steno typist and typist on par with Assistant and Junior Assistant. However, without ventilating his grievance before the appellate authority as stated in the impugned order filing the writ petition is not sustainable one. Hence, the prayer sought for by the petitioner cannot be granted. Accordingly, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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