



W.P.(MD)No.16383 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16383 of 2014

and

M.P.(MD)No.1 of 2014

Ganapathy

... Petitioner

vs.

1.The Principal,
Government Engineering College,
Tirunelveli-7,
Tirunelveli District.

2.The Commissioner,
Department of Technical Education,
Guindy, Chennai-25.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the second respondent in Memo No. 39804/T3/2011, dated 11.09.2014 and to quash the same and to direct the respondents to reckon the seniority of the petitioner in the cadre of Junior Assistant from the date it was due and to grant promotion to the petitioner with all consequential monetary and



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service benefits.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.P.Thambidurai
Government Advocate (Civil side)

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the proceedings of the second respondent, dated 11.09.2014 and to direct the respondents to reckon the seniority of the petitioner in the cadre of Junior Assistant from the date it was due and to grant promotion to the petitioner with all consequential monetary and service benefits.

2. The petitioner was appointed as Sanitary Worker on 18.06.1984 in Government Engineering College, Tirunelveli. Thereafter, he was appointed by transfer to the post of Watchman vide proceedings, dated 05.12.1984 and was regularized subsequently by the proceedings of the first respondent, dated 20.02.1985. The petitioner completed probation period successfully on 04.12.1985. Thereafter, the petitioner was appointed by transfer in the post of



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Office Assistant, vide proceedings, dated 03.04.1989 and was appointed by transfer in the post of Grade I Mazdoor, vide proceedings, dated 06.04.1994. He was regularized on 25.05.1994 and completed the probation period on 30.04.1996 successfully.

3.The petitioner submitted a representation on 03.03.1989 to include the petitioner in the panel for Junior Assistant and to provide necessary training for the said post. The second respondent approved the same, vide proceedings, dated 07.06.1999 and directed to get training in the post of Record Clerk, vide proceedings, dated 13.02.2001. The petitioner's name was included in the panel for the post of Junior assistant as on 15.03.2003, vide proceedings, dated 15.03.2003. The petitioner was appointed by transfer in the post of Junior Assistant, vide proceedings, dated 25.02.2004 and was posted in Alagappa Chettiar Engineering College, Karaikudi. However, the petitioner met with an accident and sustained severe injuries and was undergoing medical treatment, so, he was not able to join in the post of Junior Assistant. Hence, the petitioner made



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a representation, dated 08.04.2004, temporarily relinquishing his promotion for three years. The second respondent, vide proceedings, dated 27.07.2004, accepted the request and allowed to continue in the post of Mazdoor.

4. After the period of relinquishment which expired on 27.07.2007, the petitioner's name was not at all considered for promotion to the post of junior assistant. Hence, the petitioner repeatedly submitted representation and finally, made a representation, dated 25.08.2011. Since the same was not considered, the petitioner filed a writ petition in W.P.(MD)No.12878 of 2011. This Court directed the respondents to consider and pass orders, vide order, dated 17.02.2014. The respondents have considered through the impugned order and rejected the claim of promotion to the post of Junior assistant. Aggrieved over the same, the present writ petition is filed.

5. The 2nd respondent has filed a counter affidavit stating that as per General Rule 4(d) of the Tamil Nadu State and Subordinate Services, the mere



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inclusion of a candidate's name in any list of approved candidates for any service (State or Subordinate) or any class or category in a Service shall not confer on him any claim to appointment to the service, class or category. The Petitioner's name was included in the panel prepared as on 15.3.2003 vide second respondent's Proceeding No.47788/D4/2002, Dated. 16.12.2003 and was given postings as Junior Assistant vide 2nd respondent's Proceedings No. 47106/D3/2003, Dated 25.2.2004. That panel was valid for one year from that date. He relinquished his promotion as Junior Assistant and his request was accepted by the Commissioner of Technical Education, the Second respondent herein vide Proceedings No.47106/D3/03-2 dated 27.7.2004 and the petitioner was permitted to continue as Mazdoor, Gr-1. was the decision taken by the individual and the respondents were not at all responsible for his relinquishment. Hence, he has no locus standi to claim for inclusion of his name in the next panel as per the Provisions laid down in the General Rule 4(d) of the Tamil Nadu State and Subordinate Service. continue to work as Mazdoor, Grade I, which is a Technical post got its own promotional avenues. Thereafter the petitioner



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submitted representation and preferred writ petition. Based on the order of the Court the claim was considered and he was informed that the post held by the petitioner (i.e.) "Mazdoor Grade-1" being a Technical post which comes under the Tamil Nadu Technical Educational Subordinate Service and also based on the clarifications issued by the Government in Letter No. 16211/C2/2012-3, Higher Education Department, dated 08.01.2013, the request of the petitioner was rejected vide Commissioner of Technical Education Proceedings No. 39804/D3/2011, dated 11.09.2014. In this connection the respondents sought clarification from the Government whether the basic servants who have been subsequently promoted to the Technical post can also be considered as feeder categories along with the Basic servants for the purpose of recruitment by transfer to the post of junior Assistant. The Government vide Letter No.16211/C1/2012-3, Dated 08.01.2013 has clarified as follows.

2. "In this connection, I am to state that Rule 3 (g) (i) of Tamil Nadu Ministerial Service clearly stipulates that persons in the services other than Tamil Nadu Ministerial Service who are in categories having no promotional opportunities alone shall be considered for appointment by recruitment by transfer as Junior Assistant. In the instant case, the persons in the categories such as Skilled Assistant, Lab Assistant etc., which are



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post. If the Lab Assistants were granted promotion as Junior Assistants then the same would block the promotional opportunities of the Record Clerks and Basic Servants. Hence the petitioner cannot be granted transfer by appointment to the post of Junior Assistant. Moreover, it is the policy decision of the Government.

8. On perusing these clarifications, it is seen that the Government has clarified on 08.01.2013 and the same would come into effect from 08.01.2013 onwards. Prior to this clarification the respondents themselves have granted promotion to the petitioner on 25.02.2004, since the petitioner met an accident, the petitioner could not take up the promotion post and had temporarily relinquished the promotion for three years and the three years period was over on 25.02.2007. However, the claim of the petitioner is from 25.02.2007 onwards but the clarifications were issued on 08.01.2013, which would come into effect from 01.01.2013. Moreover, the petitioner was already granted the post of Junior Assistant in the year 2004 because of the accident, the petitioner could not



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continue in the said post. Therefore, the petitioner is entitled to the said post from the year 25.02.2007 onwards, i.e. after temporary relinquishment.

9. Hence the impugned order is set aside and the petitioner shall be conferred with the post of Junior Assistant from 25.02.2007 and the consequential monetary benefits shall be granted. This order shall be implemented within a period of six weeks from the date of receipt of a copy of this order.

10. For the reasons stated above the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

27.10.2022

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To

- 1.The Principal,
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Tirunelveli-7,
Tirunelveli District.
- 2.The Commissioner,
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S.SRIMATHY, J

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