



W.P(MD)No.23468 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23468 of 2022

and

W.M.P.(MD)No.17550 of 2022

I.Babu

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk,
Chennai 600 005.

2.The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board,
Madurai, Madurai District.

3.The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
M.D.T.Circle, Madurai,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st Respondent in his proceedings in Proc.No.15898/ Estt.(per)/ A5/ 2021 dated 30.09.2022 and the consequential impugned order passed by the 2nd Respondent in his proceedings in Proc.No.4267/A5/ F.EE/ 2022 dated 03.10.2022 and quash the same as illegal.



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For Petitioner : Mr.Ajmal Khan, Senior Counsel,
For M/s.Ajmal Associates.

For Respondents : Mr.Veera Kathiravan,
Addl. Advocate General,
Assisted by Mr.B.Vijayakarhikeyan,
Standing Counsel.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned Additional Advocate General assisted by the learned standing counsel for the respondents.

2.The writ petitioner possesses B.E. (Compute Engineering) degree (His father namely, Indumani died in harness). The petitioner applied for appointment on compassionate ground. Vide proceedings dated 03.04.1992, TWAD Board granted relaxation of the relevant requirements set out in TWAD Board Service Regulations, 1972 and appointed the petitioner as Assistant Engineer. It was further directed that his services will be utilized in the Compute Wing. The petitioner was promoted as Assistant Executive Engineer on 04.06.2015 and thereafter, he was further promoted as Executive Engineer vide proceedings dated 29.07.2022. It was then realized that the petitioner does not possess the requisite qualification and after issuing notice, the petitioner



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was reverted to the post of Programmer by the impugned order dated 30.09.2022. Challenging the same, the present writ petition has been filed.

3.The learned senior counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He pressed for setting aside the order impugned in the writ petition.

4.Per contra, the learned Additional Advocate General submitted that possession of B.E. degree in Civil discipline or Mechanical discipline is an essential qualification for appointment as Assistant Engineer or Assistant Executive Engineer or Executive Engineer. A mistake was committed by granting him promotion to the post of Assistant Executive Engineer and subsequently, as Executive Engineer. He pointed out that the petitioner has been given pay protection. Since a highly equitable order has been passed, it does not call for any interference.

5.I carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned Additional Advocate General, for a candidate to be appointed to the post of Assistant Executive Engineer, he must possess a degree in Engineering (Civil or Mechanical). The



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very same educational qualification is prescribed for being appointed as Executive Engineer. Admittedly, the writ petitioner is possessing B.E. degree in Computer Science. He does not possess a degree in B.E. (Civil or Mechanical). Thus, one of the fundamental requirements laid down in Recruitment Rules could not be fulfilled by the writ petitioner. However, inadvertently, he had been promoted as Assistant Executive Engineer in the year 2015 and subsequently as Executive Engineer in the year 2022. Only after giving notice to the writ petitioner, he has been reverted. Thus, there has been compliance with the principles of natural justice. It is also seen that the petitioner has been given protection in respect of pay and allowances last drawn by him.

6.If this Court were to hold that the writ petitioner cannot be reverted from the post of Executive Engineer or that of Assistant Executive Engineer, then it would be perpetuating an illegality. There cannot be issuance of a Writ contrary to law.

7.However, the petitioner can only be reverted to the post of Assistant Engineer. In this case, the impugned order reads that the petitioner is reverted to the post of Programmer in Computer Wing. It is quite possible that the post



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of Programmer and the post of Assistant Engineer are in the same pay band.

However, designation does matter. Admittedly, the writ petitioner was appointed as Assistant Engineer in the year 1992 only after granting him relaxation. A relaxation that was made way back in the year 1992 cannot be undone after thirty years. Therefore, the impugned order calls for limited interference. Reversion from the post of Executive Engineer and that of Assistant Executive Engineer is sustained. However, he shall be posted as Assistant Engineer without affecting his pay and other allowances, which he is presently drawing. The petitioner is also given liberty to submit a representation to the appropriate authorities seeking relaxation of the service regulations so that he can continue to function as Assistant Executive Engineer. I am granting this liberty to the petitioner taking note of the fact that he has served as Assistant Executive Engineer for seven long years. However, I leave it to the discretion of the competent authority to take the final call. The impugned order is interfered to the extent mentioned above.

8.The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.10.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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