



WEB COPY



W.P.No.18928 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Pronounced on : 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.18928 of 2010

and

W.M.P. No.12362 of 2022

A.Panneerselvam

... Petitioner

v.

1.The Chief Secretary,
Government of Tamilnadu,
Secretariat,
St.George Fort,
Chennai 600 009.

2.The Managing Director,
Chennai Metropolitan
Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chennai 600 002.

3.The Director,
Directorate of Vigilance & Anti Corruption,
Greenways Road, Chennai 600 028.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order of the 2nd respondent in his Memo No.CMWSSB/ P&A/ RA1/ 20297 /2010, dated 25.06.2010 and quash the same and



W.P.No.18928 of 2016

consequently directing the first respondent to make an independent enquiry through the 3rd respondent into the allegation of tampering of inter se seniority as referred to File No.MMWSSB/ R&A2/ 65985/ 91 approved on 25.12.1991.

For Petitioner : Mr.A.V.Arumugam

For Respondents : Mrs.Geetha Thamaraiselvan for R1, R3,
Special Government Pleader
Mr.Krishna Ravindran for R2

ORDER

The present writ petition was filed praying for a writ of Certiorarified Mandamus calling for the records pertaining to the order of the 2nd respondent in his Memo No.CMWSSB/ P&A/ RA1/ 20297 /2010, dated 25.06.2010 and quash the same and consequently direct the 1st respondent to make an independent enquiry through the 3rd respondent into the allegation of tampering of *inter se* seniority as referred to File No.MMWSSB/ R&A2/ 65985/ 91 approved on 25.12.1991.

2. The petitioner was originally employed with the Madras Municipal Corporation. The Government vide G.O.Ms.1176 dated 22.07.1978 notified the establishment of the Chennai Metropolitan Water Supply Sewerage Board (hereinafter referred to as "the Board") as a statutory body from 22.07.1978 which was intended to take over the water supply and sewerage



operation from the Madras Municipal Corporation from 01.08.1978. Section 20 of Chennai Metropolitan Water Supply and Sewerage Board Act, 1978, provides that the personnel who had been serving in connection with water supply and sewerage function in the metropolitan areas were eligible to be absorbed in the service of the 2nd respondent Board. The petitioner along with other similarly placed employees exercised the option of joining the 2nd respondent Board in 1978 and were absorbed by the 2nd respondent Board and were promoted subsequently as Junior Engineer and thereafter as Assistant Executive Engineer during the year 2001.

3. After about 12 years since the filing of the present writ petition, the prayer was sought to be amended vide W.M.P.No.12362 of 2022. Though a counter has been filed resisting the same, this Court proposes to examine the above prayer and the amendment is thus allowed. The amended prayer reads as under:

"to amend the prayer in W.P.No.18928 of 2010 as to issue an order or a direction or a writ more specifically of writ of Certiorarified Mandamus calling for the records pertaining to the order of the 2nd respondent in his Memo No.CMWSSB/ P AND A/ RA1/ 20297 /2010, dated 25.06.2010 and quash the same and consequently directing the first respondent to make an independent enquiry through the 3rd respondent into the allegation of tampering of inter se seniority as referred to in File



W.P.No.18928 of 2016

WEB COPY

No.MMWSSB/ R AND A2/ 65985/ 91 approved on 25.12.1991 and consequentially directing the 2nd respondent to restore petitioners seniority as already fixed by the inter se seniority list as approved by the 2nd respondent Board on 25.12.1991 and extend all promotional benefits attendant benefits and arrears of pay."

4. This is the 2nd round of litigation by the petitioner with regard to the alleged tampering and manipulation of the combined *inter se* seniority list stated to be approved on 25.12.1991 as per Resolution No.229/1991 dated 12.07.1991. Prior to the filing of the present writ petition, the petitioner had submitted a representation dated 08.04.2009 alleging manipulation of Resolution No.229/1991 dated 12.07.1991 and restoration of the combined *inter se* seniority list approved on 25.12.1991. The above writ petition in W.P.No.25748 of 2009 was filed praying for a writ of Mandamus directing the respondent to consider and dispose of the petitioner's representation dated 08.04.2009, the same was disposed of by this Court on 20.04.2010 with the following direction:

"5. It is seen that the petitioner has given a representation dated 08.04.2009. It is brought to the notice of this Court that the respondents 2 to 25 have also given similar representation on the same day, i.e., on 08.04.2009. In view of the limited prayer made by the petitioner, this Court, without going into the merits of the representation of the petitioner and the respondents 2 to 25 dated 08.04.2009, is constrained to direct the first respondent to consider the representation of the petitioner dated



WEB COPY

W.P.No.18928 of 2016



08.04.2009 along with the representation of the respondents 2 to 25 dated 08.04.2009 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. "

4.1. Pursuant to the above directions of this Court, the impugned order dated 25.06.2010 was passed wherein it was stated that the allegations of tampering are baseless and as a matter of fact, the respondents had not approved any *inter se* seniority of 367 Assistant Engineer (AE)/Junior Engineer(JE). The relevant portion of the said order is extracted below:

"3. The file R.Dis/RA2/65758/91 contains three volumes (note file of 68 pages and current file 512 pages) was closed on 07.11.1991 and another file R.Dis/RA2/65985/91 (contains note file 44 pages, current file 113 pages) was closed on 27.05.1992. Both the files were perused by Thiru.A.Pannerselvam, AEE under RTI Act 2005 and copies of document were taken on payment. The allegation that important portions of R'Disposal files were tampered and promotion chances are shattered and removed during the period between 07.12.1995 and 17.11.1998 are baseless. No such interse-seniority of 367 AE/JEs was approved by the then Managing Director on 25.12.1991.

4. Further, when the alleged files in question were closed under R'Dis during 1991 and 1992 itself, the question of tampering and removing of records between 07.12.1995 and 17.11.1998 does not arise. The combined interse-seniority between AE/ JEs for the purpose of promotion to the cadre of AEE can be drawn only at the time of drawal of panel because AE post is coming under CMWSS Board Engineering and Technical services, whereas Junior Engineer is coming under CMWSS Board Engineering Technical Subordinate Services. With the above position, the petitions are baseless and there is no merit in it for consideration.

5. However, if any of the petitioners are having any proof to substantiate their allegation they are at liberty to produced the same to the undersigned."

(emphasis supplied)



W.P.No.18928 of 2016

WEB COPY

4.2. The present writ petition is filed primarily on the basis that a combined *inter se* seniority of 367 AE/JE had been drawn and the promotions had been made thereafter overlooking / disregarding the said list. It is also submitted that the petitioner who was originally employee of the Corporation of Chennai would be governed by the service conditions contained in G.O.Ms.No.31 Rural Development and Local Administration dated 07.01.1969 and the clarification dated 14.08.1978 while the Special Regulation of the Board would apply only to employees recruited by the Board.

5. It is submitted by the learned counsel for the respondents that the writ petition is liable to be dismissed since the petition is made on the basis of a combined *inter se* seniority list of AE/ JE, stated to have been prepared in the year 1991 which is non-existent. That, no such list was prepared is made clear vide impugned order dated 25.06.2010 which is passed pursuant to the directions of this Court in W.P.No.25748 of 2009. Thus, the allegation of tampering of the alleged list is baseless as the said list never existed. In any view, the above grave allegation of forgery except for being a mere assertion is not supported by any evidence whatsoever.



WEB COPY

W.P.No.18928 of 2016



6. This Court finds no merit in the present writ petition for the following reasons:

a. The allegation of tampering of the *inter se* seniority list is made on the basis of a gross misconception inasmuch as no such list was ever prepared by the respondent Board. Special Regulations prescribing the method of recruitment, qualification for various categories of posts in the respondent Board has been framed in exercise of the powers under Section 81(2) (c) of the Act. In terms of the said regulation, Assistant Engineers who had completed 5 years of service and Junior Engineers who had completed 10 years of service are eligible for promotion as Assistant Executive Engineer. The Government vide G.O.Ms.No.218 (M.A & W.S.Department) dated 24.09.1993 had issued orders to adopt the ratio of 3:1 amongst eligible Assistant Engineer vis-a-vis Junior Engineers for promotion to the posts of Assistant Executive Engineer, appropriate amendments were made in the special regulation of the Board during 1993 to implement the ratio of 3:1 between Degree holders and Diploma holders.

G.O.Ms.No.218(M.A&W.S.Department) dated 24.09.1993 :

"5. The Government, after careful examination, have decided that the ratio of 3:1 among eligible Assistant Engineers and Junior Engineers in the Madras Metropolitan Water Supply and Sewerage Board for promotion to Assistant Executive Engineer should be adopted by Madras



WEB COPY

W.P.No.18928 of 2016



Metropolitan Water Supply and Sewerage Board is accordingly directed to take action to amend the relevant sections of Madras Metropolitan Water Supply and Sewerage Board Special Regulations, 1982 so as to fix a ratio of 3:1 among eligible Assistant Engineers (Civil, Mechanical/ Electrical) and Junior Engineers (Civil, Mechanical/ Electrical) for promotion to the post of Assistant Executive Engineer, giving effect to the amendment from the date of this order. "

6.1. It is thus evident and clear that the very basis of the present writ petition viz., existence of inter se seniority list and tampering of the same is baseless.

b. Secondly, this Court also finds that the petitioner is raising the issue of tampering on non-existent inter se seniority list after more than 18 years. The petitioner has come up with the amendment to the prayer to direct the 2nd respondent to restore the petitioners seniority as already fixed by the inter se seniority list allegedly approved by the 2nd respondent Board on 25.12.1991 after 12 years since the filing of the present writ petition and 30 years after the alleged tampering of the list dated 25.12.1991. Apart from the fact that the alleged list containing *inter se* seniority of AE/JE were non-existent as explained supra. As a matter of fact, the issue of dispute between Assistant Engineers (Degree holders) and Junior Engineers (Diploma holders) stands



resolved by a judgment of the Division Bench of this Court in W.A.No.1959 of 2010 dated 01.08.2017 wherein, it was held as under:

"22. From the records, it is evident that the appellant has filed this vexatious writ by litigating the issue settled long back. The dispute between the Assistant Engineer/ degree holders and Junior Engineer / diploma holders can never be re-agitated after the Courts have settled the issues on two earlier occasions. The appellant has been promoted as Assistant Executive Engineer on 21.01.1999 after disposal of Writ Petition and pending disposal of W.A.No.590/1998. Except harping on a vexatious contention that his seniority is to be reckoned from the date of joining into service as Overseer in the year 1975 for the post of Assistant Executive Engineers which was once done due to administrative exigency as one time concession and on the intervention of the Court order cannot be continued perpetually after the Special Service Regulations of 1982 and G.O.Ms.o.218 dated 24.09.1993, in fixing quota for degree holder and diploma holder in the ratio of 3:1 has come into vogue. The verdict in W.A.No.590/1998 etc., is for the filling up of the 20 vacancies arose before the said Government Order. The Government Order fixing 3:1 ratio between Assistant Engineers and Junior Engineers prospective effect for vacancies arose after 24.09.1993. Therefore, the plea of the appellant to follow pre-amended rule for vacancies after amendment is untenable. The learned Single Judge of this Court has rightly dismissed the Writ Petition and it requires no interference at the hands of this Court. "

c. This Court also finds that the petitioner's prayer must fail on the ground of delay and laches since any claim of seniority in service matters must be raised at the earliest point in time and a belated claim by itself could



be a reason for rejection of a claim to promotion. In this regard, it may be useful to refer to the following judgments:

1. Shiba Shankar Mohapatra and others vs State of Orissa and others - (2010) 12SCC 485:

"30. The Tribunal ought to have dismissed the case of Parsuram Sahu (supra) only on the ground of delay and the laches, as the applicant approached the Tribunal at the verge of his retirement and after getting two promotions while the other parties have got three promotions.....While deciding the said application the Tribunal itself had taken note of the facts that promotions had been made 8-9 years ago prior to issuance of the combined gradation list in 1999. It is evident from the impugned judgment that Shri Sudhir Chandra Ray joined as SI(g) on 4.1.1973. He was promoted to the rank of Inspector with effect from 12.3.1991. We are of the considered opinion that the said application ought to have been rejected by the Tribunal only on the ground of delay and laches. The High Court has also not dealt with this issue, however, it goes to the root of the cause. Such an inordinate delay cannot be ignored particularly when the issue of delay has been pressed in service before this Court."

(emphasis supplied)

2. B.S. Bajwa and another vs. State Of Punjab & Ors reported in (1998) 2 SCC 523:

"Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period



WEB COPY

of more than a decade they were all along treated as junior to the order aforesaid persons and the rights inter se had crystalised which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B.S. Bajwa and B.D.Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re- opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.

In view of the above conclusion it is not necessary for us to express any opinion on the merits of the point raised buy B.S. Bajwa and B.D. Gupta. We make it clear that the view thereon taken by the High Court is not to be treated as concluded or having affirmation of any kind. The appeals of B.S.Bajwa and B.D.Gupta are dismissed and the appeal filed by D.P.Bajaj and Jagir Singh is allowed. With the result that the judgment of the Single Judge of the High Court is set aside and the writ petition filed by B.S.Bajwa and B.D.Gupta stand dismissed."

(emphasis supplied)

3. R.S. Makashi and Ors vs I.M. Menon & Ors on 8 December, 1981 (Equivalent citations:1982 AIR 101, 1982 SCR (2) 69):

"16. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors. AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it



WEB COPY

seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in *Tilokchand Motichand v. H.B.Munshi*, AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-

"A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court."

4. P.S. Sadasivaswamy vs The State Of Tamil Nadu on 7 October, 1974. Equivalent citations: 1974 AIR 2271, 1975 SCR (2) 356:

"A person aggrieved by an order of promoting a junior over his bead should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court....."

(emphasis supplied)



W.P.No.18928 of 2016

7. In the light of the foregoing discussions, I find that the claim of the petitioner is liable to be rejected on the ground of laches for challenging the inter-se seniority list stated to have been prepared in the year 1995, i.e., 15 years thereafter, the existence of which itself is not beyond doubt and to thereafter seek amendment of the prayer 12 years after the filing of the writ petition, which clearly reveals that the petitioner has been lethargic and not vigilant about his right and thus not entitled to any relief.

8. For all the above reasons, this writ petition is devoid of merits and thus stands dismissed. No costs. Consequently, connected writ miscellaneous petition is closed.

30.08.2023

Index: Yes/ No
Speaking order/Non-Speaking order
Neutral Citation: Yes/No
shk



WEB COPY



W.P.No.18928 of 2010

MOHAMMED SHAFFIQ, J.

shk

To:

- 1.The Chief Secretary,
Government of Tamilnadu,
Secretariat, St.George Fort,
Chennai 600 009.
- 2.The Managing Director,
Chennai Metropolitan Water Supply & Sewerage Board,
No.1, Pumping Station Road, Chennai 600 002.
- 3.The Director,
Directorate of Vigilance & Anti Corruption,
Greenways Road, Chennai 600 028.

W.P. No.18928 of 2010
and
W.M.P. No.12362 of 2022

30.08.2023