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W.P.No.18856 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.18856 of 2013

M.Irudayaraj

... Petitioner

Vs.

- 1.The Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai 600 009
- 2.The Director General,
Highways Department,
Chepauk, Chennai-5
- 3.The Principal Accountant-General(A&E),
Teynampet, Chennai-18

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the second respondent herein passed in his Memorandum No.187/Kamukkam1/2011 dated 18.03.2013 and quash the same and consequently direct the first respondent herein to promote the petitioner as Junior Engineer with effect from 20.02.2004 and further promote the petitioner as Assistant Divisional Engineer with effect from 14.02.2011 on notional basis from the date of promotion of immediate junior with all consequential monetary and service benefits and direct the



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respondents herein to revise the petitioner's retirement benefits suitably as Assistant Divisional Engineer.

For Petitioner : Mr.A.Prakesh
for Mr.Ravi Shanmugam

For Respondents
For R1 & 2 : Mr.T.M.Rajangam,
Government Advocate

For R3 : Mr.V.Murali

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 18.03.2013 thereby rejected the request of the petitioner to promote him to the post of Junior Engineer with effect from 20.02.2004 and also for further promotion to the post of Assistant Divisional Engineer with effect from 14.02.2011 on notional basis from the date of his junior's promotion and disburse all monetary benefits.

2. Heard, the learned counsel appearing on either side.

3. The petitioner had joined services as Draughtsman Grade-III on 15.05.1981 temporarily. On 23.05.1981, he was posted at Theni Sub Division in an existing vacancy. However, his service was not regularised



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and he was continued in the same post for 26 years on temporary basis.

His junior, one, Selvaraj was appointed on 25.05.1981 and he was regularised since he possessed Diploma in Civil Engineering. Subsequently, the said Selvaraj was promoted to the post of Junior Engineer on 20.02.2004. However, the petitioner's service was not regularised and his probation was not declared and as such, he was denied promotion to the post of Junior Engineer.

4. The learned counsel for the petitioner would submit that the petitioner's service was regularised by an order dated 07.09.2007 and his probation was declared satisfactorily on 04.10.2007. The second respondent furnished seniority list of the Junior Engineers as on 01.01.2007. In the said list, his junior S.Selvaraj had been included at serial No.117 and his name ought to have been included above him. The non regularisation of the service is not petitioner's fault. However, he was promoted as Junior Engineer only on 29.02.2008. The petitioner submitted detailed repeated representation for his consequential probation on par with his junior S.Selvaraj. Though the petitioner's name was



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included in the seniority panel for promotion to the post of Assistant Divisional Engineer for the year 2010-2011, he was denied promotion and his junior was promoted to the post of Assistant Divisional Engineer on 14.02.2011. He further submitted that the rejection of request made by the petitioner is contrary to Rule 36 of Tamilnadu State and Subordinate Service Rules. The crucial date for the panel of the year 2010-2011 for promotion as Assistant Divisional Engineer is 15.07.2010 and not 15.07.2009. His junior was promoted as Junior Engineer on 20.02.2004 and further promoted to the post of Assistant Divisional Engineer on 14.02.2011. Now the petitioner attained age of superannuation and as such, he sought for notional promotion with all monetary benefits.

5. The respondents filed counter and it revealed that the petitioner was selected through employment exchange and appointed as Draughtsman Grade-III, now re-designated as Junior Draughting Officer. As per Rule 8 of the Tamilnadu Highways Engineering Subordinate Services Rules which governs the post of Draughtsman Grade-III to which the petitioner was appointed, the qualification prescribed are only



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Diploma in Civil Engineering or National Trade Test (Civil) or Bifurcated Course in Engineering. Therefore, National Apprenticeship Certificate was not included in the Rules for the post of Draughtsman Grade-III. Therefore on temporary basis, to the post of Junior Draughting Officer, the petitioner was appointed. He was not fully qualified for the said post on the date of his appointment as per the Rules. He completed Diploma in Civil Engineering during the year 1997. However, his junior S.Selvaraj was regularised earlier to the petitioner since he possessed qualification prescribed in the Tamilnadu Highways Engineering Subordinate Services Rules and he was promoted to the post of Junior Engineer with effect from 20.02.2004.

6. At that time, the petitioner's service was not regularised and subsequently, by the GO(3D) No.111 Highways (HM1) Department dated 07.09.2007, the petitioner was regularised and he was promoted to the post of Junior Engineer by the proceedings dated 29.02.2008. His seniority was fixed in the post of Junior Engineer on par with his junior S.Selvaraj. The seniority was refixed by including the petitioner's name in



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the appropriate place in the panel for promotion as Junior Engineer on par with his junior by the communication dated 19.07.2011. He was also considered for the promotion to the post of Assistant Divisional Engineer. However, he was not included in the panel for promotion on par with his junior on the ground that he has not completed his probation period of two years as on crucial date i.e. 15.07.2009. The completion of probation is a pre-requisite qualification prescribed in the Service Rules for promotion to the post of Assistant Divisional Engineer. Therefore, the request made by the petitioner was rightly rejected by the second respondent.

7. That apart, the petitioner had slept over the matter till his attainment of superannuation and only thereafter, he made request and the same was rejected by the second respondent. He never questioned about declaration of his probation during his service since he did not complete his Diploma in Civil Engineering. He completed only in the year 1997. Therefore, the petitioner is not entitled for promotion to the post of Assistant Divisional Engineer and this Court finds no infirmity or



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illegality in the order passed by the second respondent.

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8. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai 600 009
- 2.The Director General,
Highways Department,
Chepauk, Chennai-5
- 3.The Principal Accountant-General(A&E),
Teynampet, Chennai-18
4. The Government Advocate,
High Court, Madras.

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