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W.P.Nos.6224 & 6750 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.Nos.6224 & 6750 of 2023 &

WMP.Nos.6235, 6236, 6820, 6822 & 16128 of 2023

1. K.Priya
2. A.Sathya
3. M.Kowsalya
4. T.Saravanan
5. M.Anbu Kannan

... petitioners in W.P.No.
6224 of 2023

1. A.Kannan
2. R.P.Ranjani
3. J.Jansimala
4. R.Thirusarbaharish
5. I.Kasirajan
6. N.Abul Fernaz
7. R.Hemalatha
8. S.Rameshkumar

... Petitioners in W.P.No.
6750 of 2023

Vs

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai – 09.



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2. The Managing Director,
Tamilnadu Housing Board,
CMDA Complex, E & C Market Road,
Koyambedu, Chennai – 107.

3. The Secretary and Personal Officer,
Tamilnadu Housing Board,
CMDA Complex, E & C Market Road,
Koyambedu, Chennai – 107.

... Respondents 1 to 3 in
both WPs

4. C.Girija Kumari
5. S.Vijayakumar
6. M.P.Subramanian
7. J.Praveen
8. J.Ibrahim
9. C.Shanmugapriya
10. S.Nancy Jasmine
11. R.Susivan
12. G.Balamurugan
13. S.Murugan
14. S.Deepa
15. K.Manikandan
16. M.Raja
17. K.Sathishkumar
18. K.Parthiban
19. K.Sankar
20. M.Vijay
21. M.Murugesan
22. M.Prabanjali
23. S.Dinesh Babu
24. R.Balasubra Manian
25. V.Subashini
26. S.Saravanan
27. M.Kondasamy



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28. R.Viniain Kumar
29. K.Prabudeva
30. R.Gopalakrishnan
31. M.Jeeva
32. P.Kumar
33. S.Kumar
34. G.M.Shibi Sakthiya
35. P.Arockia Georgebruno
36. M.Gopinath
37. M.A.Muthu Manikkam
38. F.Abdul Azeez
39. S.Elangovan
40. N.Arumugam
41. V.Kalaiselvan
42. S.Tamihosai
43. A.Selvakumar
44. A.Jothiprakash
45. B.Suganya
46. M.S.Mouleeswaran
47. S.Sinduja
48. S.Rajkumar
49. S.Yokesh
50. J.Ebinesan
51. K.Sivanesan
52. P.Vinothkumar
53. R.Anbu karthick
54. K.Ilayaperumal
55. R.Elamvazhuthi
56. S.Partiban
57. V.Priyanga
58. A.Aaruthra
59. k.Chitra
60. G.Thulasimani
61. M.Anusha
62. S.Rajeswari
63. p.Shalini



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64. G.Sundhara Moorthi
65. P.Haswini
66. R.Suguna
67. R.Malathidevi
68. K.Brinda
69. G.Lavanya
70. G.Antony Beaula Rani
71. J.Mohanambal
72. P.Pandiselvi
73. S.Sasikala
74. S.Shehnaz
75. R.Boopathi
76. G.Dinakaran
77. K.Vaira Moorthy
78. M.Karthikeyan

... Respondents 4 to 78 in
in both Writ Petitions

[Respondents 4 to 78 impleaded in W.P.No.
6224 of 2023 as per the Order of this Court in
WMP.No.6601 of 2023 in W.P.o.6224]

Prayer:- Writ Petitions filed under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in connection with the impugned Order passed by the second respondent in Memo No.PT3/1010/2023 dated 20.02.2023 and to quash the same to an extent of non-inclusion of the petitioners/ Surveyors name in the panel for the post of AE/JE for the panel year 2022-23 and consequently direct the second respondent to include the Surveyors/Petitioners in the panel to the post of AE/JE for the panel year 2022-23 as per the TNHB Regulation, 1969 and in accordance with the provisions of Tamilnadu Government Servants [Conditions of Service] Act, 2016 within a



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reasonable time.

For petitioners : Mr.K.S.Viswanathan
for S.Sivakumar – in both WPs.

For respondents : Mr.V.Jeevagiridharan,
in both WPs Additional Government Pleader – R1

Mr.R.Shanmuga Sundaram, AG
Asst. by Mr.D.Veerasekaran R2 & R2

49, Mr.Richadson Wilson
for R 7, 12, 13, 21, 26, 29, 37, 43, 48,
51,54, 46, 63,64,72
in WP.No.6224 of 2023
for R7, 10, 12, 13, 14, 17, 20, 21, 23,
25, 26, 27, 28, 29, 30, 31, 36, 37, 39, 43,
45, 48, 49, 51, 54, 46, 59, 62,63,64, 65, 68,
71, 72 - in W.P.No.6750 of 2023

COMMON ORDER

These Writ Petitions have been filed to quash impugned Order passed by the second respondent in Memo No.PT3/1010/2023 dated 20.02.2023 to an extent of non-inclusion of the petitioners/ Surveyors name in the panel for the post of AE/JE for the panel year 2022-23 and consequently direct the second respondent to include the Surveyors/Petitioners in the panel to the post of AE/JE for the panel year



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2022-23 as per the TNHB Regulation, 1969 and in accordance with the provisions of Tamilnadu Government Servants [Conditions of Service] Act, 2016 within a reasonable time.

2. The main challenge is being made on the provisional list in the cadre of Technical Assistant for the post of Assistant Engineer during the financial year 2022. The said list has been challenged mainly on the ground that there are three cadres of feeder post for the promotion to the post of Assistant Engineer and for several years promotions are effected on the basis of the combined Seniority List. However, now, the provisional seniority list has been prepared among the Technical Assistant for promotion to the post of Assistant Engineer. Hence, the above list has been challenged for non consideration of surveyors for the post of Assistant Engineer. Since the Board Regulations contemplates promotion from other category of service with the qualification prescribed for direct recruitment, the impugned order is a result of discrimination and malafide and clear violation of principles of natural justice. The Board has no authority to adopt such a procedure for promotion since



there are regulations regulating the conditions.

3. In the counter, it is the contention of the respondent that in the year 2018, the board has recruited 25 Assistant Engineers, 19 Surveyors, 19 Junior Draughting Officers and 76 technical assistants by direct recruitment and separate examinations have been conducted for each of categories and syllabus were also different. The nature of work, the roles and responsibilities are also different. Whereas, the Technical Assistants were recruited for field works to assist the Field Engineer, viz., Assistant Engineers / Assistant Executive Engineers who are involved in core Civil Engineering activities in the project site day-in and day-out. As far as recruitment of Assistant Engineer is concerned, there are two modes of recruitment, one mode is by direct recruitment. The other mode is by promotion of Technical Assistant. The total vacancy in the post of Assistant Engineer will be apportioned between direct recruits and Technical Assistants in the ratio 3 : 1. Hence, it is their contention that the post Surveyor is not a feeder category for promotion to the post of Assistant Engineer, whereas, the post of Technical Assistant is the only



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feeder category for promotion for the post of Assistant Engineer. It is their further contention that the other category such as Surveyor/Head Surveyor/Draughting Officer were considered for promotion to the post of Assistant Engineers on few occasions due to insufficient number of persons in the post of Technical Assistant, which is only feeder category for the post of Assistant Engineer and at that time, the only recruitment avenue available was through Employment Exchange. Subsequently, open advertisements were issued for recruitment and as such this cannot be cited as precedent to fill the Assistant Engineer vacancies from other categories every time, when there are eligible persons in the feeder category, i.e., Technical Assistant. Hence, opposed the Writ Petition.

4. The learned counsel appearing for the petitioners submitted that that the Rule specifically stipulates for promotion to the post of Assistant Engineer by promotion from other categories of service with qualification prescribed for direct recruitment and having adopted combined seniority all these years, now the seniority list has been prepared only from the Technical Assistants. Hence, the same cannot be sustained in the eye of



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law. According to him, merely because persons were appointed as surveyer who have qualification for the appointment of Assistant Engineer, they cannot be denied promotion on the ground that there is separate avenue for promotion for the surveyor. Hence, it is his contention that all along combined seniority has been maintained and without there being any amendment to the Rules governing appointment, now the respondent cannot take a different stand.

5. Whereas, the learned Advocate General appearing for the second and third respondents submitted that the Surveyors have been appointed on the basis of a separate examination conducted and there is next promotion avenue as Head Surveyor as per G.O.Ms.160 dated 25.02.1982. Hence, it is the contention of learned Advocate General that for promotion of Assistant Engineer, Technical Assistants alone will be considered and the petitioners cannot challenge the panel.

6. According to the learned counsel appearing for the respondents 4 to 78, who are said to be Technical Assistants, the petitioners cannot challenge the panel and it is his contention that consideration for



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promotion will arise only after the panel has been separately prepared and that stage has not even arise in this case. Therefore, the Writ Petition is premature and is not maintainable.

7. I have perused entire materials. The fact that for promotion for the post of Assistant Engineers, there are two ways of recruitment one way is by direct recruitment, other by promotion from other category with qualification prescribed for direct recruitment. It is relevant to extract rule as follows :

Category of Posts [1]	Scale of Pay [2]	Qualification [3]	Method of Recruitment [4]
		[i] Must possess a degree in Engineering of any University recognised by the State Government for the purpose or any other equivalent qualification [ii] Must have passed Section A and B of the AMIE [Ind] Examination with the following [a] School have passed	[i] By direct recruitment OR [ii] By promotion from other categories of service with the qualification prescribed for direct recruitment. [iii] Preference shall be given to candidates who have rendered Army Service. The persons who are already in the



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Category of Posts [1]	Scale of Pay [2]	Qualification [3]	Method of Recruitment [4]
		Geology under Section B is an optional or additional subject [b] A pass in the intermediate or P.U.C. Examination [or] is equivalent G.O.Ms.No.560 Hg. & H.D. Development, dt.19.07.84 [a] Should have put in service of three years in the State Housing Board or the Public Works Department or the Highways and Rural works Department or any other institution acceptable to the appointing authority.	service of the State Housing Board in a temporary capacity and those who are not working in the State Housing Board but who apply for recruitment of posts direct after they return from Army Service shall also be eligible for appointment against the reserved permanent vacancies provided that the priority to appointment in the shall be in the Order of priority detailed below; [a] Persons already in the regular service of the Housing Board but who have not been appointed to substantive posts in the category: [b] Persons employed in State Housing Board in a temporary capacity without probationary rights.



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Category of Posts [1]	Scale of Pay [2]	Qualification [3]	Method of Recruitment [4]
			[c] Persons who are not in the State Housing Board Service

8. Admittedly, all along the panel has been prepared from all the three categories, namely, Surveyor, Junior Drafting Officers, Technical Assistants and combined Seniority has been maintained. These facts have not been disputed. Now a different stand has been taken by the respondents to the effect that since from the surveyor post, there is promotion avenue to head surveyor, surveyors would not be included in the panel for the promotion to the Assistant Engineer. When the Rule is specific about two modes of appointment either by direct recruitment and by promotion from other category of service with qualification prescribed for direct recruitment, the persons, who are in otherwise is qualified as direct recruit, also entitled to be considered. The respondent cannot by pass the rule and take a stand contrary to the Rule, without there being any amendment brought in the Rule.



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9. A perusal of the above rule makes it very clear that promotion from other categories is not limited to any particular category. The persons who are in other category, who possess requisite degree in Engineering of any University, also entitled to be considered for promotion as Assistant Engineer as per the Rule position. The submissions of the learned Advocate General to the effect that since there is promotion avenue for Surveyors to Head Surveyors, Surveyors, panel need not be prepared, cannot be countenanced. It is relevant to note that the minimum qualification of Surveyor is only IIT Diploma and other categories also diploma and the next avenue of promotion is head Surveyor. Further, there is no promotion from Head Surveyor. Be that as it may.

10. If the persons holding only minimum qualification required for the post of surveyor and they are appointed as surveyor, then those persons certainly cannot compete with the engineering graduates for the post of Assistant Engineer. Their promotion freezes with Head Surveyor. When the Service Rules stipulates a person who possess



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requisite Engineering degree from a recognized University, who are in the category of Surveyor is also entitled for promotion and they cannot be denied unless Rule has been specifically amended. The challenge has been made only with regard to the provisional preparation of panel among Technical Assistants. Though the same cannot be challenged by the person from other categories, this Court is of the view that unless the Rule is amended, the petitioner cannot be denied promotion merely on the ground that they are holding the post of Surveyor. In Such view of the matter, this Court is of the view that respondent is at liberty to amend the Rule, if they really want to exclude any other category and proceed further.

11. With the above direction, these Writ Petitions are disposed of. Consequently connected miscellaneous petitions are closed. No costs.

21.07.2023

Index:Yes/No

Neutral Citation : Yes/No



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vrc

To,

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai – 09.
2. The Managing Director,
Tamilnadu Housing Board,
CMDA Complex, E & C Market Road,
Koyambedu, Chennai – 107.
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N.SATHISH KUMAR, J.

VTC

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