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W.P.No.4020 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2022

PRONOUNCED ON :28.02.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WP.No.4020 of 2013

and M.P.No.2 of 2013

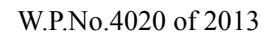
K.Kuppusamy

..Petitioner

.Vs.

1.The Government of Puducherry
Through its Secretary to Government
(Education)-cum-Chairman
Staff selection (Non Teaching Committee)
Pondicherry Engineering College
O/o.Chief Secretariat
Puducherry.

2.The Member Secretary –cum-Director
Directorate of Higher Technical Education
Pondicherry engineering College
Directorate of Higher Technical Education
Lawspet, Puducherry -600 009.



Pondicherry Engineering college
Pillaichavady, Puducherry 605 104

5.S.Kesavan

..Respondents

Prayer:Writ petition filed under Article 226 of Constitution of India praying for a writ of Certiorarified Mandamus after calling for the concerned records relating to the Order No.PeC/Estt./E7/DPC/JE(Civil)/2013/NO.385 dated 01.02.2013 passed by the 3rd respondent and quash the same and consequently direct the 3rd respondent to promote the writ petitioner as Junior Engineer (Civil) Grade-I w.e.f.01.02.2013 with all consequential and monetary and other benefits.

For Petitioner : Mr.M.Thangavel

For respondents : Mr.Syed Musthaba, Spl. Govt Pleader (Pondy)
for R1 to R3

Mr.V.Ajayakumar for R4

Mr.D.Saravanan for R5



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ORDER

The petitioner has filed this writ petition challenging the impugned order dated 01.02.013, whereby, the 3rd respondent promoted the 4 and 5th respondents to the post of Junior Engineer Gr.I (Civil) and seeks to quash the same. The petitioner further seeks a direction to the 3rd respondent to promote him to the said post with effect from 01.02.2013 with all monetary and other benefits.

2. It is averred in the writ petition that the petitioner joined the 3rd respondent-College as Daily rate Technical Assistant on 10.08.1990 and he was regularized as Technical Assistant w.e.f. 06.12.2000. While entering into service the petitioner was qualified in B.E.Civil Engineering. In 1997, he passed M.Tech.

3. According to the petitioner, in 2002 two posts of J.E.(Civil) were vacant which was to be filled by promotion or by direct recruitment. As per the rules, for promotion from Technical Assistant post to Junior Engineer, 3 years of service for Degree holder and 5 years of service for



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Diploma Holder was the criteria.

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4. The petitioner submits that in 2002, he did not complete 3 years of service. Since there was no other candidate available on completion of 3 years service, petitioner gave a representation dated 22.03.2003 to consider him for promotion.

5. The petitioner submits that Departmental Promotion Committee was not convened to fill up the vacancies in the grade of Junior Engineer (Civil) Grade I for several years. The DPC was convened on 18.10.2007 to fill up the vacancies without preparing year wise panel.

6. The learned counsel for the petitioner would submit that the petitioner and 4th and 5th respondents are appointed on the same day i.e.06.12.2000. The petitioner completed the probation and was in the 6th place of seniority. However, the 3rd respondent in clear violation of Article 14 and 16 of Constitution of India, discriminated and his legitimate promotion was denied to him.



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7. The learned counsel relied on the Promotion Rules in respect of seniority in Central Government Service and submitted that as per the Rules, Year wise panel preparation by DPC is a must and if not held, (i) determining actual number of vacancy that arose in each of the previous year and actual number of regular vacancy prepared to be filled is to be kept separately; (ii) consider in respect of each of the year those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards and (iii) prepare a select list by placing the select list of the earlier year above the one for the next year and so on.

8. The petitioner's contention is that Departmental Promotion Committee for the post of Junior Engineer Grade I (Civil) was convened only on 18.10.2007 even though vacancy arose in the year 2002 itself and no year wise panel scheme was followed despite Government of India guidelines stipulate so. The Petitioner made several representations to the 3rd respondent and approached this court in W.P.No.20351/2012, whereby, this court directed the 3rd respondent to consider and pass



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orders. The petitioner therefore, sought for retrospective promotion from the date of eligibility on 06.12.2002.

9. 4th respondent filed counter affidavit stating that when post fell vacant, it was filled up by way of deputation. As per the provisions of the Recruitment Rules, vacancies were filled up by way of deputation and the petitioner cannot claim appointment immediately after he became qualified.

10. 5th respondent filed counter affidavit stating that in the updated seniority list published by the 3rd respondent, the petitioner is placed at 5th position and as per the Recruitment Rules, 4th and 5th respondents are alone entitled for the promotion as Junior Engineer (Civil) on the basis of seniority. It is also stated that the petitioner has not chosen to challenge the seniority list and so attempting to question the order granting promotion is not legally sustainable.

11. The petitioner filed rejoinder affidavit and submitted that two



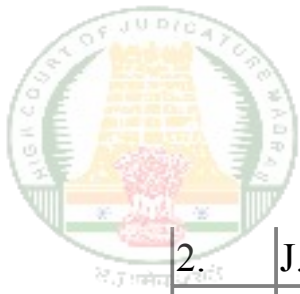
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posts of Junior Engineer (Civil) Grade I were managed by engaging Junior Engineers deputed from PWD, Puducherry and those posts fallen vacant since July 2002 and May 2005.

12. It is submitted by the petitioner that he attained eligibility for promotion to the post of Junior Engineer (Civil) from 06.12.2003. The 3rd respondent college had not convened DPC for filling up the same by promotion. Since DPC was not convened in the recruitment year 2005 and the year wise panel was not drawn, the Degree holders who ought to have been promoted got delayed and it was only for the purpose of favouring a few Diploma holders.

13. In the rejoinder, the petitioner has clearly pointed out in Table I, the seniority list in respect of regularization of Technical Assistants (Civil) dated 26.12.2000, which is as under:-

Sl.No	Name of the Technical Assistant	Date of Appointment/Joining	Remarks of the petitioner
1.	A.Manogar	06.12.2000	Diploma holder



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2.	J.Gajendiran	06.12.2000	Diploma holder
3.	S.Kesavan	06.12.2000	Diploma holder
4.	R.Venkateswarane	06.12.2000	Diploma holder
5.	R.Ravi	06.12.2000	Diploma holder
6.	K.Kuppusamy	06.12.2000	Degree holder
7.	R.Chanemougane	23.07.2001	Degree holder

In the final seniority list of Technical Assistants (Civil), dated 12.03.2002, the petitioner was placed in 6th position and the name of the 4th and 5th respondents is found place in 2nd and 3rd position.

14. The contention of the petitioner is that the petitioner's series of representations to draw year wise panel was not given any reply. A Regular DPC was convened on 18.10.2007 to fill up the 2 vacancies in the grade of Junior Engineer (Civil) and in the said meetings, it was erroneously decided to promote 4th and 5th respondents who are diploma holders.

15. It is vehemently contended that the 3rd respondent had not filled the year wise panel of eligible persons, but on the consolidated list of



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persons basing on the mere seniority list of Technical Assistants (Civil) in which the 4th and 5th respondents were placed at Serial Number 1 and 2 and the BE degree holder in Civil Engineering was placed at Serial Number 6, tilted the balance in favour of 4th and 5th respondents who are all diploma holders, which is erroneous one.

16. Aggrieved over the inaction on the part of the 3rd respondent in respect of preparation of year-wise panel as per the guidelines of Government of India and erroneously promoted 4th and 5th respondents who are diploma holders and rejecting the claim of the petitioner, the petitioner sought to quash the impugned order and for direction to the 3rd respondent to grant him retrospective promotion.

17. Heard and perused the records.

18. The first point of consideration in this writ petition is that the 3rd respondent did not convene the DPC as per the guidelines of Government of India and Education Secretariat year wise. When two posts have arisen



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in the year 2002 and 2005, no DPC was convened in the year 2003, 2004, 2005 and 2006. If the DPC convened in the year 2003, persons who had become eligible by completion of 3 years of service in the cadre of Degree holder as stipulated in the Recruitment Rules would have got promotion.

19. The 3rd respondent college, if prepared the year-wise panel of eligible persons in the manner stipulated in the Recruitment Rules and the seniority list finalized by the 3rd respondent would have been based on the qualification, date of eligibility, date of appointment, completion of probation and total service put in and in such a situation, established norms should have been followed and keeping the diploma holders in the top of the seniority list would not have been taken place. On the basis of the year wise panel of eligible persons for vacancies to the post of Junior Engineer Grade I (Civil), if prepared by convening DPC the petitioner who was eligible on the date of vacancy with 5 years of service in the Degree holder category would have got promotion. Therefore, the failure on the part of the 3rd respondent to convene DPC every year and also



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failure to prepare the seniority list and year wise panel by not adhering to the guidelines of Government of India is not permissible.

20. The second point of consideration is that in the matter of convening DPC, the Law Secretary has framed certain directions to be followed in the matter of promotion. Such directions include (i) when posts are filled up by promotion, the same should be as per the eligibility prescribed in the Recruitment Rules in force at the time of occurrence of the posts (ii) tentative inter se seniority list has to be published inviting objections and after considering the objections, final list of seniority has to be published. (iii) promotion should be effected based on year wise panel.

21. In the considered opinion of this court, the 3rd respondent-College has not followed either the guidelines of Government of India in respect of Recruitment Rules or complied with the directions framed by the Law Secretary, resulting in the impugned order whereby the diploma holders were given promotion and the degree holders were denied citing



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the position of seniority, which is unsustainable for the reason that to the said seniority list, objections not called for and the representation of the petitioner who completed his 3 years service in the degree holder category and that his completion of probation with the same date of appointment as that of the 4th and 5th respondents have not been taken into consideration while giving promotion to the post of Junior Engineer (Civil) Grade I.

22. For the reasons stated above, the petitioner who has been denied promotion by the 3rd respondent without any substantive ground but for the sole reason of without drawing the year wise panel and without convening DPC, is entitled to the relief sought for. Accordingly, the 3rd respondent is directed to give retrospective promotion to the petitioner with effect from 01.02.2013 and grant him consequential monetary and other benefits, if he is otherwise entitled to.

23. In the light of the above observations, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is



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closed.

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Index: Yes/No

Speaking/Non-speaking order

nvsri

To

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(Education)-cum-Chairman, Staff selection (Non Teaching Committee)

Pondicherry Engineering College, O/o.Chief Secretariat

Puducherry.

2.The Member Secretary –cum-Director

Directorate of Higher Technical Education

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Directorate of Higher Technical Education

Lawspet, Puducherry -600 009.

3.The Principal, Pondicherry Engineering college

Pillaichavady, Puducherry 605 104



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J.NISHA BANU, J.

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