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W.P.(MD)No.16738 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16738 of 2018
and
W.M.P.(MD)No.14790 of 2018

Prabu Jayakumar Moses

... Petitioner

vs.

1.The Secretary to Government,
Micro Small and Medium Enterprises
Department,
State of Tamil Nadu,
Secretariat, St.Fort George,
Chennai-9.

2.The Industries Commissioner and
Director of Industries and Commerce,
Chennai-28.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to re-fix inter se seniority among Assistant Director (Technical) and Assistant



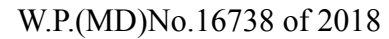
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Director (Electrical) from the year of 2009 - 2010 and Deputy Director (Technical) and Deputy Director (Electrical) and to make promotions based on such re-fixation by fixing a quota of 1.9 among candidates in post of Deputy Director (Electrical) and that of Deputy Director (General / Technical) for promotion to the combined post of Joint Registrar (General / Technical) for promotion to the combined post of Joint Director (Engineering) in order to provide fair and equal opportunity to petitioner and other similar candidates in post of Deputy Director in Electrical Wing for the promotions made in the year 2023 and consequently, to promote the petitioner as Joint Director (Engineering) in the vacancy that arises out of superannuation of present incumbent from Electrical Wing as the writ petitioner is next in line in seniority in Electrical Wing, within stipulated time.

(Prayer amended, vide Court order, dated 12.06.2023, in WMP(MD)No.11584 of 2023 in WP(MD)No.16738 of 2018)

For Petitioner : Mr.J.Ravi Kumar
For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.Thambidurai
Government Advocate.



This writ petition is filed for issuance of a writ of Mandamus, to direct the respondents to re-fix inter se seniority among Assistant Director (Technical) and Assistant Director (Electrical) from the year of 2009 - 2010 and Deputy Director (Technical) and Deputy Director (Electrical) and to make promotions based on such re-fixation by fixing a quota of 1.9 among candidates in post of Deputy Director (Electrical) and that of Deputy Director (General / Technical) for promotion to the combined post of Joint Registrar (General / Technical) for promotion to the combined post of Joint Director (Engineering) in order to provide fair and equal opportunity to petitioner and other similar candidates in post of Deputy Director in Electrical Wing for the promotions made in the year 2023 and consequently, to promote the petitioner as Joint Director (Engineering) in the vacancy that arises out of superannuation



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of present incumbent from Electrical Wing as the writ petitioner is next in line in seniority in Electrical Wing, within stipulated time.

2. The petitioner has qualification of B.E. (Electronics and Instrumentation Engineering) and is also possessing M.B.A. Initially, the petitioner was appointed as Assistant Engineer (Electrical)/Inspector (QC)/ Tester on 19.06.1995 and promoted to the post of Assistant Director through G.O.(4D)No.27, Micro, Small and Medium Enterprises Department, dated 07.10.2009. The petitioner has completed 4.5 years of service in the said post. The next avenue of promotion is Deputy Director and thereafter, is Joint Director.

3. The contention of the petitioner is that the Department of Industries and Commerce there are separate wings, i.e., “Electrical Wing” and “General Wing”. Each wing maintains separate seniority list and as



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per the seniority list, promotion will be made. In the seniority list maintained in the electrical wing, the petitioner was promoted as Assistant Director (Electrical). Likewise, the petitioner ought to have been promoted to the post of Deputy Director (Electrical) as per the list and this process has to be continued in further promotions until the post of Joint Director (Electrical). However, the 1st respondent issued G.O.Ms.No.10, Micro, Small and Medium Enterprises Department, dated 20.02.2014, to the effect that all the posts of Joint Directors such as Joint Director (Electrical and Electronics), Joint Director (General), Joint Director (Chemical) are merged and called as Joint Director (Engineering).

4. Due to the merger of these posts, the respondents ought to have merged the feeder category post while preparing the panel for promotion. For example, the respondents ought to have merged the Assistant



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Director (Electrical) in Electrical Wing with the Assistant Director (Industries) in General Wing, while preparing the panel to the post of Deputy Director (Engineering) in General Wing but the respondents have prepared the panel for promotion from the post of Assistant Director to the post of Deputy Director (Engineering) without any merger by following the separate seniority list. Since there is no merger, the Assistant Director (Industries) in General who joined as juniors to the petitioner were included in the panel for the year 2013-2014, whereas the petitioner was not included. Since separate list was followed for Deputy Director (Engineering) in General Wing, the petitioner's juniors in the post of Assistant Director (Industries) in General Wing would be promoted, since more posts are available in General Wing than other wings.



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5. In future promotion, the petitioner's juniors would be above the petitioner in the seniority level. Hence, the petitioner is prejudice because of the illegal act of the respondents. The respondents ought to have prepared a panel after merging the lower posts to avoid illegality. Because of this method, the majority of the general service persons in the department usurped the two posts of Joint Director from other wings Electrical and Chemical under the guise that Joint Director (Engineering) is common to all. The respondents have prepared a panel for the year 2013-2014. Hence, the petitioner submitted a representation, dated 09.07.2014, to add the petitioner's name in the panel which was not considered. Hence, the petitioner approached this Court in W.P.(MD)No. 12754 of 2014 and this Court, vide order, dated 05.08.2014, held that any promotion made during the pendency of the writ petition would be subjected to the result of the writ petition. Even after the order of interim stay, the respondents processed the promotion panel and promoted the



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petitioner's junior.

6. The contention of the petitioner is that the said promotion is against the principles of equality. The juniors were granted promotion in G.O.(4D)No.45, Micro, Small and Medium Enterprises [EI(1)] Department, dated 09.10.2014. But the respondents have not considered the petitioner's representation which is still pending. The petitioner further relied on the suggestion submitted by the Principal Secretary, wherein the Principal Secretary has suggested that if 10 posts are considered in the year, there should be 9 from the Deputy Director (Electrical) and one from the Deputy Director (Electrical and Electronics). Even though the posts are combined together in order to improve the efficiency in the administration, the respondents cannot do the same at the cost of the petitioner's promotional opportunity. Since the respondents have considered the plea of the petitioner hence, the



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petitioner is before this Court.

7. The respondents have filed counter affidavit stating that the petitioner was recruited through TNPSC and appointed as a Tester and he joined duty on 19.06.1995. The petitioner was not appointed as Assistant Engineer (Electrical) as stated by the petitioner. The line of appointment in the post of Tester differs from that of the Assistant Engineer (Electrical) and he was promoted to the post of Assistant Director (Electrical and Electronics) and joined duty on 07.10.2009. As on date, he has completed only 9 years and 11 months of service in the post of Assistant Director (Electrical and Electronics). His next avenue of promotion is Deputy Director (Electrical and Electronics) as per adhoc rules. There are two wings, General Wing and Electrical Wing and the mode of appointment, promotion, cadre strength of the posts differs from each other. The employees recruited through one wing cannot be inter



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changed with other wings as per the rules prescribed. The merging of the posts of Joint Director (Electrical and Electronics), Joint Director (Chemical) and Joint Director (Engineering) is due to administrative convenience. It was done after a prolonged discussion with advisory departments as the step was taken during the year 2000 and completed during the year 2014 by merging all the three posts vide G.O.Ms.No.40, Micro, Small and Medium Enterprises Department, dated 31.08.2000. Consequent to the said merger, orders were issued amending the Special Rules for Tamil Nadu Industries Service. This amendment was also published in the Gazette Notification in March 2014.

8.The counter affidavit further states that as far as the averments in 5th paragraph of the affidavit is concerned, it is submitted that there is no necessity for merging of posts in the feeder category such as Deputy Director (Technical), Deputy Director (Electrical and Electronics) and



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Deputy Director (Chemical) and Assistant Director (Technical), Assistant Director (Electrical and Electronics) and Senior Chemist [Assistant Director (Chemical)]. The petitioner was appointed as Tester, at the inception of service, he should have exercised his option either to continue in the Electrical wing or General wing. Once he decided to continue in the Electrical wing, he cannot say that the employees who have appointed / promoted to the post of Assistant Director (Technical) during the year 2013-2014 were junior to him since the promotes are from Junior Engineer (Industries) Cadre, as well as Assistant Engineer (Industries) cadre i.e., by various methods of appointment such as temporary appointees, directly recruited candidate and compassionate appointment. For example, one G.Chidambaram was appointed as Junior Engineer (Industries) during the year, 1990 and his services could not be compared with the petitioner who have been appointed during the year, 1995. Similarly, B.Manikandan, who was directly recruited as Assistant



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Director (Technical) during the year 2010, cannot be compared with the petitioner appointed during the year 2009 as Assistant Director (Electrical Electronics).

9. The counter further states that the merging of the lower posts is not essential as of now and there is no illegality of approving the panel to the post of Deputy Director (Technical). The petitioner is eligible for promotion to the post of Deputy Director (Electrical and Electronics) as per the Adhoc rules prescribed and he cannot seek promotion to the employees belonging to the post of Assistant Director (Technical). The petitioner cannot say that the employees who are working as Assistant Director (Technical) are junior to him, since their line of promotion is given based upon the Special Rules for Tamil Nadu Industries Service. There is no violation of equality adopted among the employees of the department. Already, the petitioner has submitted a representation and the



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same request was considered and rejected by the Government, since the amendment was issued in consonance of the advisory boards. The employees belonging to the post of Assistant Director (Electrical and Electronics) will not be affected even after merging the post of Joint Director (Engineering), Joint Director (Chemical) and Joint Director (Engineering) as it may be seen that one Chokkalingam, Deputy Director who belongs to Electrical and Electronics Wing has been promoted to the post of Joint Director (Engineering) and he is now working as Joint Director (Engineering) / General Manager, District Industries Centre, Villupuram. There is no necessity for fixation of inter-se seniority among the posts, since there are separate Special Rules for Tamil Nadu Industries Service and Adhoc Rules governing for granting promotion to the post of Assistant Director (Technical), Assistant Director (Electrical and Electronics) and Assistant Director (Chemical) / Senior Chemist. The Deputy Director (Technical) is governed by the Special Rules for Tamil



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Nadu Industries Service based on which the employees belonging to the post of Assistant Director (Technical) are considered for promotion. The unfilled vacancy in the cadre of Deputy Director (Technical) will be filled up in the next panel, i.e., 2019-2020. Similarly, there is one vacancy for the panel year 2018-2019 in the cadre of Deputy Director (Electrical & Electronics) consequent on the promotion of Chokkalingam as Deputy Director (Electrical and Electronics), which should be filled up from the Assistant Director (Electrical & Electronics) post. Further, the petitioner has reached the zone of consideration and his name will be considered for promotion to the post of Deputy Director (Electrical & Electronics) for the 2018-19. Therefore, it would be evident that the Department has not upheld the interest of the officers of General wing at the place of similarly placed persons in the other wing. Moreover, following the Assistant Directors (Electrical and Electronics) have also been promoted to the post of Deputy Director (Electrical and Electronics)



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by relaxing Adhoc Rules. Hence, the statement of the petitioner that there is discrimination in the department is not true and hence, the respondents prayed to dismiss the writ petition.

10. Heard Mr.J.Ravi Kumar, the Learned Counsel appearing for the petitioner and Mr.Veera Kathiravan, the Learned Additional Advocate General assisted by Mr.P.Thambidurai the Learned Government Advocate and perused the records.

11. The first contention of the respondents is that the issue is already covered by the order passed by the Learned Single Judge in the petitioner's case itself in W.P.(MD)No.12754 of 2014. The said writ petition was filed with a prayer to issue a writ of Mandamus, directing the respondents to include the petitioner's name in the panel for the promotion in the year 2013-2014 to the post of Deputy Director



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(Engineering) before making any promotion by considering the petitioner's representation, dated 09.07.2014, within a stipulated time. At the time of admission, an interim order was granted stating that the petitioner's name would be considered and the same is subject to the result of the writ petition. The learned Additional Advocate General appearing for the respondents relied on the observation of the Learned Single Judge wherein it is stated that the creation of post, and merger of post, abolition of department and framing rules are all within the domain of the employer and the same cannot be questioned. Moreover, the policy decision is within the domain of the employer.

12. The respondents further submitted that the petitioner demands that the post of Deputy Director and the post of Assistant Director should also be merged. The said pleading is beyond the scope of judicial review and the Government alone is competent to decide whether it can be



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merged or not based on the facts and circumstances and based on the administrative necessity and hence, the claim of the petitioner cannot be entertained. Consequently, the promotion and other aspects is within the domain of the respondents and the petitioner cannot question the same and relied on the judgment rendered by the Hon'ble Supreme Court in the case of ***Union of India Vs. Pushpa Rani and others*** reported in (2008) 9 ***Supreme Court Cases 242*** wherein it is stated as under:

“37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is



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patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.”

13. It is seen that the petitioner is not questioning the policy decision of merging or the creation of post and granting promotion to Technical Wing. The petitioner is only questioning the illegality that has occurred to the petitioner and the Electrical and Electronics Wing, while considering for merging. Therefore, this Court is of the considered opinion mere questioning the policy decision is different from infringement occurred during while implementing the policy decision. In



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the present case there is the infringement in implementing the policy decision and hence the writ petition is maintainable.

14. The respondents have passed G.O.Ms. No.10, Micro, Small and Medium Enterprises [E1(1)] Department, dated 20.02.2014, wherein the Government has taken a policy decision to merge the post of Joint Director (Chemicals) and Joint Director (Electrical and Electronics) with Joint Director (Engineering). The feeder category to the post would be the Deputy Director (Chemicals), Deputy Director (Electrical and Electronics) and Deputy Director (Technical). **The respondents without merging the candidates in the post of Deputy Director level and Assistant Director level, but has merged the post in the level of Joint Director alone has created this infringement.** This would be evident from the communication, dated 15.09.2020 issued by the Director of Industries and Commerce to the Principal Secretary wherein Seniority



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List were prepared by taking the persons in Serial No.47 to 75 of Deputy Director (Technical), Deputy Director (Electrical and Electronics) and Deputy Director (Chemicals).

15. On perusal of the list, it is seen that one V.Umarani who was appointed as Deputy Director (Chemical) on 30.09.2019, was placed in Serial No.66 whereas the petitioner was appointed on 29.10.2019 as Deputy Director (Electrical and Electronics) was placed in Serial No.65. Admittedly, if these two persons are compared by date of appointment to the post of Deputy Director post, the said Umarani would be senior to the petitioner, thereby the said Umarani's rights would be affected while considering for promotion. Likewise, one K.Sivasankaran, who was appointed as Deputy Director (Technical) on 20.02.2020 who is placed in Serial No.61, whereas the petitioner was appointed as Deputy Director (Electrical and Electronics) on 29.10.2019 is in Serial No.65. If these two



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persons are considered, admittedly, the said K.Sivasankaran is junior to the petitioner by the date of appointment to the post of Deputy Director post, thereby creating imparity while considering for promotion to the post of Joint Director. If the inter se seniority is fixed in the post of Deputy Director Level by taking the date of appointment in the post of Deputy Director Level then there would not be any illegality. The respondents failed to follow the same, thereby infringed the rights of the petitioner and similarly placed like that of the petitioner.

16. In the aforesaid list the respondents had listed 16 persons from Deputy Director (Tech) and thereafter included the name of Deputy Director (E&E) and Deputy Director (Chem), then again Deputy Director (E&E), then again listed 8 Deputy Director (Tech). The respondents had not stated explicitly the method to fix the seniority in the Deputy Director Level. Therefore, this Court is of the considered opinion that the



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list is not in accordance with settled principles of law that the seniority is to be prepared by taking the date of appointment when there is more than one mode of recruitment. As stated supra if the respondents are fixing the seniority based on the date of appointment at Deputy Director level then there will not be any illegality and the merging of three categories would be smooth without affecting anybody rights.

17. It is pertinent to state if the merger is from the lower level that is from Assistant Director level, then there will not be any illegality at all. But the respondents have merged only at the Joint Director level and is continuing the division in the lower level i.e. in Deputy Director level and Assistant Director Level, which has created this illegality. Therefore, this Court is of the considered opinion that the claim of the respondents that merging is not necessary at lower level is clearly absurd since it is creating infringement of rights. Likewise, without taking the date of



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appointment in the post of Deputy Director posts / Assistant Director post in the electrical and electronics, technical and chemical division is absurd. Therefore, the method followed by the respondents has clearly infringed the rights of the persons.

18. That is why, the Principal Secretary has rightly advised the Government to provide ratio among the candidates. At least if the ratio is granted among the candidates, there will not be any illegality.

19. The respondents have neither followed merging from Lower Level post i.e. Assistant Director post nor prepared any seniority list based on the date of appointment in the Assistant Director Post / Deputy Director post nor granted any ratio among the electrical and electronics, technical and chemical division has infringed the rights of the petitioner and similarly placed persons.



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21. With the above said directions and observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

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To

- 1.The Secretary to Government,
Micro Small and Medium Enterprises
Department,
State of Tamil Nadu,
Secretariat, St. Fort George,
Chennai-9.
- 2.The Industries Commissioner and
Director of Industries and Commerce,
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S.SRIMATHY, J

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