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W.P. No.5627 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.5627 of 2010

R.Vasu

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai -3.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the Government Order in G.O.Ms.No.71 Municipality and Water Supply Department dated 31.03.2001 issued by the 1st respondent and the subsequent proceedings in G.D.C. No.E1/36102/98 regularising the service of the petitioner in the post of Assistant Executive Engineer with effect 15.04.1993 quash the same as far as the petitioner is concerned and to direct the 2nd respondent to modify the date of regularisation in the proceedings G.D.C.No.E1/36102/98 dated 17.08.2002 from 15.04.1993 as



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06.11.1982 viz., the date of his promotion to the of Assistant Executive Engineer and the direct the respondents herein to refix the scale with the consequential refixation of the pensionary benefits, from the said date and disburse all the arrears accrued on account of the modified order of regularisation within the short date that may be fixed by this Hon'ble Court.

For Petitioner : Ms.G.Sridevi
For R1 : Mr.M.S.Prem Kumar
Government Advocate
For R2 : Mr.G.T.Subramanian

ORDER

The brief facts that are relevant for disposal of this writ petition are as under:

The petitioner herein who was holding Diploma in Civil Engineering was appointed as OverSeer in Special Works Department in Chennai Corporation on 07.02.1961 and thereafter, he was promoted as Supervisor on 01.09.1972. The said post of Supervisor was subsequently re-designated as Junior Engineer. It is thereafter, the petitioner was promoted to the post of Assistant Executive Engineer on 06.11.1982 through proceedings G.D.C.No.A1/149935/80 and he retired from service on attaining the age of superannuation on 30.09.1997 in the post of Assistant Executive Engineer.

2. There was a dispute with regard to filling up the post of Assistant



Executive Engineer among the persons holding the post of OverSeer and other allied posts holding Diploma in Engineering and the persons occupying the said post, while holding the Bachelor's Degree in Engineering. The ratio 3:1 was fixed by the Government for filling up the said post by issuing G.O.Ms.No.954 dated 02.06.1978. However, the said G.O was challenged by some of the persons working as OverSeer and others, and finally the said Government order was set aside on the ground that statutory Rules governing the post of Assistant Executive Engineer were not amended. It is thereafter, the statutory Rule was amended by the Government by issuing G.O.Ms.No.138, Municipal Administration and Water Supply Department dated 09.02.1990 amending the Rules and fixing the ratio of 3:1 for the Assistant Engineer and Junior Engineer for promotion to the post of Assistant Executive Engineer. The said Government order was also the subject matter of litigation and finally the matter went up to the Hon'ble Apex Court and the Hon'ble Apex Court, by an order dated 03.02.1993 made in Civil Appeal No.406 of 1993, issued the following directions:

“The Corporation shall ascertain the vacancies in the category of Assistant Executive Engineers, that have arise three months prior to the coming into force of the impugned amendment (introducing the quota of 3:1 as between



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degree-holders and diploma holders) and shall work out the vacancies which would have gone to the diploma-holders if unamended Rules had been followed. The Corporation shall also ascertain which of the diploma-holders would have been promoted in those vacancies. Such diploma-holders will be promoted in the vacancies that may be existing as on today and those that may arise in future. Until these diploma-holders are so promoted to the category of Assistant Executive Engineers, no degree-holders shall be promoted. After these diploma-holders are so promoted and thereafter, it is obvious the amended Rules shall be given effect to from the date he ought to have been promoted. Such diploma holder-promotees shall be entitled to the benefit of seniority and pay fixation flowing from such retrospective promotions, but they shall not be entitled to the arrears of difference in salary for the period they have not actually worked as Assistant Executive Engineers.”

3. It is pursuant to the above said order, the respondents have taken steps to accommodate the persons having Diploma in Engineering and accordingly, year wise panels were prepared and on finding that the petitioner was not eligible for promotion to the post of Assistant Executive Engineer



with effect from 06.11.1982 i.e., the panel year 1982-83, the petitioner was reverted to the post of Junior Engineer through proceedings G.D.C.No.E1/838/90 dated 22.03.1993. It is necessary to extract the relevant paragraph from the said proceedings:

“Consequent on refixation of seniority to Assistant Executive Engineers based on the judgment of Supreme Court of India dated 03.02.1993 vide proceedings 7th read above, the following Assistant Executive Engineers are ordered to be reverted as Assistant Engineers/Junior Engineers as they do not find place in the seniority list.”

4. Thereafter, the case of the petitioner was again considered for promotion to the post of Assistant Executive Engineer through proceedings dated 15.04.1993. The petitioner was once again promoted to the post of Assistant Executive Engineer and thereafter, he retired from service. Therefore, vide G.O.Ms.No.71, Municipal Administration and Water Supply Department, dated 31.03.2001, the Government directed regularisation of services of the petitioner in the post of Assistant Executive Engineer with effect from 14.04.1993 and consequently, the 2nd respondent issued proceedings dated 17.08.2022. It is aggrieved by the said G.O.Ms.No.71,



dated 31.03.2001 and the consequential proceedings bearing G.D.C.No.E1/36102/98 dated 17.08.2002 regularizing the services of the petitioner with effect from 15.04.1993, the petitioner approached this Court by filing the present writ petition seeking regularization of his services with effect from 06.11.1982 i.e., the date on which originally the petitioner was promoted as Assistant Executive Engineer.

5. The 2nd respondent filed counter affidavit along with typed set of papers.

6. Heard Ms.G.Sridevi, learned counsel for the petitioner, Mr.M.S.Prem Kumar, learned Government Advocate for R1 and Mr.G.T.Subramanian, learned counsel for the 2nd respondent at length.

7. The respondents justified their action in promoting the petitioner with effect from 15.04.1993, pursuant to the order passed by the Hon'ble Apex Court as noted above, by duly placing on record the proceedings of the 2nd respondent bearing G.D.C.No.E1/838/90 dated 18.08.1998 wherein the yearwise panels were prepared and considering the eligibility of Junior



Engineers and they were accommodated in the vacancies that were available in the respective panel years from the year 1975-76 onwards. The claim of the petitioner for regularization of the service in the post of Assistant Executive Engineer is with effect from 06.11.1982 i.e., from the panel year 1982-83.

8. Admittedly, the petitioner became eligible for being promoted to the post of Assistant Executive Engineer only in the month of May 1982 on passing relevant Account Test. From the list annexed to the above said proceeding, it is noticed that the several persons who are appointed subsequent to the petitioner as OverSeer and Junior Engineer were placed in the panel years 1975-76, 1976-77, 1977-78, 1978-79 and 1979-80 till the panel year 1982-83. The petitioner was not eligible for being considered for promotion to the post of Assistant Executive Engineer during the above panel years and it is only during the panel year 1982-83, the petitioner became eligible for such promotion. From the year 1982-83 onwards, none of the juniors to the petitioner were placed in any of the panels upto the year 1989-90 for promotion to the post of Assistant Executive Engineer.

9. When the respondents have undertaken the exercise of refixing



the seniority and accommodating Junior Engineer in the post of Assistant Executive Engineer during various panel years, none of the juniors to the petitioner were promoted to the post of Assistant Executive Engineer after the petitioner acquired requisite qualification to hold the post of Assistant Executive Engineer. This Court does not find any error or illegality in not promoting the petitioner or in not accommodating the petitioner in any of the panel years upto the year 1989-90. Even otherwise, the petitioner was subjected to disciplinary proceedings by issuing a charge memo dated 27.08.1985 and the said disciplinary proceedings came to an end by passing order in V.O.C.No.Vgc.III/1098/85-1 dated 14.10.1988 imposing punishment of stoppage of one increment. The said punishment was in operation for a period of one year i.e., upto 13.10.1989. Therefore, the question of considering the case of the petitioner for promotion to the post of Assistant Executive Engineer from 27.08.1985 to 13.10.1989 does not arise.

10. It is thereafter, the case of the petitioner was considered and accordingly, he was promoted to the post of Assistant Executive Engineer with effect from 15.04.1993. In tune with the same, the impugned Government order dated 31.03.2001 and consequential impugned proceedings dated 17.08.2002 came to be issued by the respondents 1 and 2 respectively.



In the circumstances, this Court does not find any error or illegality in the impugned orders passed by the respondents 1 and 2.

11. Be that as it may, as already noted above, though petitioner was temporarily promoted to the post of Assistant Executive Engineer on 06.11.1982 pursuant to the order passed by the Honble Apex court, he was reverted to the post of Junior Engineer through proceedings dated 22.03.1993. The petitioner has not chosen to challenge the said proceedings till date and allowed the said proceedings to become final. It is thereafter, the petitioner's case was again considered for promotion through proceedings dated 15.04.1993 and accordingly, the petitioner joined promotional post and retired from service on attaining the age of superannuation on 30.09.1997. As the petitioner failed to challenge the proceedings dated 22.03.1993 whereby his initial temporary promotion to the post of Assistant Executive Engineer with effect from 06.11.1982 was taken away, the claim of the petitioner for any benefit of such temporary promotion with effect from 06.11.1982 cannot be entertained.

12. Furthermore, the entire exercise is now carried out by the



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respondents in regularization of services issuing impugned G.O.Ms.No.71, dated 31.03.2001 and consequential proceedings dated 17.08.2002 is all pursuant to an order passed by the Hon'ble Apex Court and there is no dispute in this regard.

13. In the light of the above, this Court does not find any error or illegality in the impugned orders passed by the respondents and accordingly, the writ petition is dismissed. The connected miscellaneous petitions, if any shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
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2.The Commissioner,

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