



W.P.No.28069 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.28069 of 2011

and M.P.Nos.1 & 2 of 2011

K.Rjaraman

...Petitioner

Vs.

1.The Chairman,

Tamilnadu Pollution Control Board,

76, Anna Salai, Guindy

Chennai-600 032

2.The Member Secretary,

Tamil Nadu Pollution Control Board,

76, Anna Salai, Guindy

Chennai 600 032

3.B.Devaraj

Environmental Scientist

Office of the District Environmental Laboratory,

Kumaran Complex, Kumaran Road,

Tirupur 641 601

4.A.Balasubramanian

Environmental Scientist,



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Office of the Advanced Environmental Laboratory,
No.65, Sekar Nagar, Semmandalam,
Cuddalore 607 001.

5.Jayasudha

Environmental Scientist,
Office of the Advanced Environmental Laboratory,
Kappaker Industrial Estate
Thirumangalam, Madurai 625 008 ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, praying to call for the proceedings of the 1st respondent in Proc.No.TNPCB/Per/P6/34191/10; TNPCB/Per/P6/34191/10-1 and TNPCB/Per/P6/34191/10-2 dated 7.12.2010 appointing respondents 3 to 5 as Environmental Scientist and quash the same and consequently direct the respondents 1 and 2 to conduct a proper and fair selection to the post of Environmental Scientist by considering all the eligible candidates including the petitioner herein to the post of Environmental Scientist as per the circular memo No.TNPCB/Per/P4/034189/2010 dated 07.12.2010 issued by the 2nd respondent herein.

For Petitioner : Mr.V.K.Sathiamurthy
For Respondents : Mr.N.Vijayalakshmi Natarajan
for R1 & R2
: Mr.Balan Harida for R3 & R4
: No appearance for R5



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ORDER

The petitioner herein was appointed as Assistant on 13.08.1997 in the Respondent/Board and subsequently, he was granted selection grade in the year 2008 and thereafter, in the month July 2011 he was promoted as General Assistant. Meanwhile, the petitioner acquired post graduate qualification namely M.S.c (Environmental Science). By that time, in terms of the Tamil Nadu pollution Control Board Service Regulations, the post of Environmental Scientist is required to fill up by the direct recruitment alone and there was no scope for appointing the internal candidates either by promotion or by way of recruitment by transfer. However, the respondent/Board having felt necessity of considering the internal candidates for being appointed in the post of Environmental Scientist submitted proposal for amendment of the Service Regulations, so as to provide a channel for the internal candidates working in different cadres for being considered for promotion to the post of Environmental Scientist. Ultimately, the said proposals were accepted and revised service regulations namely Tamil Nadu pollution



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Control Board Service Regulations, 2010 came to be issued on 29.09.2010 through G.O.Ms.No.141 Environment and Forest (EC2) Department dated 29.09.2010, thereby providing three methods of recruitment for the post of Environmental Scientist namely:

(i) by promotion from the post of Junior Environmental Scientist,

(ii) by recruitment by transfer from any other category or service and

(iii) by direct recruitment. Thus, the said channel for appointment to the post of Environmental Scientist either by promotions or by appointment transfer came into effect w.e.f 29.09.2010.

Thereafter, the respondent/Board issued a notification through Circular Memo No.TNPCB/Per/P4/034189/2010 dated 07.12.2010 calling for applications for filling up the post of Environmental Scientist etc., for appointment by transfer to the post of Environmental Scientist, with the persons working as a typist/Assistant/Field Assistant/Lab Assistant, i.e., internal candidates who possessed the requisite qualifications in terms of the revised Service Regulations, 2010. Such



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applications are required to be submitted on or before 10.12.2010. While so, on the very same date i.e., 07.12.2010 itself, while calling for applications from the eligible candidates, the respondent/Board through impugned proceedings dated 07.12.2010 appointed the respondents 3 to 5 herein who were working as Typist/Assistant, in the respondent/Board appointed them as Environmental Scientist by appointment by transfer. Aggrieved by the same, the petitioner herein who was working as General Assistant and also eligible for participating in the process of Selection, pursuant to the circular dated 07.12.2010 referred to above approached this Court by filing the present writ petition.

2. The respondents 1 & 2 filed counter affidavit contending that the respondents 3 to 5 herein have been making a claim for consideration of their case for being appointed to the post of Environmental Scientist since the year 2002 and on considering their request the written test was conducted for the respondents 3 to 5 in the year 2002 and they became qualified in the said written test which was conducted in terms of Regulations 10 of the Service Regulations.



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However, their cases could not be considered for being appointed as Environmental Scientist as there was no such channel for being appointed on transfer or by promotion from the category of Typist and Assistant. Therefore, their cases were not considered at the relevant point of time. It is also stated that the respondents 3 to 5 herein also approached this Court on earlier occasion by filing a writ petition before this Court and this Court also directed the respondent/Board to consider the claim of the respondents 3 to 5 for being appointed to the post of Environmental Scientist. According to the respondents 1 & 2, it is pursuant to the said order passed by this Court the claim of the respondents 3 to 5 was considered and they were accordingly appointed after the revised service Regulations, 2010 came into force providing for appointment by transfer from the categories of Typist/Assistant etc. It is further contended by the respondents 1 and 2 that the respondents 3 to 5 were already subjected to a selection process in terms of Clause 2 of Regulation 10 of revised Service Regulations and became successful and therefore, they were found eligible for being appointed to the post of Environmental Scientist and accordingly, the impugned order dated 07.12.2010 was issued



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appointing them as Environmental Scientist with effect from 07.12.2010.

The respondents 3 to 5 though served with notice, has not filed counter affidavit.

3.However, Mr.Balan Haridas, learned counsel for the respondents 3 and 4, submitted that the respondents 3 and 5 already retired from service and their terminal benefits were also settled.

4.The learned counsel for the petitioner contended that for the first time channel for filling up the post of Environmental Scientist by way of appointment by transfer was created through the revised service Regulations 2010 with effect from 29.09.2010 and therefore any amount of selection process that was conducted by the Board prior to the date is absolutely irrelevant and further, the respondent/Board having called for applications through Circular dated 07.12.2010 is not justified issuing appointment orders in favour of the respondents 3 to 5 while subjecting other similarly situated candidates to undergo process in terms of Circular dated 07.12.2010.



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5. According to the learned counsel for the petitioner, the petitioner herein participated in the selection process pursuant to the Circular dated 07.12.2010 and then eventually they came to be appointed as Environmental Scientist on 01.06.2012 and he has been continuing in the said post. But by virtue of the impugned appointment orders issued in favour of respondents 3 to 5 the petitioner is deprived of his seniority and further promotions and whereas the respondents 3 to 5 who are illegally appointed through the impugned orders to the post of Environmental Scientist were subsequently further promoted and retired from service. According to him, but for illegal appointment issued in favour of the respondents 3 to 5, the petitioner would have got all such promotions.

6. This Court has carefully considered the submissions made by either side and also perused the record.

7. It is not in dispute that prior to 06.09.2010 there was no channel or Rule enabling the respondent/Board to appoint the



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Typist/Assistants to the post of Environmental Scientist either by promotions or by appointment by transfer. It is only for the first time with effect from 29.09.2010 revised Service Regulations 2010, came into force providing for a channel for considering the cases of Typist/Assistants for being appointed on transfer to the post of Environmental Scientist subject to fulfilling the requisite qualification criteria. It is pursuant to the said regulations the respondent/Board thought it fit to call for applications from the candidates willing to be considered for appointment to the post of Environmental Scientist by issuing Circular dated 07.12.2010.

8.Thus, in case, if the respondent/Board intends to fill up the post of Environmental Scientist through one of the methods of the recruitment i.e., appointment by transfer in all fairness the respondent/Board ought to have invited application from all eligible candidates willing to be appointed to the said post and subjected to them the process of selection in terms of the revised service Regulations. But, the respondent/Board instead of acting in a fair manner has chosen to appoint the respondents 3 to 5 herein through impugned proceedings



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dated 07.12.2010 on the very same day on which a Circular Memo dated 07.12.2010 was issued calling for application for filling up the post of Environmental Scientist. The impugned orders dated 07.12.2010 does not make any reference to the so called selection process that was undergone by the respondents 3 to 5 in the year 2002, but straight away makes a reference to 22 (1) & (2) of revised Service Regulations, 2010 and respondents 3 to 5 were appointed to the post of Environmental Scientist. Absolutely, there is no reason assigned the impugned orders as to on what basis the cases the respondents 3 to 5 were considered for being appointed to the post of Environmental Scientist. However, as already noted above the respondent/Board made an attempt to justify its action in issuing the impugned orders in favour of the respondents 3 to 5 on various grounds. One such ground is that the respondents 3 to 5 were subjected to selection process in the year 2002 basing upon the applications said to have been submitted by them. That is again an illegality and arbitrary action committed by the respondent/Board. The question of considering the individual application submitted by candidates and subjecting them to selection process and thereby finding



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them as eligible for being appointed to the post of Environmental Scientist is not permissible under law. In case of the respondent/Board intends to fill up any post in the respondent/Board, which is state within the meaning of Article 12 Constitution of India, it is expected to act in a fair manner and afford such an opportunity to all eligible candidates and act in a fair manner.

9.In the instant case, the so called selection process was confined only to respondents 3 to 5 in the year 2002 and basing upon the so called eligibility acquired by the respondents 3 to 5 in the year 2002, that too when there was no channel for considering their cases for appointment to the post of Environmental Scientist and having taken aid from such process of selection issued the appointment orders. Any amount of selection process or exercise that was undertaken by the respondent/Board prior to issuance of the revised service Regulation enabling for consideration of the cases of Typists/Assistants for being appointed on transfer to the post of Environmental Scientist, is of no use and in case of the respondent/Board intends to fill up the post of



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Environmental Scientist in terms of the revised Service Regulations, the respondent/Board expected to initiate the selection process in terms of the Service Regulations after the revised Service Regulations came into effect. Therefore, the contentions raised in the counter filed by the respondents 1 & 2 to sustain the impugned orders cannot be accepted. In the facts and circumstances of the case, the action of the Respondent/Board in appointing the respondents 3 to 5 to the post of Environmental Scientist through impugned order dated 07.12.2010 is liable to be declared as illegal and arbitrary and unconstitutional, and are liable to be quashed, and the same is hereby quashed.

9(A). It is brought to the notice of this Court that the Respondents 3 & 4 have already retired from service in the post of Deputy Chief Scientific Officer whereas the petitioner and respondent No.5 are stated to be working as Deputy Chief Scientific Officer as on date.

10. Consequently, in case if the petitioner who was appointed to the post of Environmental Scientist with effect from 01.06.2012 is found



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to be entitled for any further promotions, but for the illegal appointment orders issued in favour of the respondents 3 to 5, the case of the petitioner shall be considered accordingly and appropriate orders be passed by the respondents 1 and 2 as expeditiously as possible at any rate within a period of six weeks from the date of receipt of the copy of this order. Taking into consideration the fact that the respondents 3 and 4 already stated to have been retired from service on attaining the age of superannuation, no recovery of any amounts can be effected from them.

11. Accordingly, the writ petition stands allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

12.11.2024

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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