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W.P.No.21880 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.21880 of 2013

D.Arumugam

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Highways and Minor Ports Department,
Fort St.George,
Chennai – 9.

2.The Director General,
Highways Department,
Chepauk,
Chennai – 5.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records connected with Memo.No.211/Kammukkam1/2023, dated 27.03.2013 passed by the second respondent and quash the same and further direct the respondents to appoint the petitioner as Assistant Engineer with retrospective effect from 1995 based on the service seniority as per the Hon'ble Tribunal order dated 04.04.1995 in O.A.No.475 of 1995.



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For Petitioner : Mr.N.Suresh
for Mr.K.Arumugam

For Respondents 1 & 2 : Mr.M.Alagu Gowtham,
Government Advocate

ORDER

The petitioner has filed this writ petition to call for the records connected with Memo.No.211/Kammukkam1/2023, dated 27.03.2013 passed by the second respondent and quash the same and further direct the respondents to appoint the petitioner as Assistant Engineer with retrospective effect from 1995 based on the service seniority as per the Hon'ble Tribunal order dated 04.04.1995 in O.A.No.475 of 1995.

2. The case of the petitioner is that the petitioner was appointed as Assistant Draughtsman on 01.10.1980 and subsequently promoted as Junior Draughting Officer on 01.07.1981. Thereafter, he has passed B.E. degree in the year 1991. This being so, the petitioner has been given promotion to the post of Junior Engineer on 18.02.2004. The first respondent has passed an



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order in G.O.Ms.No.2337, Public Works (H.K.3) Department, dated 06.11.1990 and issued instruction to head of department for appointment of Draughting Officers, Junior Draughting Officers, Overseers, Road Inspectors (Grade I), Survey Assistants as Assistant Engineers on acquiring B.E./A.M.I.E. Qualification with 5 years experience on a temporary basis. Though the petitioner has completed the B.E. degree course in April 1991 and completed 5 years experience in the post of Junior Draughting Officer on 26.06.1986, his name was not considered for the appointment of Assistant Engineer vide proceedings No.33264/N1/91 dated 24.02.1995 issued by the second respondent.

2.1. The petitioner has sent various representations to the second respondent to consider him for promotion to the post of Assistant Engineer, since his juniors were promoted for the said post, however, no action has been taken. Hence, he made another representation to the second respondent to consider him for promotion by relying on the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.475 of 1995 dated 04.04.1995 wherein it is stated that “subject to the acquisition of degree of bachelor of



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Engineering qualification, promotions are to be made to the post of Assistant Engineer according to seniority”. However, the said order has not been complied by the respondents. Therefore, the petitioner has filed a writ petition before this Court in W.P.No.34903 of 2012 and this Court by its order dated 21.12.2012, directed the respondents to consider the claim of the petitioner and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. After receiving the order of this Court, the second respondent has rejected the request of the petitioner in Memo.No.211/Kamukkam1/2013, dated 27.03.2013 on the ground that the petitioner's junior has been passed B.E. degree prior to the petitioner, hence the petitioner request cannot be considered. Aggrieved over the said order, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner would submit that the Government has issued G.O.Ms.No.2337, Public Works (HK.3) Department dated 06.11.1990 and according to which, the eligibility conditions for promotion to the post of Assistant Engineer is that the candidate must have



five years experience as Draughtsman, Junior Draughtsman and must possess Engineering degree. In the case on hand, the petitioner has five years experience as Junior Draughtsman on 01.07.1981 and as on date of issuance of Government Order, he was having nine years experience as Junior Draughtsman. In regard to possessing of Engineering degree, the petitioner has acquired the same subsequent to the passing of the Government Order i.e., in the year 1991. Hence, he has fulfilled both the eligibility conditions stipulated in G.O.Ms.No.2337, Public Works (HK.3) Department dated 06.11.1990.

4. Learned counsel for the petitioner would further submit that the panel for promotion was prepared on 24.04.1995 in which persons who are juniors to the petitioner were promoted to the post of Assistant Engineers and the petitioner was denied with the promotion. Moreover, the seniority of the petitioner in the seniority list is 253, whereas as the persons who are juniors in the seniority list viz., Seniority Nos.359 and 399 have been promoted to the post of Assistant Engineer. Thus, it is a clear violation of article 14 of the Constitution of India.



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5. Learned counsel for the petitioner would further submit that the Tamil Nadu Administrative Tribunal has passed an order in O.A.No.475 of 1995 dated 04.04.1995 in which it has been held that *“On the basis of the Seniority in the feeder category subject to the acquisition of degree of bachelor of Engineering qualification, promotions are to be made to the post of Assistant Engineer according to seniority.”*

6. Learned Government Advocate has filed a counter affidavit on behalf of the respondents. For better appreciation and understanding the relevant paragraphs are extracted hereunder:

“3. In G.O.Ms.No.2337, PWD (HK3) Department dated 06.11.1990 orders were issued permitting the Chief Engineer, Highways and Rural Works Department to make purely temporary appointment in the vacancies in the post of Assistant Engineer in Highways Department from the categories viz., Draughting Officers, Junior Draughting Officers, Overseers, Survey Assistants and Road Inspectors Grade I who possess B.E./A.M.I.E., qualification with five years of experience in the spots they serve, pending issue of amendment to the Special Rules for Tamil Nadu Highways Engineering Service. As



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envisaged in G.O.Ms.No.2337, Public Works (HK3) Department dated 06.11.1990 proposals were sent to the Government for issuing necessary amendments to the Special Rules for Tamil Nadu Highways Engineering Service. But in the meanwhile the first respondent has rescinded the G.O.Ms.No.2337, PWD dated 06.11.1990 in G.O.(Ms) No.860, PWD, dated 26.10.1995.

4. It is submitted that promotions were granted to the eligible candidates in the feeder categories mentioned in the G.O.Ms.No.2337, PWD dated 06.11.1990 based on the date of acquiring qualification as per the orders of the Hon'ble Tribunal issued in O.A.No.1920 of 1989, the petitioner had not acquired the requisite qualification and he had acquired the B.E. degree only during the year 1991. It is submitted that all the 67 candidates who were temporarily promoted as Assistant Engineers from the various feeder categories had acquired B.E degree well before the petitioner had acquired. It is submitted that the first respondent had rescinded the G.O.Ms.No.2337, PWD, dated 06.11.1990 in G.O.Ms.No.860, PWD dated 26.10.1995. Hence as it is, the question of operating the G.O.Ms.No.2337, PWD, dated 06.11.1990 does not arise now. It is submitted that as per the seniority in the feeder category and option exercised by the petitioner he was promoted as Junior Engineer on 18.02.2004.

5. It is submitted that as per the orders of the Hon'ble Tribunal issued in O.A.No.1920 of 1989, promotions were granted to the eligible candidates based on the date of acquiring qualification.

6. It is submitted that the juniors mentioned by the



petitioner viz., Mrs.S.Jayanthi and Thiru.M.Selvam had acquired B.E., degree qualification during the year 1986 that is well before the petitioner had acquired. It is submitted that promotions were not granted to the juniors overlooking the petitioner, but promotion were granted to the juniors since they had acquired B.E., degree qualification well before the petitioner had acquired.”

7. Learned Government Advocate appearing for the respondents would submit that the petitioner is possessing 5 years experience as Junior Draughtsmen but he has acquired Engineering degree only to the subsequent issuance of G.O.Ms.No.2337, Public Works (HK.3) Department dated 06.11.1990. Hence, he was not considered for the promotion to the post of Assistant Engineer.

8. Heard the learned counsel on either side and perused the materials available on record.

9. In the instant case on hand, it is an admitted fact that the petitioner was working as a Junior Draughtsmen and as on date of the G.O.Ms.No. 2337, Public Works (HK.3) Department dated 06.11.1990 he was having 5 years experience as Junior Draughtsmen and he has also



possessed the Engineering qualification in the year 1991, subsequent to the above Government Order. Since there was no specific date mentioned in the Government Order for acquiring Engineering degree, this Court is of the considered view that the petitioner is also entitled for promotion to the post of Assistant Engineer in the year 1995 itself when his juniors were promoted and appointed by the respondents.

10. In view of the above factual matrix of the case, the order passed by the second respondent in Memo.No.211/Kammukkam1/2013, dated 27.03.2013 is liable to be quashed and the same is hereby quashed.

11. In the result, this writ petition is allowed and the respondents are directed to appoint the petitioner to the post of Assistant Engineer with retrospective effect in the year 1995 based on the service seniority as per the Tribunal order dated 04.04.1995 in O.A.No.475 of 1995 and all consequential service benefits, monetary and pensionary benefits, which the petitioner is entitled as per the rules in force as on that date, within a period of 12 weeks from the date of receipt of a copy of this order. No



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costs.

25.04.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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Highways and Minor Ports Department,
Fort St.George,
Chennai – 9.

2.The Director General,
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J.SATHYA NARAYANA PRASAD,J.

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