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W.P.No.25158



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.25158 of 2012

A.Selvaraj

... Petitioner

Vs.

1. The Chairman and Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai, Chepauk, Chennai – 600 005.

2. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Mega Project Division No.I,
21/12, 3rd East Cross Raod,
Gandhi Nagar, Vellore – 632 006.

3. A.Sekar

... Respondents

[R3 impleaded vide order dated 30.01.2015 passed in M.P.No.1 of 2014]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the Memo No.187/ SC/A1/HO/10 dated 11.2.2010 passed by the first respondent and quash the same and further direct the respondent to regularize the petitioner's services in the post of Technical Assistant from date of his appointment i.e. 16.11.1981 as per the amended Service Regulations, vide B.P. dated 04.03.1986 and as has been done to K.Manoharan and A.Saravanan and



to promote the petitioner in the Post of Assistant Engineer from date of his acquisition of B.E. Qualification i.e., November 1987 duly placing him in the appropriate Serial Number in the order of Seniority List for the post of Assistant Engineer as ordered by this Honourable Court and amended TWAD Board Service Regulations vide B.P.Ms.No.140 dated 06.12.2007 duly following Rule of Reservation and backlog vacancies for Scheduled Caste and Scheduled Tribes and further promote the petitioner to the subsequent promotional posts as per the seniority number now assigned in the post of Assistant Engineer in the appropriate scales of pay duly permitting to draw arrears of pay and allowances on par with his juniors in the promotional posts retrospectively.

For Petitioner	: Mr.L.Chandrakumar for Mr.S.Sivakumar
For R1 & R2	: Mr.S.Silambannan, Senior Counsel assisted by M/s.S.Mekhala

ORDER

The petitioner, who was initially appointed as 'Technical Assistant' under the erstwhile Work Charged Establishment of the respondent/ Board on 16.11.1981 was regularized in the post of 'Technical Assistant' with effect from 01.07.1982 and thereafter, when his case was not considered for being appointed to the post of 'Assistant Engineer', the petitioner approached this Court by filing W.P.No.12862 of 1997 and W.P.No.2763 of 2004. Both the said Writ Petitions were disposed of by this Court by a common order dated



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07.09.2006, directing the respondents therein to promote the petitioner forthwith to the post of 'Assistant Engineer' on the basis of his regularization and place him in the appropriate serial number in the order of seniority list. Though appeals were filed against the said order in W.A.Nos.833 and 834 of 2008, the same were dismissed by a common order dated 09.11.2009. Consequently, the respondents implemented the order passed by the learned Single Judge of this Court in W.P.Nos.12862 of 1997 and 2763 of 2004 by issuing the Memo No.187/SC/A1/HO/10, dated 11.02.2010 by duly promoting the petitioner as 'Assistant Engineer' with effect from 29.09.1998 and placing his seniority in the post of 'Technical Assistant' at Sl.No.3(A) i.e., above his Juniors viz., K.Sengodan, T.Muthusami, S.Gowri Shankar and K.Manoharan. Accordingly, the seniority in the cadre of 'Assistant Engineer' was also revised by duly placing the petitioner above K.Manoharan and G.Gowri Shankar through proceedings bearing Memo No.187/SC/A1/HO/10 dated 11.02.2010.

2. Aggrieved by the said proceedings dated 11.02.2010, the petitioner approached this Court by contending that the petitioner has acquired B.E Qualification in the month of November, 1987 and by virtue of the amendment made to the relevant Rules under G.O (Ms) No.140, TWAD Estt (Per) Wing



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dated 06.12.2007, amending the Tamil Nadu Water Supply and Drainage Board services regularization, 1972, the petitioner became eligible on completion of 5 years of service in the post of 'Technical Assistant' and on acquiring B.E Degree in the month of November, 1987 and therefore, he is entitled for promotion to the post of 'Assistant Engineer' from that date on the ground that there are backlog/ carry forward vacancies earmarked for SC category and his case is bound to be considered under the said category from the date on which the petitioner acquired the eligibility criteria for promotion/ appointment by transfer to post of 'Assistant Engineer'.

3. According to Sri.L.Chandrakumar, learned Senior Counsel appearing for the petitioner, the respondents while issuing the impugned proceedings, failed to consider the case of the petitioner for being promoted to the post of 'Assistant Engineer' in the backlog/ carry forward vacancies earmarked for SC category. Therefore, it is contended that the petitioner is entitled for appropriate relief, directing the respondents to appoint the petitioner by transfer to the post of 'Assistant Engineer' from the date of petitioner acquiring the eligibility criteria as prescribed under the relevant Rules.



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4. On the other hand, Mr.S.Silambannan, learned Senior Counsel appearing for the respondents contended that all the backlog vacancies that are earmarked for SC category during the relevant years were already filled-in and also placed strong reliance on Paragraph No.10 of the counter-affidavit filed by the Respondent No.1.

5. A perusal of the tabular statement furnished under Paragraph No.10 of the counter-affidavit shows that the candidates belonging to SC/ ST category were appointed during the years 1981 to 1990 along with direct recruitment. Though Sri.L.Chandrakumar, learned Senior Counsel strenuously contended that the petitioner is entitled for consideration of his case for promotion with retrospective effect against the vacancies earmarked for SC category by duly taking into consideration the qualification acquired by the petitioner, no factual basis is made available before this Court for considering the claim of the petitioner in that perspective. Further, no particulars of any of the juniors of the petitioner being promoted ahead of the petitioner belonging to SC category is also placed before this Court. In the absence of any such factual matrix, it is not possible for this Court to examine the claim that is being made by the petitioner.



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6. This Court, while disposing of W.P.No.12862 of 2004 has only directed the Respondent No.1 to promote the petitioner to the post of ‘Assistant Engineer’ by duly placing him at the appropriate place in the seniority list. That is what is done by the respondents by passing the impugned order and there was no positive direction to consider the claim of the petitioner under SC category or against the backlog/ carry forward vacancies earmarked for SC category. Therefore, the contention of Sri.L.Chandrakumar, learned Senior Counsel that the respondents failed to implement the order dated 07.09.2006 passed by this Court cannot be accepted.

7. In the light of the above, this Court does not find any error or illegality in the impugned order passed by the respondents warranting interference by this Court under Article 226 of the Constitution of India.

8. The petitioner had already retired from service on attaining the age of superannuation and in case, if he is still of the view that he is entitled for promotion as against any of the vacancies earmarked for SC category i.e., backlog/ carry forward vacancies, the petitioner is at liberty to submit



appropriate representation before the respondents by duly furnishing all the particulars and in case if the petitioner makes any such claim by duly furnishing the relevant information, the respondents shall consider such representations submitted by the petitioner and pass orders in accordance with law.

9. Accordingly, the Writ Petition is dismissed subject to above observations. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

08.08.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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