



W.P.No.26738 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.26738 of 2015

- 1.M.Vaithinathan
- 2.M.Krishnan
- 3.S.Balasubramaniam
- 4.P.Rajendran
- 5.S.C.Matuthu
- 6.S.Bose
- 7.V.Sakthivairavan
- 8.A.Ethirajalu

... Petitioners

Vs.

- 1.The Secretary to the Government of Tamil Nadu,
Public Works Department,
Fort St.George, Chennai-600 009.
- 2.Engineer in Chief and Chief Engineer (General),
Public Works Department,
Water Resources organisation,
Chepauk, Chennai-5.
- 3.Engineer and Chief Engineer (Building),
Chennai Region,
Public Works Department,
Chepauk, Chennai-5.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 1st Respondent in letter No.252/B2/2014-4 dated on 27.03.2014 and quash the same is illegal and consequently consider the promotion or designation as Junior Engineer retrospectively as per G.O.Ms.No.108 dated 26.06.2006.

For Petitioners : Mr.C.R.Gobinath
for M/s.G.Ranganathan

For Respondents : Mr.Abishek Murthy
Government Advocate

ORDER

The present writ petition is filed challenging the impugned proceedings dated 27.03.2014 whereby the petitioners' claim to promotion as Junior Engineer stood rejected on the premise that they have not put in 4 years of service in the post of Technical Assistant.

2. The petitioners who were initially appointed as Head Mazdoors filed an O.A. No.322 of 1996 before the Tamil Nadu Administrative Tribunal which stood transferred to the file of this Court and numbered as W.P.No.19567 of 2006 on the abolition of the said Tribunal. The writ petition in W.P. No.19567 of 2006 challenged G.O. Ms.No.680, Public Works Department dated 16.08.1995 and for a direction to the respondents



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therein to consider them for appointment to the post of Technical Assistants with due seniority.

3. A learned Judge of this Court in W.P.No.19567 of 2006, *vide* order dated 10.01.2007, in the said writ petition, found the following:

i. The petitioners were originally appointed under the work charged establishment as Work Inspectors;

ii. Their services were provincialised on completion of five years of service and were regularised in the post of Work Inspectors to which they were originally appointed;

iii. The private respondents therein were appointed in the nominal muster roll on daily wage basis and their services were regularised in the cadre of Technical Assistants on completion of ten years of service;

iv. The result was that the private respondents in the said writ petition were regularised as Technical Assistants which is superior to the post of Work Inspector which was the post held by the petitioners and several others who were similarly placed.

v. Resultantly, the petitioners became subordinates to the private



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respondents therein who were initially appointed in the nominal muster roll on daily wage basis.

4. This Court, in W.P. No.19567 of 2006, taking note of the above aspects, found that the petitioners' grievance was justified inasmuch as they were holding the post which was inferior to that of the employees who were employed in the nominal muster roll. This Court however, found that G.O. Ms.No.680, *supra*, cannot be set aside on that score alone, and was of the view that any attempt to upset the regularisation would only lead to further complications within identically placed employees. This Court took note of G.O.Ms.No.108, *supra*, whereby, the Government had granted retrospective promotion to a few Technical Assistants to the post of Junior Engineers on the ground that their juniors were promoted. This Court further found that the petitioners therein had come into regular establishment as Work Inspectors after completion of five years of service in the work charged establishment and have also acquired the requisite qualification, *viz.*, Diploma in Engineering and fully qualified for promotion to the post of Technical Assistant, but were unable to be promoted to the post of Technical Assistant as they were blocked by batches after batches of nominal muster



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roll employees who got regularised in the category of Technical Assistants on completion of services. In the circumstances, the said writ petition was disposed of directing the official respondents to consider the case of the petitioners therein for promotion to the post of Technical Assistants as done vide G.O. Ms.No.108, *supra*.

5. Pursuant thereto, the petitioners were promoted to the post of Technical Assistant retrospectively and notionally with effect from 01.01.1996 vide G.O. Ms.No.29, Public Works Department dated 25.01.2010.

6. The petitioners would submit that they ought to be promoted from the post of Technical Assistant to the post of Junior Engineer. This has been rejected *vide* order dated 27.03.2014 of the first respondent on the premise that promotion to the post of Junior Engineer would require having served as Technical Assistant for a period of four years.

7. It was submitted by the learned counsel for the petitioners that the notional promotion should be treated as satisfying the requirement of four



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years experience in the post of Technical Assistants for being eligible for promotion to the post of Junior Engineers.

8. This was resisted to by the learned Government Advocate who submitted that what is contemplated as a qualification was actual service and not notional service as Technical Assistants, which the petitioners are lacking and which is an essential qualification for being promoted to the post of Junior Engineer. It was thus submitted that the petitioners are not entitled to be promoted to the post of Junior Engineers. It was also submitted that the petitioners had reached the age of superannuation as Technical Assistants even on the date of filing of this writ petition.

9. Against the above factual background, the short question that arises for consideration is whether the petitioners would satisfy the requirement for promotion to the post of Junior Engineer from that of Technical Assistant in terms of the Tamil Nadu Engineering Special Subordinate Services Rules. To answer the above questions it may be necessary to extract the relevant portions of the Tamil Nadu Engineering Subordinate Service of Tamil Nadu Services Manual Volume III which reads as under:



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“12(v) (c) Provided also that a Technical Assistant shall not be eligible for promotion as Junior Engineer unless he has rendered not less than four years of continuous service as Technical Assistant in the case of diploma holders and eight years in the case of others and if he had not passed the Account Test for Public Works Department Officers and Subordinates.”

9.1. A reading of the above provision would show that a Technical Assistant shall not be eligible for promotion unless he has “rendered not less than 4 years of continuous service” as Technical Assistant in case of Diploma Holders and 8 years in case of others.

9.2. It is the case of the petitioner that the notional promotion made pursuant to the orders of this Court to the post of Technical Assistant must be taken as continuous service rendered by the petitioner in the post of Technical Assistant and would thereby satisfy the requirement of service as Technical Assistant for not less than 4 years, thus satisfying the eligibility criteria for promotion to the post of Junior Engineer.

10. To the contrary, it was submitted by Mr.Abishek Murthy, the learned Government Advocate for the Respondents by placing reliance upon the judgement of this Court in W.P.No.228 of 2008 dated 11.01.2022 which



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relied upon the judgement of the Hon'ble Supreme Court wherein notional promotion was explained as not to result or create a deeming/ fiction of gaining experience from the date of such notional promotion, thus, the petitioners do not satisfy the eligibility criteria for promotion to the post of Junior Engineer.

11. It appears to me that what is contemplated under the above rule is actual service in the post of technical assistant and not notional. In the present case the petitioners were granted notional promotion to the post of technical assistant. It is important to bear in mind that by notional service one does not gain experience. Notional promotion is normally granted to take care of some injustice, inter alia, because some junior has come to be promoted earlier. In this regard, the judgment of the Hon'ble Supreme Court in the case of *Union of India vs. M.Bhaskar and other* reported in (1996) *Supp (2) SCR 358*, may be relevant and thus extracted hereunder:

“15.5....

“15. The aforesaid decision has been challenged in this appeal by the Union of India by contending that 2 years' period of experience has to be reckoned, not from 11-10-1988, but from 21-9-1989. There is no dispute that the eligibility condition is 2 years' experience in Grade II. Now, this respondent having really started working in Grade II pursuant to the order of 21-9-1989, he could not have gained experience prior to the date he had joined pursuant to this order. The mere fact that his promotion in Grade II was



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notionally made effective from 11-10-1988 cannot be taken to mean that he started gaining experience from that day, because to gain experience one has to work. Notional promotions are given to take care of some injustice, inter alia, because some junior has come to be promoted earlier. But we entertain no doubt that the person promoted to higher grade cannot gain experience from the date of the notional promotion; it has to be from the date of the actual promotion. ”

(emphasis supplied)

12. It may also be relevant to refer to the 4 judges bench of the Supreme Court in the case of State of Bihar v. Madhan Mohan Prasad reported in (1976) 1 SCC 529 wherein the Apex Court while dealing with fixing of seniority of direct recruit vis-a-vis promoted officers wherein construing Rule 16(e) of the Bihar Superior Judicial Service Rules which laid down the governing criteria for fixation of seniority, construed the expression “officiate continuously” employed in the said rule. The Apex Court held that “officiate continuously” would mean “actual officiation”. The relevant rule and construction placed by the Supreme Court on the said rule is extracted hereunder:

Relevant Rule as extracted in the judgment:

"19. the date from which they may have been allowed to officiate continuously in posts in the cadre of the service or in posts outside the cadre on identical time-scale of pay and of equal status and responsibility or in posts of higher scale of pay and of higher



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responsibility."

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Construction placed on the above Rule:

"23. We further agree with the High Court that the words "may have been allowed to officiate continuously" in clause (e) of Rule 16 mean actual and continuous officiation and not a fortuitous or fictional officiation. A notional construction of the clause would lead to anomalous results."

(emphasis supplied)

13. It may also be relevant to take note of the judgment of the Supreme Court in the case of *Union of India v. K.B. Rajoria*, reported in (2000) 3 SCC 562, wherein while construing whether an employee granted notional promotion would satisfy the requirement of 2 years "regular service" as Additional Director General (Works), laid down in the relevant rules as the eligibility criteria for promotion to the post of Director General (Works), it held as under:

"11. The word "regular" therefore does not mean "actual" and the first question the High Court should have considered was whether the appointment of Krishnamoorti was regular and in accordance with the Rules or it was irregular in the sense that it was contrary to any principle of law.

12. The decision which is somewhat apposite is the case of K. Madhavan v. Union of India [(1987) 4 SCC 566 : 1987 SCC (L&S) 496 : (1987) 5 ATC 91] where the eligibility requirement was eight years in the grade "on a regular basis". In that case it was held: (SCC p. 575, para 10)



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“In our view, therefore, the expression ‘on a regular basis’ would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis.”

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14. The above judgment of the Apex Court in Rajoria's case may not be of much assistance to the petitioners inasmuch as the Supreme Court was dealing with the nature of appointment as to whether it was regular or suffered from some irregularity. While the present rule governing promotion to the post of Junior Engineer from Technical Assistant mandates rendering not less than 4 years of continuous service as Technical Assistant. I would think that the judgment of the Supreme Court in the case of M.Bhaskar (3 Judges) and Madan Mohan Prasad (4 Judges) are closer to the issue on hand and in any view rendered by larger coram than the judgment in Rajoria's case (2 Judges) and thus binding. Following the judgment in M.Bhaskar and Madan Mohan Prasad's case this Court is of the view that what is contemplated under the rule governing promotion to the post of Junior Engineer from Technical Assistant is rendition of 4 years of actual continuous service and a notional promotion to the post of Technical Assistant may not satisfy the above requirement.

15. Yet another reason why I would think notional promotion to the



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post of Technical Assistant would not satisfy the requirement of rendering continuous service as Technical Assistant for not less than 4 years is also in view of the fact that notional promotion does not mean experience is gained in the post to which an employee is notionally promoted.¹ It appears to me that the rule governing promotion to the post of Junior Engineer from Technical Assistant mandates that to be eligible for such promotion the candidate should have rendered continuous service for not less than 4 years as Technical Assistant. This in my view would mean that experience is factored as relevant for promotion, if so, it is doubtful if that requirement could be obviated by including notional promotees for that may result in circumventing the above requirement of continuous service as Technical Assistant for being promoted to the Post of Junior Engineer.

16. In the light of the above discussion this Court is of the view that the petitioners do not satisfy the requirement of 4 years of continuous service in the post of Technical Assistant as mandated in Tamil Nadu Engineering Special Subordinate Services Rules. Thus, finding no merit in

1. *Union of India vs. M.Bhaskar and other*, reported in (1996) Supp (2) SCR 358



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the writ petition stands dismissed. No costs.

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

1.The Secretary to the Government of Tamil Nadu,
Public Works Department,
Fort St.George, Chennai-600 009.

13/15



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2.Engineer in Chief and Chief Engineer (General),
Public Works Department,
Water Resources organisation,
Chepauk, Chennai-5.

3.Engineer and Chief Engineer (Building),
Chennai Region,
Public Works Department,
Chepauk, Chennai-5.



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MOHAMMED SHAFFIQ, J.

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