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W.P.No.9634 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.9634 of 2021

S.Suryakumar

... Petitioner

Vs.

- 1.The Director General,
Highways Department (Construction and Maintenance)
Guindy, Chennai.
- 2.The Chief Engineer,
Highways Department (Construction and Maintenance)
Guindy, Chennai.
- 3.The Superintending Engineer,
Highways Department (Construction and Maintenance)
Villupuram.
- 4.The Assistant Divisional Manager,
Highways Department (Construction and Maintenance)
Perambalur.

5.P.Senthilkumar

... Respondents

(R5 impleaded vide Court order dated 19.08.2021
WMP.No.4179 of 2024)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in proceedings No.58/2020/A2 dated 09.02.2021 on the file of the Assistant



Divisional Engineer, Highways Building and Maintenance, Perambalur District, 4th respondent herein, and quash the same and consequentially, accord promotion to the petitioner as per his representation dated 31.12.2020.

For Petitioner : Mr.J.Milton Pon Davidson

For Respondents : Mr.R.U.Dinesh Rajkumar,
AGP for R1 to R4

ORDER

This Writ Petition has been filed for quashment of the proceedings of the 4th respondent in No.58/2020/A2 dated 09.02.2021 and consequently, accord promotion to the petitioner as per his representation dated 31.12.2020.

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

3. The case of the petitioner is that the petitioner completed SSLC in the year 1986 and Higher Secondary in the year 1987-1989. After that, he completed Surveyor Course in the Government Industrial Training Institute (ITI) Ambattur in the year 1989-91. Thereafter, he completed National Apprenticeship at the office of Town and Country Planning, Trichy Region in



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the year 1994-95 and all India Technical Education at Government Polytechnic Trichy in the year 2014-18 in Diploma Civil Engineering. After completing all the courses, he registered in the District Employment Exchange and he was appointed as Road Inspector (Grade-II) in the Highways Department and posted in the Highways Department, Ariyalur Division through the Employment Exchange. As per the Government Order in G.O.Ms.No.1858/PWD, dated 22.10.1969 and G.O.Ms.No.856 dated 01.06.1977, the persons working as Skill Assistant Grade II having completed 5 years and as per the seniority, skill and experience can be promoted as Skill Assistant Grade I. As per the Government Order, the petitioner is eligible for the post of Skill Assistant Grade I both on educational qualification as well as on service experience. Hence, the petitioner applied for the post on 12.12.2014, but without granting promotion on date, delayed the same for a period of 6 months and promoted the petitioner only on 15.06.2015. Thereafter, the petitioner gave a representation to the fourth respondent on 31.12.2020 for rectifying the delay in promotion. The fourth respondent in his letter dated 09.02.2021 in proceedings No.58 of 2020/A2 rejected the said representation. Against which, the petitioner has filed this present petition.



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4. The learned counsel for the petitioner submitted that most of the persons employed in the post of Skill Assistant Grade II in various parts of the State were promoted to the post of Skill Assistant Grade I. Some Divisional Engineers promoted the Skill Assistant Grade II to Skill Assistant Grade I on completing 5 years of Grade II and some Divisional Engineers failed to promote the Skill Assistant on the same qualification. Due to which, the Grade II Assistants suffered uniformity in their promotions. Even though the petitioner possessed necessary qualification and experience as per all the Government Orders, he was not accorded promotion in time which now resulted in losing the State Seniority.

5. The learned Additional Government Pleader appearing for the respondents 1 to 4 submitted that as per the Government Order in G.O.Ms.No.1858/PWD dated 22.10.1969 and G.O.Ms.No.856 of 01.06.1977, the promotion shall be made only on the ground of merit and ability and the seniority should be considered only if the merit and ability are equal. Hence, the petitioner has the basic merit qualification required for his promotion and his ability was taken into consideration while considering him for promotion.



After considering both his merit and ability, the Divisional Engineer, Highways (C&M), Perambalur, promoted the petitioner as Skill Assistant Grade I on 15.06.2015, as per the guidelines issued in the said Government Orders. He further submitted that as per Section 40 (6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, any application for the revision of seniority of a person in a service shall be submitted to the appointing authority within a period of three years from the date of appointment and any application received after the said period of three years shall be summarily rejected. Section 40 (6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is extracted hereunder for better reference:

“(6). Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.”

5. As per the Section 40 (6) of the Tamil Nadu Government Servants



(Conditions of Service) Act, 2016, this Court finds that any application for the revision of seniority of a person in a service shall be submitted to the appointing authority within a period of three years from the date of appointment, but the petitioner has submitted his application with a delay of 5 years. Hence, this Writ Petition has no merits and the same is liable to be dismissed.

6. Accordingly, this Writ Petition is dismissed. No costs.

28.08.2024

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Index : Yes / No

Speaking order / Non-speaking order

To

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VIVEK KUMAR SINGH, J.

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