



W.P.No.33930 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	15.04.2024
Pronounced on	:	30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.33930 of 2012

and

M.P.No.2 of 2012

S.Senthil Kumar

...Petitioner

Vs.

1.The Commissioner,
Salem City Municipal Corporation,
Salem – 636 001.

2.V.Thilaga

3.M.Selvaraj

4.R.Senthil Kumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the Impugned Proceedings of the respondent in E6/11511/1998 dated 25.05.2012 and to quash the same insofar the promotion to the category of Assistant Executive Engineer is concerned.

For Petitioner : Mr.Singaravelan, Senior Counsel
Mr.T.Ranganathan

For Respondents : Mr.S.Haja Nazirudeen,
Additional Advocate General
Asst. by N.Devi, Standing Counsel,



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Corporation (for R1)
Mrs.AL.Gandhimathi, Senior Counsel
for L.Palanimuth (for R2 to R4)

ORDER

This Writ Petition is filed calling for the records relating to the Impugned Proceedings of the respondent in E6/11511/1998 dated 25.05.2012 and to quash the same insofar the promotion to the category of Assistant Executive Engineer is concerned.

2.Petitioner was appointed as Work Inspector on 30.08.1990 in the Salem City Municipal Corporation. On acquiring the qualification of B.E. degree in Civil engineering, he was redesignated as Assistant Engineer on 03.07.1995. His next promotion is to the post of Assistant Executive Engineer. 1st respondent in Memorandum Na.Ka.No.C3/30547/2000 dated 12.12.2000 issued a common seniority list among the Assistant Engineers and Junior Engineers as on 01.04.2000. Petitioner's name was shown in Sl.No.6. This seniority list was prepared contrary to the instructions issued by the Government in G.O.(Ms).No.237, Municipal Administration and Water Supply Department, dated 26.09.1996 and also the Special Rules of the Tamilnadu Municipal Engineering and Water Supply Services Rules, 1996. The settled principle of 3:1 ratio between Assistant Engineer and Junior Engineer has not



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been followed, while preparing the seniority list. Petitioner submitted his objection on 19.12.2000 to the 1st respondent, but his representation was not considered. Government in Letter No.46851/MCV/2001-1 MAWS Department, dated 08.03.2002, clarified that the ratio of 3:1 is prescribed in the Special Rules for promotion as Assistant Executive Engineer shall be followed between Assistant Engineers and Junior Engineers. He submitted his representations dated 12.11.2012 to the 1st respondent requesting the first respondent to inform the action taken in the matter, but no response was received. Unless the seniority is properly fixed in accordance with the rules for promotion to the post of Assistant Executive Engineer, petitioner's further promotional opportunities will be affected. Therefore, this Writ Petition.

3.Learned Senior Counsel for the petitioner submitted that, the Town Planning Inspector, who are engineering graduates will be designated as Assistant Engineers and those who are diploma holders will be designated as Junior Engineers. G.O.(Ms).No.237, Municipal Administration and Water Supply Department, dated 26.09.1996, consist instructions with regard to fixation of inter-se seniority between Town Planning Inspectors and Assistant Engineers/Junior Engineers.



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As per the instruction, (i) one list with the names of Assistant Engineers of the Engineering and Water Supply Department may be prepared and the names of Assistant Engineers transferred from Town Planning Department of the Corporation may be placed below the names of Assistant Engineers of the Engineering and Water Supply Department.

(ii) The names of Assistant Engineers of the Town Planning Department to be placed in the order of their seniority in the post of Town Planning Inspectors.

(iii) Another list of names of Junior Engineers of Engineering and Water Supply Department to be prepared and the names of Junior Engineers transferred from the Town Planning Department to be placed below the names of Junior Engineers of Engineering and Water Supply Department in the order of their seniority in the post of Town Planning Inspectors.

(iv) It is necessary to follow the ratio of 3:1, while fixing the inter-seniority between the Assistant Engineers and Junior Engineers along with the Town Planning Inspectors, who are also being transferred to the



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Engineering and Water Supply Department.

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3.1.It is the submission of the learned Senior Counsel appearing for the petitioner that the draft seniority list published by the 1st respondent dated 12.12.2000 is not in conformity with the instructions given in the G.O.(Ms).No.237, Municipal Administration and Water Supply Department, dated 26.09.1996. When this draft seniority list was prepared, petitioner was working as Assistant Engineer, whereas, M.Vanitha, M.R.Sibichakravarthy, V.Thilagam and R.Senthil Kumar, where working only as Junior Engineers. Except M.R.Sibichakravarthy, others had completed B.E, only after petitioner had completed B.E. in November 1994. If seniority is fixed in 3:1 ratio between Assistant Engineers and Junior Engineers, petitioner would have been placed 3rd in the seniority list. By not framing the seniority by adopting the ratio of 3:1 between Assistant Engineers and Junior Engineers, petitioner was deprived his timely promotion to the post of Assistant Executive Engineer. Except petitioner, others have been promoted as executive Engineer. At the time of filing the writ petition, an interim order was passed stating that “Any appointment made is subject to the result of the Writ Petition”. Despite repeated representations, petitioner's case was not considered properly and thus, this Writ Petition is filed.



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4.Learned Counsel for the 1st respondent submitted that, the post of Assistant Executive Engineer has to be filled up by promotion from holders of the post of Assistant Engineers and Junior Engineers. Rule 5 of the Engineering and Water Supply Service Rules relates to ratio between direct recruitment of Assistant Engineers and appointment of Junior Engineers by promotion. As per the rules ratio of 3:1 is followed for framing the inter-se-seniority between Assistant Engineers and Junior Engineers. A common seniority list (inter-se-seniority) was prepared vide proceeding in Na.Ka.No.C3/30547/2000, dated 07.03.2001, in Salem corporation, treating Assistant Engineers and Junior Engineers as single category and by following the ratio of 3:1. Petitioner has not challenged the seniority list dated 07.03.2001 and thus, he prayed for dismissal of this Writ Petition.

5.Learned Counsel for the respondents 2 to 4 submitted that, M.Lalitha and M.R.Sibichakravarthy were appointed into service prior to the date of appointment of the petitioner. The seniority list dated 07.03.2001 was prepared, following the instructions issued in G.O.(Ms).No.237, Municipal Administration and Water Supply Department, dated 26.09.1996. Without challenging the seniority list, the consequential promotion given, on the basis this of seniority list cannot be challenged.



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5.1.W.P.No.4730 of 2015 was filed by one V.Chandran, to consider his name for promotion as Assistant Executive Engineer by following the ratio of 3:1. That Writ Petition was dismissed. The appeal filed against the dismissal of the Writ Petition in W.A.No.97 of 2017 was also dismissed. Petitioner is one of the respondents in this Writ appeal. Therefore, it is not open to the petitioner to challenge the seniority list dated 07.03.2011. The persons who got promoted namely Lalitha and M.R.Sibichakravarthy through impugned proceeding in E6/11511/1998, dated 25.05.2012, are not included as respondents in this case. In their absence, their promotion cannot be challenged. What is being challenged here is only the resolution for promotion of one Lalitha and M.R.Sibichakravarthy and not the seniority list dated 07.03.2001, which is basis for their promotion. 4th respondent was also subsequently promoted. And his promotion has not been challenged. As per the instructions in G.O.(Ms).No.237, Municipal Administration and Water Supply Department, dated 26.09.1996, Lalitha has a total of 5 years for completing B.E. She passed B.E. in April 1996. The interest of existing employees are safeguarded in this G.O. Therefore, the petitioner cannot challenge the promotion of Lalitha and M.R.Sibichakravarthy and 4th respondent.

6.Considered the rival submissions and perused the records.



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7.From the submissions of learned Counsel for the parties, especially Senior counsel appearing for the petitioner, it is the case of the petitioner that, he acquired B.E. in November 1994 and redesignated as Assistant Engineer on 03.07.1995. Date of acquiring B.E. Degree is shown in the draft seniority list in Na.Ka.No.C3/30547/2000 dated 12.12.2000 as follows;

<i>Sr.No.</i>	<i>Name of the Individual</i>	<i>Date of acquiring B.E.Degree and Re-designated as Asst. Engineer</i>
1	M.Lalitha	April 1996
2	M.R.Sibichakravathy	April 1993
3	V.Thilagam	November 1999
4	V.Thilagam	April 1999
5	R.Senthil Kumar	April 1998
6	S.Senthil Kumar	November 1994

The date of completion of B.E. by M.Selvaraj is not given in the draft seniority list, but it is stated in the affidavit of the petitioner that M.Selvaraj passed B.E in April 2000.

8.The grievance of the petitioner is that, as on 03.07.1995 petitioner was working as Assistant Engineer on passing B.E in November 1994. But Lalitha, M.R.Sibichakravathy and Senthil Kumar had been working as Junior Engineers. Though M.R.Sibichakravathy completed B.E in April 1993, others



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had completed B.E. much later than the petitioner. His objection to the draft seniority was not properly addressed. But the first respondent proceeded to publish the seniority list in Na.Ka.No.C3/30547/2000, dated 07.03.2001, confirming the draft seniority list. Had 3:1 ratio between Assistant Engineers and Junior Engineers been followed, petitioner would have been placed 3rd in the order of seniority and would have been promoted as Assistant Executive Engineer long back.

9.The general instruction with regard to fixation of inter-se- seniority between Town Planning Inspectors and Assistant Engineers/Junior Engineers given in Annexure-I in G.O.Me.No.237, Municipal Administration and Water Supply (Election) Department, dated 26.09.1996 reads as follows,

“(The scale of pay of the Assistant Engineers, Junior Engineers and Town Planning Inspectors are as follows:-

<i>Assistant Engineer</i>	<i>- Rs.2000-3200</i>
<i>Junior Engineer</i>	<i>- Rs.1640-2900</i>
<i>Town Planning Inspector</i>	<i>- Rs.1350-2200</i>

Since the scale of pay of the Town Planning Inspectors is Less than the scale of pay of the Junior Engineers, while fixing the inter-se-seniority, it is not fair to take the date of first appointment, the total services etc.



of the individuals. Further, these Town Planning Inspectors who are Engineering Graduates will be designated as Assistant Engineers and These who are Diploma holders as Junior Engineers.

Therefore, one list of names of Assistant Engineers of the Engineering And Water Supply Department may be prepared and the names of Assistant Engineers transferred from the Town Planning Department of the Corporation May be placed below the names of Assistant Engineers of the Engineering and Water Supply Department. The names of Assistant Engineers of the Town Planning Department may be placed in the order of their seniority in the post of Town Planning Inspectors. Another list of names of Junior Engineers of the Engineering and Water Supply Department may be prepared and the names of Junior Engineers transferred from the Town Planning Department may be Placed below the names of the Junior Engineers of the Engineering and Water Supply Department in the order of their seniority in the post of Town Planning Inspectors. In future, the initial appointment itself shall be made at the ratio of 3:1. i.e., 3 Engineering Graduate Assistant Engineers and one Diploma holder Junior Engineer, hence the question of fixing the seniority at the ratio of 3:1 does not arise. But



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it becomes necessary to follow the ratio of 3:1 now, while fixing the inter-se-seniority between the Assistant Engineers and Junior Engineers along with the Town Planning Inspectors who are also being transferred to the Engineering and Water Supply Department. However, there may be already a panel of names of Assistant Engineers and Junior Engineers as approved either by the Government or by the Special Officer in council for promotion to the posts of Assistant Executive Engineers in the Corporation. The names of these Assistant Engineers and Junior Engineers who are in the approved panel shall not be taken into account and the inter-se-seniority shall be fixed for the remaining Assistant Engineers and Junior Engineers who are waiting for inclusion of their names in the next panel for promotion to the posts of Assistant Executive Engineer, along with the Town Planning Inspectors who are being transferred to the Engineering and Water Supply Department. Further, when the Junior Engineers are more in number than the Assistant Engineers in a Corporations, while following the ratio of 3:1, some of the Junior Engineers may remain without placement in the seniority list. For example, in a Corporation there are 15 Assistant Engineers and 10 Junior Engineers. After fixing the inter-se-seniority by following the ratio of 3:1. i.e., 15 Assistant Engineers:5



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Junior Engineers, the last five Junior Engineers may remain without placement in the seniority list. Therefore, as a special case, the names of all these remaining five Junior Engineers may be placed at the end of that seniority list and they may be considered for promotion to the posts of Assistant Executive Engineer without refixing their seniority at the ratio of 3:1 later along with the Assistant Engineers who are being appointed in future vacancies in the Corporations. The Assistant Engineers/Junior Engineers who have been transferred from the Town Planning Service to the Engineering Department will draw their pay in the time scale of regular Assistant Engineer/Junior Engineer.”

10.As per the instructions given, before the fixing the inter-se-seniority, one list of seniority for Assistant Engineers and another list of seniority of Junior Engineer have to be framed as follows ;

(i)One list with the names of Assistant Engineers of the Engineering and Water Supply Department may be prepared and the names of Assistant Engineers transferred from Town Planning Department of the Corporation may be placed below the names of Assistant Engineers of the Engineering and Water Supply Department.



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(ii)The names of Assistant Engineers of the Town Planning Department to be placed in the order of their seniority in the post of Town Planning Inspectors.

(iii)Another list of names of Junior Engineers of Engineering and Water Supply Department to be prepared and the names of Junior Engineers transferred from the Town Planning Department to be placed below the names of Junior Engineers of Engineering and Water Supply Department in the order of their seniority in the post of Town Planning Inspectors.

(iv)It is necessary to follow the ratio of 3:1, while fixing the inter-se- seniority between the Assistant Engineers and Junior Engineers along with the Town Planning Inspectors, who are also being transferred to the Engineering and Water Supply Department.

11.However, there is a protection given for the panel of names of Assistant Engineers and Junior Engineers as approved either by the government or by the Special officer in Council for promotion to the post of Assistant Executive Engineer in the Corporation. The names of these Assistant Engineer and Junior Engineers, who are in the approved panel shall not be taken into



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account and inter-se-seniority shall be fixed for the remaining Assistant Engineers and Junior Engineers, who are waiting for inclusion of their names in the next panel for promotion to the post of Assistant Executive Engineer, along with the Town Planning Inspectors, who are being transferred to the Engineering and Water Supply Department. It reads as follows:

“However, there may be already a panel of names of Assistant Engineers and Junior Engineers as approved either by the Government or by the Special Officer in council for promotion to the posts of Assistant Executive Engineers in the Corporation. The names of these Assistant Engineers and Junior Engineers who are int the approved panel shall not be taken into account and the inter-se-seniority shall be fixed for the remaining Assistant Engineers and Junior Engineers who are waiting for inclusion of their names in the next panel for promotion to the posts of Assistant Executive Engineer, along with the Town Planning Inspectors who are being transferred to the Engineering and Water Supply Department.”

12.As rightly pointed out by the learned Senior Counsel appearing for the petitioner, it appears that before the preparation of draft seniority list in Memorandum Na.Ka.No.C3/30547/2000 dated 12.12.2000 and seniority list in



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proceeding in Na.Ka.No.C3/30547/2000, dated 07.03.2001, no seniority list of

Assistant Engineers and list of Junior Engineers had been prepared. The draft seniority list though mentions about the designation of the Assistant Engineers/Junior Engineers, it is apparent that, 3:1 ratio, as required under G.O.(Ms).No.237, Municipal Administration and Water Supply Department, dated 26.09.1996 is not followed. In the final seniority list published in Na.Ka.No.C3/30547/2000, dated 07.03.2001, there is no indication as to who is Assistant Engineer and Junior Engineer. In the absence of indication of their positions, it cannot be decided as to whether the ratio of 3:1 between Assistant Engineers and Junior Engineers is followed or not.

13.Though there is a substance in the case of the petitioner that the ratio of 3:1 as required in G.O.(Ms).No.237, Municipal Administration and Water Supply Department, dated 26.09.1996, is not followed. The pivotal point that arises for consideration is whether petitioner is entitled for the relief claimed in this Writ Petition.

14.As rightly pointed out by the learned Counsel for the respondent, there is no express challenge to the seniority list in proceeding in Na.Ka.No.C3/30547/2000, dated 07.03.2001. Petitioner had only challenged to



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proceedings in E6/11511/1998 dated 25.05.2012. This proceeding is placed in

Page No.13 of the typed set, filed along with the Writ Petition. As per the seniority list dated 07.03.2001, M.Lalitha and M.R.Sibichakravarthy are in seniority number 1 and 2. As per the seniority list dated 21.06.1995, the top 4 in the list had been promoted as Assistant Executive Engineers. The names of M.Lalitha and M.R.Sibichakravarthy had also been included in that draft seniority list and was approved by the 1st respondent Corporation. As per G.O.(Ms).No.237, Municipal Administration and Water Supply Department, dated 26.09.1996, if there is already a panel with the names of Assistant Engineers and Junior Engineers approved either by the Government or by Special Officer in the council for promotion to the post of Assistant Executive Engineer in the Corporation, their names shall not be taken in account and inter-se-seniority shall be fixed for the remaining Assistant Engineers and Junior Engineers. Therefore, M.Lalitha and M.R.Sibichakravarthy need not be included for fixing inter-se-seniority between Assistant Engineers and Junior Engineers. Accordingly, M.Lalitha and M.R.Sibichakravarthy had been promoted as Assistant Executive Engineer. In effect petitioner challenged the promotion of M.Lalitha and M.R.Sibichakravarthy, though they are not impleaded as respondents in this petition. Without their presence, the validity of their promotion cannot be considered, especially when their seniority is



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protected by instructions issued by the Government in G.O.(Ms).No.237, Municipal Administration and Water Supply Department, dated 26.09.1996, as detailed above. Petitioner protested against the draft and final seniority list. When coming to the prayer, petitioner failed to challenge the seniority list dated 07.03.2001, but content only with challenging proceedings in E6/11511/1998 dated 25.05.2012. This challenge, in the absence of M.Lalitha and M.R.Sibichakravarthy, in the considered view of this Court, cannot be maintained.

15.In this view of the matter, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

gd
Internet:Yes
Index:Yes/No
Speaking/Non speaking order
NCC: Yes/No

30.04.2024

To

The Commissioner,
Salem City Municipal Corporation,
Salem – 636 001.



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G.CHANDRASEKHARAN.J.,
gd

Pre-Delivery Order in
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