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W.P.No.17962 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17962 of 2022

C.Ganapathi

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Public Works Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Finance Secretary,
Secretariat, Fort St.George,
Chennai – 600 009.

3.Engineer in Chief and Chief Engineer (General),
Water Resource Development,
Public Works Department,
Chepauk, Chennai – 600 005.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to grant all the attendant benefits arising out of letter bearing No.S4(2)/23021/2018 dated 20.09.2018 and further direct to act upon the letter bearing Ref.No.S2(4)/33819/2018 dated 11.02.2019.



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For Petitioner : Mr.K.Krishnamoorthy

For Respondents : Dr.T.Seenivasan
Special Government Pleader

ORDER

This writ petition has been filed for direction to the respondents 1 and 2 to grant all the attendant benefits arising out of the communication dated 20.09.2018.

2. The petitioner had joined service under the 1st respondent on 07.07.1982 as Technical Assistant on Nominal Muster Roll (hereinafter called as 'NMR'). The 3rd respondent regularized his service by order dated 15.05.2008 with retrospective effect from 01.01.1993 i.e., after completion of ten years as NMR, as a special case with routine promotion, annual increments and pensionary benefits but without monetary and arrear benefits. As per the various Government Orders, about 333 Technical Assistants were regularized immediately after completion of ten years of service. In the year 2003, the Technical Assistants were given promotion to the post of Junior Engineer on 01.05.2003. The seniority distribution in the feeder category i.e., Technical Assistants was prepared on 12.12.2003 and the petitioner was placed below



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many of his juniors. In fact, the petitioner's service was regularized only from the year 1995 and as such the petitioner filed writ petition in W.P.No.20298 of 2005 seeking direction to regularize him from the year 1993. This Court directed the respondents to consider the request made by the petitioner by order dated 16.09.2013. The 3rd respondent stated by its communication dated 11.02.2019 that due to administrative delay, retrospective regularization of the petitioner with effect from 01.01.1993 was not done. Accordingly, seniority was refixed and kept in seniority number 4-A and promoted to the post of Junior Engineer in the year 1997. After four years of continuous service as Technical Assistant as in the case of diploma holder, he was entitled to be considered to the post of Junior Engineer. The petitioner was originally promoted as Junior Engineer on 01.05.2003. Therefore, the petitioner is entitled for retrospective regularization in time on par with his juniors.

3. The respondents filed counter and stated that as per Rule V (C) of Schedule II of Rule 6 of the TamilNadu Engineering Subordinate Service Specifies 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



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the case of others and if he had not passed the Account Test for Public Works

Department Officers and Subordinates." Accordingly, it does not automatically entitle a Technical Assistant who has completed four years of service as Technical Assistant, for promotion to the post of Junior Engineer. It is subject to seniority in the post of Technical Assistant and entry into zone of consideration for promotion to the post of Junior Engineer. Therefore, the petitioner cannot be entitled for automatic promotion to the post of Junior Engineer from the post of Technical Assistant on completion of four years in the post of Technical Assistant without consideration to seniority. A proposal in respect of the petitioner to consider his request had been sent by the 3rd respondent to the 1st respondent dated 11.02.2019 is solely on sympathetic grounds. The petitioner is not entitled for promotion to the post of Junior Engineer.

4. On perusal of the communication dated 11.02.2019 issued by the 3rd respondent revealed that the petitioner is very much entitled for regularization with effect from 01.01.1993. Accordingly, the petitioner has been regularized in the post of Technical Assistant with retrospective with effect from 01.01.1993. However, it was issued by the Government only on 15.05.2008.



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Therefore, there was an administrative delay in issuing of retrospective regularization orders gains credence.

5. Therefore, considering his eligibility for the post of Junior Engineer during the year 1997 on completion of four years from the post of Technical Assistant, consequent to his service retrospective regularization on 01.01.1993, the respondents are directed to grant all attendant benefits to the petitioner as per the communication dated 20.09.2018 and the orders passed by the 3rd respondent dated 11.02.2019 within a period of twelve weeks from the date of receipt of copy of this order.

6. With the above direction, this writ petition stands disposed of. No costs.

11.01.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
gvn



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G.K.ILANTHIRAIYAN. J,

gvn

To

- 1.The Principal Secretary,
Public Works Department,
Secretariat, Fort St.George,
Chennai – 600 009.
- 2.The Finance Secretary,
Secretariat, Fort St.George,
Chennai – 600 009.
- 3.Engineer in Chief and Chief Engineer (General),
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