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W.P.No.5864 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE N. MALA

W.P.No.5864 of 2016

and

W.M.P.No.5211 of 2016

R. Gunanithi

...Petitioner

-Vs-

1. The Government of Tamil Nadu,
represented by it Additional Chief Secretary,
Public Works Department,
Fort St. George,
Chennai – 600 009.
2. The Engineer – in – Chief,
Water Resources Department and Chief Engineer (General)
Public Works Department,
Chepauk,
Chennai – 600 005.
3. S. Durai
4. Sabanayagam
5. T.R.Ganesh

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the records in relating to impugned order passed by



W.P.No.5864 of 2016

the first respondent vide G.O.(D).No. 33 Public Works (A1) Department dated 10.02.2016 and quash the same in so far as serial No. 5, 9 and 13 concern, consequently direct the respondents to promote the petitioner to the post of Assistant Executive Engineer (Electrical) in Public Works Department for the year 2015 – 2016 as per the amendment issued in G.O.Ms.No. 3037 dated 22.12.1986.

For Petitioner : Mr.M.R.Jothimanian
For R1 & R2 : Mr.R. Kumaravel
Additional Government Pleader
For R3 to R5 : No appearance

ORDER

This writ petition is filed seeking for Certiorarified Mandamus to quash the impugned order passed by the first respondent vide G.O.(D).No. 33 Public Works (A1) Department dated 10.02.2016 in so far as serial No. 5, 9 and 13 concern and consequently direct the respondents to promote the petitioner to the post of Assistant Executive Engineer (Electrical) in Public Works Department for the year 2015 – 2016 as per the amendment issued in G.O.Ms.No. 3037 dated 22.12.1986.

2. The case of the petitioner is that the petitioner was selected and appointed as Junior Engineer in 1989 -1990 batch by the Tamil Nadu Public



W.P.No.5864 of 2016

Service Commission through direct recruitment and thereafter she joined as Junior Engineer on 22.11.1990 in the second respondent Department. The petitioner submits that the post of Junior Engineer was re-designated as Assistant Engineer in the year 1990 itself and she is now working as a Assistant Engineer (Electrical) in the Public Works Department, Chepauk, Chennai. According to the petitioner, the petitioner is fully qualified to the post of Assistant Executive Engineer (Electrical) in the Public Works Department as per the Government orders and special Rule for Tamil nadu Engineering Service. The petitioner's further case is that the crucial date for promotion to Assistant Executive Engineer is 1st April of every year. The first respondent sanctioned 25 vacancies for the post of Assistant Executive Engineer (Electrical) in Public Works Department vide G.O.(D).No.343, Public Works (A1) Department for the year 2015-2016 and the same was approved on 16.12.2015. The second respondent prepared a panel among the Assistant Engineers/Junior Engineers in the ratio 3:1 under the Tamil Nadu Engineering Service Rules.

3. It is further stated that as per the amendment made to the Tamil Nadu Engineering Service Rules in G.O.Ms.No.3037 dated 22.12.1986, out of every five vacancies successively reserved for Diploma Holders in the



W.P.No.5864 of 2016

category of Assistant Executive Engineers, the first four vacancies shall be filled or reserved to be filled by the recruitment by transfer from among Junior Engineers of the Tamil Nadu Engineering Sub-ordinate services and the fifth vacancy shall be filled or reserved to be filled by recruitment by transfer from among Head Draftsman Officer and Draftsman Grade -I of Tamil Nadu Engineering Subordinate Services. Therefore, the Junior Engineers recruited by TNPSC through direct recruitment should be placed above the Head Draftsman Officer and Draftsman Grade I of Tamil Nadu Engineering Subordinate Services. But the said rule was not followed by the second respondent while preparing panel for the year 2015-2016.

4. The petitioner further states that the respondents 3 to 5 were appointed as Draftsman Grade III and thereafter they were appointed as Draftsman Grade II. The Draftsman Grade II are eligible for appointment as Junior Engineer and therefore they are sent for field duty as Junior Engineers. Now, they are working as Junior Engineers from the category of Draftsman Grade II. As per the amendment issued to the special rules, the first four vacancies for the post of Assistant Engineer are to be reserved for the Junior Engineers recruited by TNPSC through direct recruitment and the 5th vacancy is reserved for Junior Engineers from the category of Draftman



W.P.No.5864 of 2016

grade II. As the respondents 3 to 5 were fitted in the panel against the amendment issued in G.O.Ms.No.3037/Public Works Department/dated 22.12.1986, the fitment of the the panel was totally unsustainable. The petitioner therefore submitted a representation to the respondents on 12.01.2016 requesting the respondents to follow the amendment issued in G.O.Ms.No.3037 dated 22.12.1986, but the respondents did not process the petitioner's representation. Aggrieved by the same, the petitioner filed W.P.No. 3571 of 2016 for issuance of writ of Mandamus directing the first respondent to include the name of the petitioner in the appropriate place in the panel of the Assistant Engineer/Junior Engineer (Electrical) for promotion to the post of Assistant Executive Engineer (Electrical) in Public Works Department for the year 2015 to 2016 as per the amendment issued in G.O.Ms.No.3037 dated 22.12.1986. In the said Writ petition, this Court vide order dated 02.02.2016 directed the first respondent to consider the petitioner's representation and to pass orders within a period of eight weeks from the date of receipt of copy of the order. It was made clear that if the amendment issued in the G.O.Ms.No. 3037 dated 22.12.1986, was applicable to the petitioner then the same should be considered by the respondents.

5. While so, on 10.02.2016, the first respondent issued an order in



W.P.No.5864 of 2016

G.O.(D) No. 33, Public Works (A1) Department promoting the respondents 3 to 5 (Serial No. 5, 9, 13) as Assistant Executive Engineer (Electrical) in Pubic Work Department. Aggrieved by the said order the present writ petition is filed.

6. The respondents filed detailed Counter stating that the contentions of the petitioner were based on wrong notions that persons promoted as Junior Engineer (Electrical) from the category of Draughtsman were to be considered against the 5th vacancy earmarked for Draughtsman category in Tamil Nadu Engineering Subordinate Service and the person recruited through Tamil Nadu Public Service Commission should be placed above the 5th vacancy position. The respondents stated that the concept of 5th vacancy as per G.O.(Ms.)No 3037 P.W.D. dated 22.12.1986 was applicable only to Branch – I - Public Works of Tamil Nadu Engineering Service and not at all applicable to Branch -V- Electrical of Tamil Nadu Engineering Service. The respondents further stated that the petitioner was not entitled to the benefits of G.O.(Ms.)No. 3037 P.W.D. dated 22.12.1986 and the promotion given to the second to fifth respondent was valid and hence the impugned order deserved to be upheld.

7. The main grievance of the petitioner is that the respondents did



W.P.No.5864 of 2016

not follow G.O.(Ms.)No. 3037 P.W.D. Dated 22.12.1986. According to the petitioner, the first four vacancies were to be filled by recruitment by transfer from among Junior Engineers of Tamil Nadu Engineering Subordinate Service and the fifth vacancy was to be filled by recruitment by transfer from among Head Draughtsman and Draughtsman Grade I of Tamil Nadu Engineering Subordinate service.

8. According to the petitioner, out of every four vacancies for the post of Assistant Executive Engineers, the first three vacancies were to be filled by promotion from among Assistant Engineers and the fourth vacancy was to be filled by direct recruitment by transfer from among Junior Engineers, Head Draughtsmen and Draughtsmen Grade I. According to the petitioner for recruitment by transfer from Head Draughtsmen and Draughtsmen Grade I of clause (iii) of the amendment, the first four post were to be filled by transfer from among Junior Engineers of the Tamil Nadu Engineering Subordinate Service and the fifth vacancy was to be filled by Head Draughtsmen and Draughtsmen Grade I. The respondent without verifying the aforesaid amendment promoted the respondents 3 to 5 in violation of Clause (iii) of the amendment. The learned counsel for the petitioner further submitted that impugned order passed by the first



W.P.No.5864 of 2016

respondent was liable to be set aside as it was in violation of the amendment.

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9. The learned Additional Government Pleader for the respondents submitted that G.O.(Ms.)No.3037 P.W.D. dated 22.12.1986 is not applicable to the petitioner as they belong to Branch-V not to Branch-I. The amendment was applicable only to Civil Engineers of Public Works Department not to Electrical Engineers of Public Works Department. He further submitted that the impugned order passed by the first respondent was unassailable.

10. Heard both sides and perused the materials available on record.

11. G.O.(Ms.)No 3037 P.W.D. dated 22.12.1986 was passed streamlining the promotional opportunities in the Public Works Department of Tamil Nadu Engineering Service Special Rules relating to the appointment of Assistant Engineers now known as Assistant Executive Engineers, Supervisors now known as Junior Engineers. It reads as follows:-

Amendments: *In the said Special Rules in Part II under Branch -I-Jublio in Rule (R) in sub rule (c) for clause (ii) the following clauses shall be substituted namely:*



WEB COPY



W.P.No.5864 of 2016

(ii) *So far as qualified and suitable candidates are available out of every four vacancies successively arising among Assistant Executive Engineers, the first three vacancies shall be filled or reserved to be filled by promotion from among Assistant Engineers and the fourth vacancy shall be filled or reserved to be filled by recruitment by transfer from among Junior Engineers, Head Draughtsman and Draughtsman Grade I*

(iii) *So far as qualified and suitable candidates are available, out of every five vacancies successively reserved to diploma holders in the category of Assistant Executive Engineers, the first four vacancies shall be filled or reserved to be filled by recruitment by transfer from among Junior Engineers of the Tamil Nadu Engineering Subordinate Service and the fifth vacancy shall be filled or reserved to be filled by recruitment by transfer from among Head Draughtsmen and Draughtsmen Grade I of Tamil Nadu Engineering Subordinate Services;*

in the Table under Rule 5 under the Table, for the method “Recruitment by transfer” in column (2) and the corresponding entries in column (3) against the category “Assistant Executive Engineers” in column (1) the following method and entries shall be substituted namely:-

<i>“Recruitment by transfer from Junior Engineer of the Tamil Nadu Engineering Subordinate Service.</i>	<i>Must have served as Junior Engineer for a period of not less than ten years.</i>
<i>Recruitment by transfer from Head Draughtsman and Draughtsman, Grade I of the Tamil Nadu Engineering Subordinate Services.</i>	<i>Must have put in twenty years service, out of which three years must have been spent as Junior Engineer in Tamil Nadu Engineering Subordinate Service.</i>



W.P.No.5864 of 2016

WEB COPY

12. The petitioner claims that as per Clause (ii) of the amendment for every four vacancies of Assistant Executive Engineers, the first three vacancies were to be filled by promotion from Assistant Engineers and the fourth vacancy was to be filled by recruitment by transfer from among Junior Engineers, Head Draughtsmen and Draughtsmen Grade – I. As per clause (iii) of the said amendment out of every five vacancies in the category of Assistant Executive Engineers, the first four vacancies were to be filled by the recruitment by transfer from among junior Engineers of the Tamil Nadu Engineering Subordinate Service and the fifth vacancy was to be filled by recruitment by transfer from among Head Draughtsmen and Draughtsmen Grade I of Tamil Nadu Engineering Subordinate Services.

13. In view of the above, the respondents were entitled to one post as against the four posts reserved for junior Engineers of Tamil Nadu Engineering Subordinate Services. But the first and second respondents without following the said rules promoted the respondents 3 to 5, who belong to the Head Draughtsmen and Draughtsmen Grade – I of Tamil Nadu Engineering Subordinate Services in the place of the petitioner who belongs



W.P.No.5864 of 2016

to the category Junior Engineer of the Tamil Nadu Engineering Subordinate Services.

14. The Learned Government Pleader in reply submits that the amendment of the Special Rules Part – II was made for Branch- I which is Public Works Department whereas the petitioner belongs to Branch V (i.e) Electrical Department. The Learned Government Pleader further submits that the said amendment applies only to Civil Engineers of PWD not to Electrical Engineers. Therefore, the amendment did not apply to the petitioner who belongs to the Electrical Department and hence the impugned order is valid.

15. The Tamil Nadu Services Manual in Section 10 deals with Tamil Nadu Engineering Service. In Part I of the said section, the first Branch of service is the Public Works Department and Part II of Branch I of Public Works Department categories various branches under the category of officers. In Part II of Branch I (Public Works Department) the various categories of officers (from 1-6) are given. The petitioner and the respondents belongs to category 5 and 6. Category 5 refers to Assistant Engineer and category 6 refers to Head Draughting Officer. From the



W.P.No.5864 of 2016

manual, it is seen that for the post of Assistant Executive Engineer, two methods of recruitment are provided. One by promotion from among Assistant Engineer and the other by transfer from among Junior Engineers, Head Draughtsman and Draughtsman Grade II.

16. As per clause (iii) of the amendment, out of every 5 vacancies successfully reserved for diploma holders in the category of Assistant Executive Engineer, the first four vacancies shall be filled or reserved to be filled by transfer from among Junior Engineers of Tamil Nadu Engineering Subordinate Services and the 5th vacancy by transfer from among Head Draughtsman and Draughtsman Grade I of Tamil Nadu Engineering Subordinate Services. It is admitted that the petitioner's services were regularised as Junior Engineer Electrical vide order dated 25.11.1993. The said order clearly states that the petitioner was appointed to the post of Junior Engineer Electrical in Public Works Department by the Tamil Nadu Public Service Commission in the year 1989 to 1990 and regularised in Branch I of Category of the Tamil Nadu Engineering Services and therefore clause (iii) of the Amendment applies to the petitioner.



W.P.No.5864 of 2016

17. Even as per the proceedings of the respondents, the petitioner was appointed in Branch I category. Hence the amendment which refers to Special Rules in Part II under Branch I necessarily applies to the petitioner. Therefore, the contention of the respondents that the amendment does not apply to the petitioner cannot be countenanced. As the specific stand of the respondents was that the Amendment did not apply to the Petitioner because he did not belong to Branch I, it appears that the respondents have not applied the Amendment while passing the impugned order. Hence the impugned order promoting the respondents 3 to 5 in violation of the Amended rules cannot be sustained.

18. The learned counsel for the petitioner submitted that the petitioner was subsequently promoted to the post of Assistant Executive Engineer in the panel year 2016-2017. The learned counsel for the petitioner further submitted that the petitioner as well as the respondents 3 to 5 subsequently retired and therefore, the relief should be moulded by directing the respondents 1 and 2 to pay the monetary benefits to the petitioner by considering his promotion in the panel for 2015-2016. As rightly submitted by the petitioner's counsel in view of the subsequent developments no



W.P.No.5864 of 2016

purpose would be served in quashing the impugned order. Therefore the relief in the writ petition is moulded by directing the respondents 1 & 2 to pay the petitioner all monetary benefits by considering his promotion in the panel year 2015-2016. The respondents are directed to sanction the benefits within a period of 12 weeks from the date of receipt of a copy of this order.

19. Accordingly, the writ petition is allowed. Consequently, connected W.M.P. is closed. No costs.

02.09.2024

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Index : Yes/No

Speaking/Non Speaking order

To

1. The Additional Chief Secretary,
Public Works Department,
Fort St. George, Chennai – 600 009.
2. The Engineer – in – Chief,
Water Resources Department and Chief Engineer (General)
Public Works Department,
Chepauk, Chennai – 600 005.



WEB COPY



W.P.No.5864 of 2016

N. MALA, J.

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W.P.No.5864 of 2016

02.09.2024