



WP.No.25072 of 2024
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In the High Court of Judicature at Madras

**Reserved on :
13.9.2024**

**Delivered on :
20.9.2024**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition Nos.25072, 25075, 25078, 25091, 25092,
25094, 25096 & 25097 of 2024 &
all connected pending WMPs

N.Natrayanasamy,
Junior Engineer, Zone I,
Erode Corporation, Erode-9.

...Petitioner in WP.
No.25072 of 2024

R.Sambandan, Junior Engineer,
Zone IV, Erode Corporation,
Erode-9.

...Petitioner in WP.
No.25075 of 2024

S.Chandrasekaran, Junior
Engineer, Zone-
Erode Corporation, Erode-9.

...Petitioner in WP.
No.25078 of 2024

B.Senthamarai, Junior
Engineer, Zone 4,
Erode Corporation, Erode-9.

...Petitioner in WP.
No.25091 of 2024

B.Sivakumar, Junior
Engineer, Zone 3,
Erode Corporation, Erode-9.

...Petitioner in WP.
No.25092 of 2024



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K.Natarajan, Junior
Engineer, Zone 3,
Erode Corporation, Erode-9.

...Petitioner in WP.
No.25094 of 2024

B.Thirumurthy, Junior
Engineer, Zone 1,
Erode Corporation, Erode-9.

...Petitioner in WP.
No.25096 of 2024

K.Balasubramani, Junior
Engineer, Zone 3,
Erode Corporation, Erode-9.

...Petitioner in WP.
No.25097 of 2024

Vs

1.The State of Tamil Nadu, rep.
by its Secretary to Government,
Municipal Administration &
Water Supply Department,
Secretariat, Namakkal Kaviner
Maligai, Chennai-9.

2.The Director of Municipal
Administration, No.75,
Santhome High Way, MRC Nagar,
Raja Annamalai Puram,
Chennai-28.

3.The Commissioner, Erode City
Municipal Corporation, Erode.

...Respondents in
all the WPs

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of a Writ of Mandamus directing the
respondents herein to promote the petitioners to the post of Assistant
Engineer by taking into consideration the fact that the Government
has issued G.O.Ms.No.516 Municipal Administration & Water Supply



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(MC7) Department dated 02.9.2023 and G.O.Ms.No.679 Municipal Administration & Water Supply (MC7) Department dated 14.12.2023 whereby the Government directed the Appointing Authorities to first effect promotions and before making appointments by direct recruitment vide Notification No.01/DMA/Recruitment/2024 dated 02.2.2024.

For Petitioners in all the WPs	:	Mrs.Dakshayani Reddy, SC for Mr.P.Rajavel
For Respondents all the WPs	in :	Mr.J.Ravindran, AAG assisted by Dr.T.Seenivasan, SGP

COMMON ORDER

A common issue is involved in all these writ petitions and hence, they are taken up together, heard and disposed of by this common order.

2. These writ petitions have been filed by the respective petitioner seeking for the issuance of a Writ of Mandamus to direct the respondents to promote the petitioners to the post of Assistant Engineer in line with G.O.(D) No.516 dated 02.9.2023 and G.O.(D) No. 679 dated 14.12.2023 and consequently to direct the Appointing Authorities to first effect promotion to the petitioners to the post of



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Assistant Engineer before making appointments by direct recruitment vide Notification dated 02.2.2024.

3. The case of the petitioners is as follows :

(i) The petitioners were appointed in various posts in Erode Municipality/Corporation at various point of time. For better appreciation, the particulars of their respective appointment are tabulated as hereunder :

S. No.	W.P.No.	Post in which the petitioner was appointed	Date of appointment	Municipality/ Corporation
1	25072 of 2024	Electrician II	22.11.1991	Erode Municipality
2	25075 of 2024	Tap Inspector/Overseer	01.3.2006	Hosur Municipality
3	25078 of 2024	Work Inspector	24.5.2006	Erode Municipality
4	25091 of 2024	Work Inspector	25.5.2006	Erode Municipality
5	25092 of 2024	Wireman	20.12.1989	Erode Municipality
6	25094 of 2024	Work Inspector	25.5.2006	Koonur Municipality
7	25096 of 2024	Work Inspector	20.7.2007	Erode Municipality
8	25097 of 2024	Technical Assistant	21.10.2009	Erode Corporation

(ii) The Erode Municipality was upgraded as a Corporation with effect from 01.1.2008 and G.O.Ms.No.206 dated 22.10.2008 was issued by the Government for the purpose of grouping of staff pattern, laying down cadre strength, creation of additional posts, avenue for promotion, etc. This was based on the Service Rules, which were already in existence for corporations in G.O.Ms.No.237



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dated 26.9.1996. All the petitioners ultimately reached the position/post of Junior Engineer in the Corporation in the year 2019. The next avenue of promotion for the petitioners is to the post of Assistant Engineer as per the Service Rules.

(iii) In order to make all the Service Rules uniform for all the local bodies, the Government brought in the Tamil Nadu Urban Local Bodies Rules, 2023 (for short, the Rules) vide G.O.Ms.No.152 dated 20.10.2022 to govern the employees of the city municipal corporations, municipalities and town panchayats. These Rules came into force with effect from 13.4.2023.

(iv) According to the petitioners, the Rules contained a saving clause under Rule 202, which specifies that nothing contained in the General Rules and Special Rules shall adversely affect any person, who is a member of any service in municipal corporation, municipal council or town municipal panchayat on the date of coming into force of the Rules.

(v) The grievance of the petitioners is that they completed five years of service as Junior Engineers and were waiting for promotion to the post of Assistant Engineer prior to the Notification of the Rules. However, they were not considered for promotion to the post of Assistant Engineer in the panel for the year 2023-2024 on the ground



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that the petitioners had not completed five years of service as Junior Engineers. The petitioners claim that they are entitled to promotion to the post of Assistant Engineer with effect from 20.2.2024.

(vi) Even after completion of five years as Junior Engineers, the respondents did not consider the claim of the petitioners for promotion to the post of Assistant Engineer despite issuance of G.O.(D) No.516 dated 02.9.2023 and G.O.(D) No.679 dated 14.12.2023. The respondents were attempting to fill up the vacancies through direct recruitment by issuing the Notification dated 02.2.2024 to fill up the vacancies to the post of Assistant Engineer in the corporations. According to the petitioners, the Notification dated 02.2.2024 was issued by disregarding the two Government Orders that were issued, which safeguard the rights of the existing employees in various urban bodies. It is under these circumstances, these writ petitions came to be filed before this Court to direct the respondents to promote the petitioners to the post of Assistant Engineer in the available vacancies and thereafter make appointments to the said post by direct recruitment.

4. When these writ petitions came up for admission on 29.8.2024, this Court found that a prima facie case has been made



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out and accordingly, this Court granted an order of interim injunction restraining the respondents from filling up the post of Assistant Engineer at Erode Corporation by direct recruitment pursuant to the Notification dated 02.2.2024.

5. Pursuant to the interim order granted, respondents 1 and 2 filed petitions to vacate the interim order granted by this Court along with separate counter affidavits with the same contents. The specific stand taken by respondents 1 and 2 is that none of the petitioners has completed five years of service as Junior Engineers as on the crucial date i.e. 15.3.2023 and that therefore, they were not considered for promotion to the post of Assistant Engineer in the panel for the year 2023-2024.

6. The further stand taken by respondents 1 and 2 in the counters is that in so far as the panel for the year 2024-2025 is concerned, the crucial date is 15.3.2024, that the two Government Orders, which were relied upon by the petitioners, granted permission to effect promotion to fill up all the vacancies, which arose from 13.4.2023 to 14.3.2024 by taking into account the crucial date as 15.3.2023, that since none of the petitioners has completed



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five years of service as Junior Engineers as on 15.3.2023, they were not considered for promotion to the post of Assistant Engineer, that therefore, for the existing vacancies in the post of Assistant Engineer in the Erode Corporation, a publication was made on 02.2.2024 for filling up the vacancies by direct recruitment since no suitable candidates were available for filling up the vacancies by promotion and that by relying upon Rule 202 of the Rules, the Notification for filling up the vacancies by direct recruitment was published on 02.2.2024 as per the vacancies that arose for the year 2023-2024.

7. In the counters, respondents 1 and 2 also took a stand that the Notification dated 02.2.2024 involves filling up the post of Assistant Engineer by direct recruitment as well as 15 other posts totalling to 2655 vacancies in 158 urban local bodies under the control of the second respondent and other entities of the Greater Chennai Corporation, the Tamil Nadu Water Supply & Drainage Board and the Chennai Metropolitan Water Supply and Sewerage Board and that since the petitioners are not entitled to be considered for promotion to the post of Assistant Engineer, their claim is unsustainable. Ultimately, respondents 1 and 2 sought for vacating the interim order already granted and also for the dismissal of these



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writ petitions.

8. Mrs.Dakshayani Reddy, learned Senior Counsel appearing on behalf of the petitioners made the following submissions :

(a) G.O.(D) No.516 dated 02.9.2023 was issued to fill up the promotional vacancies in the urban local bodies. Rule 202 of the Rules, which provides a saving clause to safeguard the members of any service in a municipal corporation, municipal council, etc., was taken into consideration and permission was granted to fill up the promotional vacancies, which exist in the urban local bodies prior to coming into the force of the Rules on 13.4.2023 by taking the educational qualifications prescribed in the Service Rules that existed prior to the commencement of the Rules.

(b) G.O.(D) No.679 dated 14.12.2023 was issued by the Government giving various directions to fill up the vacancies in several posts in the urban local bodies and the relevant portions relied upon are extracted as hereunder :

"7.....

(i) First promotion after commencement of Tamil Nadu Urban Local Bodies Rules, 2023 shall be given to the eligible employees of corporations/municipalities/ town panchayats by the appropriate competent authority prescribed under the Tamil Nadu Urban Local Bodies Rules, 2023, by taking into account of the



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qualifications prescribed in the Service Rules which was existed prior to the commencement of the Tamil Nadu Urban Local Bodies Rules, 2023 by invoking provision made in Rule 202 of the said Rules.

(ii) The Additional Chief Secretary/Commissioner, Greater Chennai Corporation, the Director of Municipal Administration and the Director of Town Panchayat are permitted to give such first promotion to fill up the vacancies which exist in the urban local bodies upto 14.3.2024 by the appropriate authority competent under the Tamil Nadu Urban Local Bodies Rules, 2023 by taking into account of the qualifications prescribed in the Service Rules that existed prior to the commencement of the Tamil Nadu Urban Local Bodies Rules, 2023.

(iii) The vacancies which are existing from 13.4.2023 to 14.3.2024 shall be filled up taking into the account of the crucial date of 15.3.2023."

(c) As per G.O.Ms.No.59 dated 03.3.2016, the post of Assistant Engineer can be filled up through direct recruitment and through recruitment by transfer from the holders of the post of Junior Engineer in the ratio of 3 : 1. In so far as filling up of the post through recruitment by transfer is concerned, a candidate must possess a degree in engineering or town planning from a recognized university and must have served as a Junior Engineer for a period of not less than five years. All the petitioners fulfilled this minimum qualification.

(d) All the petitioners completed five years of service in the



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post of Junior Engineer as on 20.2.2024 and therefore, under G.O.(D) No.679 dated 14.12.2023, the petitioners ought to have been granted promotion to the post of Assistant Engineer. In so far as the Erode Corporation is concerned, there are 11 vacancies in the post of Assistant Engineer and for the year 2023-2024, not a single person was promoted to the post of Assistant Engineer and all the vacancies were intact.

(e) G.O.(D) No.516 dated 02.9.2023 had specifically taken into account Rule 202 of the Rules and directed that the promotion to the vacancies, which have been in existence prior to 13.4.2023, should be filled up by taking into account the existing Service Rules. Totally, 11 vacancies were existing prior to 13.4.2023 and the respondents ought to have considered only the petitioners for appointment towards these vacancies considering the fact that the petitioners were qualified as on 14.3.2024. Only on completion of this process, the respondents should have resorted to direct recruitment to fill up the posts.

(f) Only for those vacancies, which have arisen after 13.4.2023 till 14.3.2024, the Government had prescribed the crucial date as 15.3.2023 whereas there were existing vacancies prior to 13.4.2023, which ought to have been filled up first without being bogged down



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by the crucial date fixed in the relevant Government Order.

(g) As an alternative submission, G.O.Ms.No.221 dated 27.8.1992 was relied upon and it provided for re-designation of the petitioners to the post of Assistant Engineer on acquiring a degree in engineering and all the petitioners acquired this qualification even in the year 2019 and therefore, the petitioners must at least be re-designated as Assistant Engineers.

(h) G.O.Ms.No.59 dated 03.3.2016 came into effect at a later point of time and it prescribed a period of five years as Junior Engineer for recruitment by transfer. In many instances, the Government had relaxed this requirement in so far as the re-designation was concerned and such relaxation of the Rules was also pointed out in the additional typed set of papers filed on the side of the petitioners.

(i) Out of the 11 vacancies, the post of Assistant Engineer must be filled up in the ratio 1 : 3 and hence, three posts ought to be filled up only by way of promotion and the balance eight posts can be filled up through direct recruitment whereas all the 11 posts are now sought to be filled up through direct recruitment. Hence, at least, those posts, which are designated for promotion, can be left untouched and should not be filled up in the process of direct



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recruitment.

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9. Per contra, Mr.J.Ravindran, learned Additional Advocate General appearing on behalf of the respondents made the following submissions :

(a) All the petitioners became Junior Engineers on 20.2.2019 and they completed five years period only on 20.2.2024. G.O.(D) No.516 dated 02.9.2023 specifically provides that the vacancies that arose in various posts in the urban local bodies prior to coming into the force of the Rules on 13.4.2023 must be filled up by the Appropriate Authority by taking the educational qualifications prescribed by the Service Rules that existed prior to the commencement of the Rules.

(b) Rule 202(4) of the Rules specifically states that in any case, if no suitable candidates are available for filling up the vacancies through promotion or through recruitment by transfer, such posts shall be filled up by direct recruitment. As on the date of Notification, which prescribes for filling up the vacancies arising from 13.4.2023 to 14.3.2024, the crucial date was fixed as 15.3.2023 and as on that date, none of the petitioners had completed five years as Junior Engineers nor they possess necessary qualifications prescribed under



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the Rules. Therefore, no suitable candidates were available for filling up the vacancies through promotion or through recruitment by transfer and therefore, the vacant posts are sought to be filled up by direct recruitment by resorting to Rule 202(2) of the Rules.

(c) In so far as the alternative submission made on the side of the petitioners is concerned by relying upon G.O.Ms.No.221 dated 27.8.1992, it applied only to municipalities and not to corporations. Hence, the petitioners cannot seek for re-designating them as Assistant Engineers by placing reliance on the relevant Government Order.

(d) In so far as the relaxation that was given by the Government in some of the cases is concerned, it a prerogative power given to the Government considering the peculiar facts of each case and such a relaxation cannot be sought for as a matter of right.

(e) There are totally 11 vacancies available out of the sanctioned 16 vacancies. Out of the 16 sanctioned vacancies, 12 vacancies are relatable to direct Assistant Engineers and four vacancies are relatable to promotion from Junior Engineers. In those 12 vacancies, 9 were directly recruited and 3 were brought in by promotion. In these 11 vacancies, one vacancy was filled up in the teeth of a court order, in which, the contempt proceedings were



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pending. Hence, out of the balance 10 vacancies, 9 posts are relatable to direct recruitment and one post alone is left for consideration for promotion from the post of Junior Engineer. Even this one post cannot be filled up by way of promotion since none of the petitioners fulfilled the five years qualification as on the crucial date. Therefore, even that one post is filled up by direct recruitment by resorting to Rule 202(4) of the Rules.

(f) The process of filling up of the total 2655 vacancies, which were sought to be filled up, has been stalled due to the interim order granted by this Court and such an interim order was granted pursuant to filing of these writ petitions by the petitioners, who have not even fulfilled the qualification prescribed as on the crucial date. Consequently, the interim order must be vacated and all the writ petitions are liable to be dismissed.

10. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the relevant Government Orders.

11. The short issue that arises for consideration in all these writ petitions is as to whether the petitioners are entitled to be promoted



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to the post of Assistant Engineer in the available vacancies before making appointments by direct recruitment vide Notification dated 02.2.2024.

12. Before coming into the force of the Rules from 13.4.2023, the then rule position was governed by the Tamil Nadu Municipal Corporations Engineering and Water Supply Service Rules, 1996. For the post of Junior Engineer, the mode of selection that was prescribed was by direct recruitment and by promotion. For direct recruitment, the candidate must possess a degree in engineering or town planning from a recognized university and must have passed the departmental test prescribed for the corporation before the completion of probation. The ratio fixed between direct recruitment of Assistant Engineer and appointment through Junior Engineer by promotion was 3 : 1.

13. G.O.Ms.No.59 dated 03.3.2016 brought in an amendment whereby for recruitment by transfer, a candidate must possess a degree in engineering or town planning from a recognized university and must have served as a Junior Engineer for a period of not less than five years. Thus, the qualification of serving five years as Junior



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Engineer came into force by virtue of this Government Order.

14. G.O.Ms.No.152 dated 20.10.2022 was issued for fixing of norms according to population, creation of uniform category of posts, regularization and reorganization of existing posts and it allowed 3,417 posts to the 20 municipal corporations. This Government Order was issued pursuant to the decision taken by the Government to bring in uniformity in all the Service Rules to govern the employees of the bodies of such city municipal corporations, municipalities and town panchayats.

15. The Tamil Nadu Urban Local Bodies Rules, 2023 were brought into force with effect from 13.4.2023 for uniform service rules to be applied across the municipal corporations including the Chennai Corporation, which, till then, was considered as a separate unit. Rule 202 of the Rules contained the saving clause and it specified that nothing contained in the General Rules and Special Rules vide the Rules notified in the year 2023 will adversely affect any person, who is a member of any service in a municipal corporation, municipal council or town panchayat on the date of coming into force of the Rules.



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16. G.O.(D) No.516 dated 02.9.2023 was issued by the Government to fill up the promotion vacancies in the urban local bodies by taking the educational qualifications prescribed in the erstwhile Service Rules prior to the coming into the force of the Rules on 13.4.2023. Paragraph 8 of this Government Order granted permission to the concerned Authorities to fill up the promotion vacancies, which existed in the urban local bodies prior to the coming into force of the Rules on 13.4.2023.

17. G.O.(D) No.679 dated 14.12.2023 was issued by the Government to fill up the vacancies in the urban local bodies and the specific orders passed by the Government in this regard have already been extracted supra.

18. A careful reading of the directions issued by the Government would show that the first promotion after coming into force of the Rules on 13.4.2023 should be given to the eligible employees of corporations/municipalities/town panchayats, as the case may be, by taking into account the qualifications prescribed in the Service Rules, which existed prior to the coming into force of the



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Rules. It was also made clear that such promotion to fill up the vacancies was permitted upto the vacancies as on 14.3.2024. For the vacancies arising from 13.4.2023 to 14.3.2024, the crucial date was fixed as 15.3.2023.

19. A candidate, in order to be considered for promotion to the post of Assistant Engineer, must fulfil the qualification prescribed under G.O.Ms.No.59 dated 03.3.2016, which provided for possessing a degree in engineering or town planning from a recognized university and serving as a Junior Engineer for a period of not less than five years. This qualification must be possessed as on the crucial date fixed by the Government Order, which resulted in the issuance of the Notification dated 02.2.2024.

20. There is no dispute with regard to the fact that all the petitioners became Junior Engineers on 20.2.2019 and they completed five years only on 20.2.2024. It is not in dispute that totally, 11 vacancies were identified in the Erode Corporation. As per the existing Service Rules, the vacancies should have been filled up in the ratio 3 : 1 i.e. direct recruitment : promotion. If that is done, eight vacancies must be filled up by direct recruitment and three



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vacancies must be filled up by way of promotion.

21. The petitioners have taken a stand that the vacancies have arisen even prior to 13.4.2023, that therefore, the crucial date will not apply to them and that since they were qualified even prior to 13.4.2023 (the date, on which, the Rules came into force), their rights are saved under Rule 202 of the Rules.

22. The crucial date that was fixed for promotion to the post of Assistant Engineer was 15.3.2023. As on that date, none of the petitioners was qualified by completing five years as Junior Engineers. Admittedly, they got qualified only on 20.2.2024. Therefore, at the best, the petitioners can be considered only in the panel for the year 2024-2025 and not before that.

23. As per the Notification dated 02.2.2024, the vacancies are sought to be filled up pursuant to the vacancies that arose for the year 2023-2024 after giving promotion to all the eligible existing employees vide G.O.(D) No.516 dated 02.9.2023 and G.O.(D) No.679 dated 14.12.2023.



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24. Rule 202(4) of the Rules specifically provides that if, in any case, no suitable candidates are eligible for filling up the vacancies through promotion or through recruitment by transfer, such vacant posts shall be filled up by direct recruitment. This Rule has now been resorted to by the respondents to fill up the vacancies through direct recruitment since no suitable candidate is available for filling up the vacancy by promotion as on the crucial date i.e. 15.3.2023.

25. This decision taken by the respondents cannot be faulted since the vacancies will have to be filled up for the smooth and effective functioning of the urban local bodies to meet the exigencies of public service and the Authorities are not in a position to wait for the petitioners to qualify themselves in the panel for the year 2024-2025 and grant them their promotion. In the light of Rule 202(4) of the Rules, it is not necessary for the respondents to wait for the petitioners to qualify themselves. Instead, they can always fill up the posts under the promotion category also through direct recruitment when the suitable candidates are not available as on the crucial date.

26. In so far as the alternative submission made on the side of the petitioners for re-designation of the petitioners as Assistant



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Engineers is concerned, a careful reading of G.O.Ms.No.221 dated 27.8.1992 would show that it applied only to the municipalities and the entire Government Order dealt with only municipalities. There is a passing reference that the Junior Engineers acquiring necessary degree in engineering could be re-designated as Assistant Engineers as in the case of Junior Engineers in the Municipal Corporations and the Government Departments. That, by itself, will not make this Government Order applicable to a corporation and more particularly when the Government Order specifically confines itself only to municipalities. Therefore, the petitioners will not be entitled to be re-designated as Assistant Engineers only based on their qualification by relying on G.O.Ms.No.221 dated 27.8.1992.

27. In so far as the relaxation of the rules that were resorted to in some of the cases in Coimbatore Corporation is concerned, such relaxation of the rules cannot be claimed as a matter of right and it is the prerogative of the Government to grant such relaxation in appropriate cases and those cases cannot be cited as precedents in all cases. In the absence of fulfilling necessary qualifications, a candidate cannot, as a matter of right, seek for promotion by asking for the relaxation of the rules. Hence, this submission made on the



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side of the petitioners is also liable to be rejected by this Court and is accordingly rejected.

28. It is true that out of the 11 vacancies, three vacancies fell within the scope of promotion from the post of Junior Engineer. However, since suitable candidates are not available as on the crucial date, Rule 202(4) of the Rules provides for filling up these vacancies also by direct recruitment. The relevant Rule has not been put to challenge and hence, the process of filling up of those three vacancies by direct recruitment cannot be held to be illegal.

29. In the light of the above discussions, this Court holds that the petitioners are not entitled for being considered for promotion to the post of Assistant Engineer towards the vacancies that arose for the year 2023-2024. Consequently, it is left open to the respondents to proceed further to fill up the vacancies by direct recruitment as per the Notification dated 02.2.2024.

30. In the result, the writ petitions are dismissed. No costs. Consequently, all connected pending WMPs are also dismissed.



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To

- 1.The Secretary to Government of
Tamil Nadu, Municipal Administration
& Water Supply Department,
Secretariat, Namakkal Kaviner
Maligai, Chennai-9.
- 2.The Director of Municipal Administration,
No.75, Santhome High Way, MRC Nagar,
Raja Annamalai Puram, Chennai-28.
- 3.The Commissioner, Erode City
Municipal Corporation, Erode.

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N.ANAND VENKATESH,J

RS

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