



Writ Appeal No.1 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
08.07.2024

PRONOUNCED ON
08.08.2024

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THE HONOURABLE MR. ACTING CHIEF JUSTICE
D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K. KUMARESH BABU

Writ Appeal No.1 of 2023

M. Balashanmugam

... Appellant

Vs

1. The Secretary to Government of Tamil Nadu,
Department of Highways and Small Ports (HK2)
Secretariat, Chennai – 600 009.

2. The Chief Director,
Department of Highways and Rural Works,
Chepauk, Chennai – 05.

3. The Divisional Engineer (H)
Rural Roads Division,
Coimbatore – 9.

4. The District Collector,
Coimbatore District,
Coimbatore.

... Respondents

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 10.08.2022 made in W.P.No.5179 of 2015 and



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pass such further order.

For Appellant : Mr.K.Sridhar

For Respondents : Mr.C.Kathiravan Spl G.P for RR1to 4

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra Court Appeal had been filed by the unsuccessful Writ Petitioner in which his request to regularise him from the year 1984 in the post of Road Inspector was negatived and the consequential order in which his request for granting of promotion in an anterior date was also rejected.

2. Heard Mr.K.Sridhar learned counsel appearing for the appellant and Mr.C.Kathiravan learned Special Government Pleader appearing on behalf of the respondents 1 to 4.

3. Mr.K.Sridhar, learned counsel appearing for the appellant would submit that the appellant was appointed as a Road Inspector on 13.09.1972 on temporary basis in the Highways Department and thereafter, he was posted as Blue Print Operator by proceedings dated 22.12.1975 in the Rural Road Division. Again the appellant was repatriated as Road



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Inspector in the year 1984, where he continued to work till 1995. Again he was sent on deputation as an Overseer at Panchayat Union, Gangavalli, where he worked till his repatriation in the year 2007. By proceedings dated 24.04.2008, he had been promoted as Junior Engineer and on attaining the age of superannuation on 30.04.2008, he was also allowed to retire from service. After attaining the age of superannuation, the appellant had made a representation to the authorities seeking retrospective promotion in the post of Junior Engineer with effect from the date on which his juniors were promoted. The said representation was rejected by the first respondent by proceedings dated 12.07.2010, on the ground that he had worked as Overseer on various terms and conditions in the Department of Rural Development on deputation and therefore, he was not entitled for seeking retrospective promotion.

4. He would further submit that pending the Writ Petition, a claim had been made by the Department that by proceedings dated 22.08.2002 the appellant's services in the post of Road Inspector was regularised only from 01.01.1987 and thereafter, he had not completed four years of service



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as Road Inspector which is the prescribed qualification apart from the

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Educational qualification for considering a person for promotion as Junior Engineer on par with his juniors. Therefore, he had also made an amendment to the Writ Petition challenging the said order. He would further contend that the appellant on repatriation of his deputation came to the Highways Department on 22.08.1984 and he had been working as a Road Inspector from then. Therefore his regularisation as Road Inspector from the year 1987 firstly is illegal and therefore, he should have been regularised as Road Inspector from 22.08.1984, and if that is taken in account, he would also have been entitled to promotion as that of his juniors who were promoted in the year 1990. Again, the appellant was sent on deputation in the year 1995 till 2007 in Panchayat Union service as Overseer. The appellant was repatriated to the parent Department in December 2007 and he was also granted promotion as Junior Engineer only on 28.04.2008. Had the period of service from 1984 been taken into account in the cadre of Road Inspector, he would have completed four years of required service much before 1990 i.e., the date on which his juniors were promoted and therefore, his promotion in the year 2008, is to date



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back atleast notionally from the 1990 & all benefits should be granted to the appellant. These aspects have been completely overlooked by the learned Single Judge and the learned Single Judge had held that the appellant was repatriated to the parent Department on his request and that only on completion of four years of requisite service in the cadre of Road Inspector Grade I, he was promoted on 28.04.2008 and therefore, the claim of the appellant for retrospective promotion and other consequential benefits has been rightly rejected by the respondents.

5. He would further submit that even assuming that the appellant had been regularised only in the year 1987, he is entitled for grant of promotion as Junior Engineer after completion of four years in the said cadre by accepting the regularisation of the year 1987 and he would have been entitled to be promoted in the year 1991 atleast or when his juniors were promoted in the year 1990, the appellant cannot have been denied promotion atleast from the year 1991. These aspects have also been overlooked by the learned Single Judge and hence he would seek interference with the order passed by the learned Single Judge.



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6. Countering his arguments, Mr.C.Karthiraven, learned Special Government Pleader would contend that it is true that the appellant was enlisted as Road Inspector in the year 1972, his enlistment was only on temporary basis and thereafter, due to exigences of the circumstances, he was deputed to the Rural Road Division as a Blue Print Operator, where he worked in the said post from 1975 till 1984. In the year 1984, the appellant was repatriated and thereafter was regularised by proceedings in the year 2002 w.e.f., 01.01.1987. He would submit that the appellant was granted notional promotion as Road Inspector Grade-I by proceedings dated 14.12.2007 only w.e.f., 20.01.1997.

7. He would further submit that the appellant was sent on deputation as Overseer by proceedings dated 13.12.1995, wherein he worked till 31.10.2007 and was repatriated to the parent Department on 01.12.2007. In that context, he would submit that the appellant during his deputation had been notionally promoted by proceedings dated 14.12.2007 i.e., after his repatriation to the parent Department only from 20.01.1997. He was



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also promoted as Junior Engineer on temporary basis by proceedings dated 24.04.2008, in which post he joined on 28.04.2008 and superannuated on 30.04.2008. He would submit that the appellant had not completed four years of service as Road Inspector Grade-I, which is the feeder category to the promotional post of Junior Engineer as on 01.11.1990. Since the appellant had not completed four years of service in the feeder category, he is not entitled for seeking promotion to the post of Junior Engineer. He would heavily rely upon Rule 9 of the Tamil Nadu State and Subordinate Services Rules, and contend that when a member of the service had been appointed to any other service outside his regular line and continues in service beyond the period of five years, he shall not be considered for promotion or appointment by recruitment by transfer to a higher post in his regular line even though he is otherwise qualified under the Rules for which promotion or appointment unless he returns to the former service and puts in a fresh service for a period of not less than one year in former service. In that aspect, he would contend that the appellant who was originally repatriated from the Rural Roads Division in the year 1984, his appointment was only on temporary basis and thereafter, only his services



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have been regularised w.e.f., 1987 by proceedings dated 22.08.2002. The appellant had not challenged the said proceedings even during the filing of the Writ Petition, only when an objection was taken, the appellant had filed an application for amendment in the year 2016.

8. He would further contend that after completing the qualifying service, the appellant was promoted as Road Inspector Grade-I w.e.f., 20.01.1997 by proceedings dated 14.12.2007. On the date of his promotion, he was working as an Overseer on deputation. The said promotion was also granted to him as it was within the period of five years of his deputation. The appellant was repatriated to the parent Department in the year 2007 and taking into consideration that he had been repatriated to the parent Department, he was promoted on temporary basis as a Junior Engineer. He would submit that the appellant was only promoted on a temporary basis prior to his superannuation and he had never been promoted as a regular Junior Engineer and he had also superannuated on 30.04.2008. Therefore, for all these reasons, he would contend that there



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was no necessity to interfere with the order passed by the learned Single

Judge.

9. We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

10. It is an admitted case that the appellant was originally appointed on temporary basis and his appointment as Road Inspector was only regularised w.e.f., 01.01.1987 by G.O.3(D).No.174, Highways SR-II Department, dated 22.08.2002. Hitherto, the appellant had not challenged the said proceedings by making a claim that he ought to have been regularised w.e.f., 22.08.1984, the date on which he was repatriated to the parent Department. He was also de-promoted as Road Inspector Grade-I in the year 1997, while he was on deputation as Overseer in Panchayat Union. The appellant had been repatriated to the Parent Department from 01.12.2007. By proceedings dated 30.11.2007, it had been intimated to



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him that he would be placed '*last in the seniority list of Road Inspectors*'.

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This proceedings has also not been challenged by the appellant. All his request was to grant promotion on par with his juniors, who were promoted as Junior Engineers by the proceedings of the Chief Engineer on 01.11.1990. The appellant had also produced the said order of promotion of his juniors, which had been made by invoking the powers under Rule 39(a)(1) of the Tamil Nadu State and Subordinate Services Rules. A reading of the said Rule would indicate that the said promotion was a temporary promotion owing to an emergency situation in public interest. When that being so, the appellant firstly cannot seek for promotion on par with his juniors, as they have been promoted only on temporary basis in the year 1990. The appellant had also been only promoted on temporary basis by invoking the very same Rule 39(a)(i) of Tamil Nadu State and Subordinate Services Rules by proceedings dated 24.04.2008. The appellant had never been promoted as a Junior Engineer on a regular basis in a regular substantive vacancy. When that being so, he cannot claim to make a retrospective promotion to an anterior date particularly to the date on which his juniors have been promoted on temporary basis. Further



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when the appellant had never been promoted on substantive vacancy, he cannot be said to have been holding the post of Junior Engineer and he cannot also seek to have a retrospective promotion in a post to which he had not been substantively promoted. Further, even assuming that he had been regularly promoted in a substantive vacancy by application of Rule 9 of the Tamil Nadu State and Subordinate Services Rules, particularly, proviso to the said Rule, he would not also be entitled to seek promotion retrospectively because after his repatriation, he should serve in the feeder category for atleast one year. Admittedly, when he was deputed to the Panchayat Union as an Overseer in the year 1995 and he was repatriated to the parent Department in the year 2007. Therefore, he also cannot seek any promotion to an anterior date.

11. For the aforesaid reasons, we do not find any necessity to interfere with the order passed by the learned Single Judge, even though the same had been passed on different consideration.

12. In fine, the Writ Appeal fails and the same is accordingly



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dismissed. However, there shall be no order as to costs.

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(D.K.K.,A.C.J.) (K.B., J.)
08.08.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

The Government of Tamil Nadu,
Represented by its Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai – 600 009.



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D.KRISHNAKUMAR., ACJ.,
and
K.KUMARESH BABU.,J.

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A Pre-delivery Judgment made in
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