



W.A.(MD)No.105 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

CORAM:

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**

AND

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

W.A.(MD)No.105 of 2023

and

C.M.P.(MD)Nos.1435 of 2023 & 7364 of 2024

The Commissioner,
Madurai Municipal Corporation,
Madurai.

... Appellant

-Vs-

1.P.Solaimalai

2.The Secretary to the Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009.

3.The Commissioner,
Municipal Administration,
75, Santhom High Road, R.A.Puram,
M.R.C. Nagar, Chennai-600 028.

... Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 24.10.2019 made in W.P.(MD)No.11931 of 2019 on the file of this Court.



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For Appellant : Mr.S.Vinayak
For R1 : Mr.B.Saravanan, Senior Counsel,
for Mr.C.Jeganathan
For R2 : Mr.A.Kannan,
Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by *R.SURESH KUMAR, J.*]

This Writ Appeal has been directed against the order dated 24.10.2019 made in W.P.(MD)No.11931 of 2019.

2.The 1st respondent is the writ petitioner. In order to notice the relevant facts for the disposal of this Writ Appeal, the facts, that have been recorded by the learned Single Judge in the order impugned in paragraph Nos.1 to 5, are extracted herein:-

“This Writ Petition has been filed seeking a direction to the respondents herein to re-designate the petitioner as Assistant Engineer from December 2009 on the basis of G.O.Ms.No.221, dated 27.08.1992 and consequently, promote the petitioner as Assistant Executive Engineer with all attendant benefits and back wages, within a time frame to be fixed by this Court.

2.According to the petitioner, he was initially appointed as Electrician Motor Attender on 20.08.1990 through the Employment



Exchange. After ten years of service, he was promoted as Skilled Assistant Grade – II. Further, he was promoted as Technical Assistant on 30.07.2007 and thereafter, on 20.02.2009, he was promoted as Drafting Officer. He was given further promotion to the post of Assistant Engineer during the year 2010. Subsequently, he was reverted from the post of Assistant Engineer to the post of Drafting Officer. During the year 2012, the third respondent had given In-charge to the post of Assistant Engineer. Now, he is working as Drafting Officer.

3.Further, according to the petitioner, he has completed B.E. (Civil) Engineering. He was given In-charge to the post of Assistant Engineer from 01.07.2010 in the third respondent Corporation. The third respondent has decided to fill up the post of Assistant Engineer through direct recruitment, even though the petitioner is eligible for the said post. Opposing the same, he sent a detailed representation to the respondents. One Rajasili, who was sponsored by the Employment Exchange, filed a Writ Petition, challenging the continuation of the petitioner as Assistant Engineer (In-charge) and to consider her for appointment. The said Writ Petition was dismissed, against which, she filed a Writ Appeal before this Court, wherein this Court held that Assistant Engineer cannot be allowed to continue for a period beyond six months and any individual to continue as Assistant Engineer indefinitely without filling up of the said post. Against the said judgment, the petitioner and others preferred S.L.P. before the Hon'ble Apex Court, which was dismissed.

4.After passing such order, the third respondent reverted the



petitioner from the post of Assistant Engineer to the post of Technical Assistant. The said order of reversion has been challenged by the petitioner in W.P.(MD)No.14339 of 2012, wherein, this Court granted an order of interim stay. As per G.O.Ms.No.416, Municipal Administration and Water Supply Department, dated 15.09.1999, issued by the first respondent, whenever there are vacancies for the post of Assistant Engineer/Technical Assistant arise, the Officers, who are working in the junior level post, can be considered, provided they possess the required qualifications for the post of Assistant Engineer/Technical Assistant. In the said circumstances, the petitioner has given a detailed representation to the third respondent stating that he is eligible for the post of Assistant Engineer. Based on the said representation, the third respondent, vide his proceedings dated 26.04.2012, has recommended for upgradation of existing Engineering Staff to the post of Assistant Engineers and also stated that they can be posted as Assistant Engineers, by relaxing the existing service rules. The said proposal is pending before the respondents 1 and 2. During the pendency of the said proposal, the petitioner filed W.P.(MD)No.70 of 2013 before this Court seeking to forbear the respondents 1 and 3 from in any manner filling up the post of Assistant Engineer pending consideration of the proposal submitted by the third respondent. The said Writ Petition was disposed of with a direction to dispose the proposal, which is pending with the respondents 1 and 2, but the request of the petitioner for grant of status quo has been rejected. Hence, the petitioner has filed W.A.(MD)No.721 of 2013 before this Court and the said Writ Appeal



was disposed of with a direction to the second respondent to pass appropriate orders on the proposal sent by the second respondent, within 8 weeks from the date of receipt of a copy that judgment.

5.After passing the said order, the second respondent rejected the said proposal vide order dated 11.12.2017. Thereafter, the petitioner made a detailed representation stating that the rejection made by the second respondent is incorrect. However, recently, the petitioner came to know that the second respondent issued G.O.Ms.No.221, Municipal Administration and Water Supply Department, dated 27.08.1992, wherein the employees, who are working as Junior Engineers, after completing B.E. Graduation, are entitled to be re-designated as Assistant Engineer from the date of completion of B.E. Degree. Based on the said Government Order, the second respondent re-designated so many persons, who have completed the B.E. Degree. Similarly, the petitioner is working as Drafting Officer, which is equivalent to the post of Junior Engineer. Hence, the petitioner is also entitled for re-designation as per the above said Government Order. In the said circumstances, the petitioner sent a detailed representation on 11.04.2019 to the respondents requesting them to re-designate him as Assistant Engineer from the date of possessing of B.E. Degree, i.e., since December 2009, but so far no action has been taken by the respondents. Hence, the petitioner has come up with the present Writ Petition for the relief stated supra.”



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3.Considering the case of the 1st respondent / writ petitioner, the learned Single Judge was pleased to apply ratio or benefit of G.O.(Ms)No.221, Municipal Administration and Water Supply Department, dated 27.08.1992 and accordingly, the employees working as Junior Engineers, after completion of B.E., degree, are entitled to be re-designated as Assistant Engineer from the date of completion of B.E., degree. Therefore, the direction was given by the learned Single Judge to the appellants to re-designate the 1st respondent as Assistant Engineer from the date of completion of B.E., degree as per G.O.(Ms)No.221 and consider him for further promotion without any monetary benefits. Aggrieved over the same, the present Writ Appeal is filed.

4.Heard the learned counsel for the appellants, the learned Senior Counsel for the 1st respondent and the learned Additional Government Pleader for the 2nd respondent.

5.Before going into the issue, let us take an import of G.O.(Ms)No.221. The relevant portion of the said G.O., is extracted hereunder for easy reference:-

“The Tamil Nadu Municipal Engineering Graduating Association has represented to Government that Junior Engineer (Rs.



1640-2900/-) in Municipalities on acquiring degree in Engineer may be designated as Assistant Engineer providing them the scale of pay of Rs.2000-3500 as in the case of Junior Engineer in Municipal Corporation and in Government departments. The Commissioner of Municipal Administration also recommended this request. The proposal was referred as the official committee. The Official Committee which was examined the request has accepted the proposal and recommended that the request be conceded.

2.The Government accept the recommendation of the official committee and direct that the Junior Engineer in Municipalities possessing B.E.Degree be re-designation as Assistant Engineer on the scale of pay of Rs.200-60-2300-75-3200-100-3500.

3.This order shall be deemed to have come into force with effect from 01.06.88 notionally for the purpose of fixation of pay in the revised scale of pay with monetary benefits only from 01.04.1992.”

6.On perusal of the import of the said G.O., it is made clear that the said G.O., itself was issued for the benefit of Junior Engineer working in various Municipalities possessing B.E., degree for the re-designation as Assistant Engineer. Therefore, it does not apply to the Municipal Corporation like the appellants.



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7.Insofar as the staff working at Municipal Corporation is concerned, the governing rule is the Tamil Nadu Municipal Corporations Service Rules, 1996, which, in fact, was made under Section 106 of Madurai City Municipal Corporation Act, 1971.

8.Insofar as the constitution of various posts in Tamil Nadu Municipal Corporations Engineering and Water Supply Subordinate Service Rules, 1996, is concerned, in Clause 3, there are four categories, namely, Junior Engineer, Technical Assistant, Skilled Assistant Grade I and Skilled Assistant Grade II. For appointment of the post of Junior Engineer, Rule 3 says that it is by promotion from the holders of the posts of Technical Assistant. The qualification prescribed for Technical Assistant to get promotion to the post of Junior Engineer is that the candidate must possess a Diploma in Engineering and must have worked for a period of not less than 5 years as Technical Assistant in the office and in the works. Like that insofar as the post of Assistant Engineer is concerned, Tamil Nadu Municipal Corporations Engineering and Water Supply Service Rules, 1996 provides that it is only by direct recruitment and the qualification is that the candidate must possess a degree in Engineering or Town Planning from a recognized University and also must have passed departmental test prescribed for the Corporation before completion of probation.



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9. With regard to the post of Assistant Executive Engineer, the rule prescribes that it is only by promotion and the qualification would be that the candidate must have worked as Assistant Engineer / Junior Engineer for not less than one year in the Engineering Department of the Corporation main Office and for a period of not less than three years in the Ward offices.

10. This is how the constitution of these posts and how the appointment shall be made had been provided under the rule.

11. Insofar as the track record and service career of the 1st respondent are concerned, he was initially appointed as Electrician Motor Attender on 20.08.1990 and after ten years, he was promoted as Skilled Assistant Grade II. Thereafter, he was further promoted as Technical Assistant on 30.07.2007.

12. When he was working in the cadre of Technical Assistant from the year 2007, during the year 2009 due to a scheme for the urban development, some persons are wanted to be posted as Drafting Officer. Even though such post is not one of the posts under the constitution of the rule, the 1st respondent / writ petitioner had been posted as Drafting Officer on 20.02.2009. Thereafter, for



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sometime in 2010, he had been temporarily given charge as Assistant Engineer, subsequently, reverted back to Drafting Officer. These facts were also recorded by the learned Single Judge, which have been extracted hereinabove.

13.It is further to be noted that during the year 2009, while he was working as Drafting Officer, he has acquired the B.E., qualification from a recognized University.

14.In that capacity with effect from the acquiring of B.E., degree, the 1st respondent / petitioner wanted his candidature to be considered for direct promotion to the post of Assistant Engineer or Assistant Executive Engineer, citing the reason that as per the Government Order in G.O.(Ms)No.221, the person, who is working as Junior Engineer or any other designation acquiring of B.E., qualification, on the date he acquired such qualification, can be designated as Assistant Engineer and accordingly, he would be considered as Assistant Engineer for all purposes, including promotion.

15.Taking note of the clue from the said G.O.(Ms)No.221, he wanted the extended benefit of import of the said G.O., by designating him as Assistant Engineer with effect from 2009, since he acquired B.E., qualification in the year



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2009. Therefore, when he made such attempt by filing the Writ Petition before the Writ Court, the Writ Court also applying the import of the said G.O., in the case of the 1st respondent, has directed the appellant Corporation / employer to re-designate him as Assistant Engineer from the date on which he acquired B.E., qualification scrupulously and give further promotion ie., Assistant Executive Engineer, however, without any condition of monetary benefits.

16.We have already held that the import of the said G.O., shall not have any application for the employee of the Municipal Corporation like the appellants, as their service conditions are governed by the separate rules, which we have quoted hereinabove.

17.When that being the rule position, as to whether the 1st respondent / writ petitioner would be eligible to get such promotion to the post of Assistant Engineer or Assistant Executive Engineer is the question, that has been posed before us.

18.The 1st respondent / writ petitioner had been given promotion to the post of Technical Assistant with effect from 30.07.2007, that is the eligible category for further promotion to the post of Junior Engineer provided he must



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possess Diploma in Engineering and must have worked for not less than five years in the feeder category.

19.If that rule is taken into account, since the 1st respondent / writ petitioner has acquired the qualification of B.E., in the year 2009 and also he completed five years period as Technical Assistant from the year 2007, he become eligible to be considered for promotion to the post of Junior Engineer in the year 2012. Once he become Junior Engineer in the year 2012 or immediately thereafter, based on the seniority, then he was also to be considered for further promotion to the post of not Assistant Engineer but only Assistant Executive Engineer as per the rule, as the post of Assistant Executive Engineer can be filled up only by way of promotion by two routes. The first route is the promotion from Assistant Engineer and the second route is the promotion from the Junior Engineer but the ratio is only 3:1.

20.Pausing for the moment, even though the said rule prescribed the method of promotion for these posts, in the year 1996 the rule underwent a change by way of amendment, where such amendment has been notified in G.O.(Ms)No.59, Municipal Administration and Water Supply (MC5), dated 03.03.2016, under which the following amendment had been made:-



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“ *Amendments*

In the said Rules-

(1) in rule 3, in 'THE TABLE, for the entries in column (2) against the entry “Assistant Engineer” in column (1) the following entries shall be substituted, namely,-

(i) By direct recruitment, and

(ii) by recruitment by transfer from the holders of the post of Junior Engineer in the Tamil Nadu Municipal Corporation Engineering and Water Supply Subordinate Service.

Provided that appointment by direct recruitment and by recruitment by transfer shall be made in the ration of 3:1

Explanation

The Junior Engineers of the Tamil Nadu Municipal Corporations Engineering and Water Supply Subordinate Service shall, on acquiring the qualification of B.E., Degree, be qualified for recruitment by transfer to the post of Assistant Engineer from the date of acquiring such qualification and become eligible only for consideration to the post of Assistant Engineer by recruitment by transfer based on the option to be exercised by them in this regard. The option exercised by the Junior Engineers for appointment to the post of Assistant Engineer by recruitment by transfer, after acquiring the qualification of B.E., degree shall be final and they shall be placed at the bottom of the seniority list of the post of Assistant Engineer on their recruitment by transfer to the post. Subsequently, they cannot exercise another option for recruitment by transfer to the post of Assistant Executive Engineer from the category of Junior Engineer; and



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(2)in rule 4, in 'THE TABLE', in columns (2) and (3) against the entry “Assistant Engineer” in column 1, after the entry 'By direct recruitment' in column (2) and the corresponding entries in column (3) thereof the following entries shall, respectively, be added, namely:-

*By recruitment by transfer (i)Must possess a degree in Engineering or Town Planning from a recognized University; and
(ii)Must have served as Junior Engineer for a period of not less than 5 years”.*

21.As per this amendment against the entry of Assistant Engineer in Column (1), the following entries shall be substituted namely, (1) by direct recruitment, (2) by recruitment by transfer from the holders of the post of Junior Engineer in the Tamil Nadu Municipal Corporation Engineering and Water Supply Subordinate Service. Therefore, hitherto, the post of Assistant Engineer was filled up only by way of direct recruitment. However, by virtue of this amendment, it can be filled up also by the recruitment by transfer from the holders of the Junior Engineer.

22.Under the said amendment, explanation has also been provided, where it is stated that the Junior Engineer of the Tamil Nadu Municipal Corporation Engineering and Water Supply Subordinate Service shall on



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acquiring B.E., be qualified for recruitment by transfer to the post of Assistant Engineer from the date of acquiring such qualification and become eligible only for consideration to the post of Assistant Engineer by recruitment by transfer based on the option to be exercised by them in this regard. The option exercised by the Junior Engineers for appointment to the post of Assistant Engineer by recruitment by transfer, after acquiring the qualification of B.E., degree shall be final and they shall be placed at the bottom of the seniority list of the post of Assistant Engineer on their recruitment by transfer to the post. Subsequently, they cannot exercise another option for recruitment by transfer to the post of Assistant Executive Engineer from the category of Junior Engineer.

23. Therefore, this provision is similar to that import of the said G.O.(Ms)No.221. However, there is a slight difference between these two. In G.O.(Ms)No.221 the Junior Engineers can be re-designated as Assistant Engineer on acquiring the qualification of B.E., whereas in this amendment, the Junior Engineer shall be qualified to be considered for recruitment by transfer to the post of Assistant Engineer on the date he acquired such qualification.

24. It is further amended in the rule that for appointment to the post of Assistant Engineer by way of transfer by promotion, a candidate must possess a



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degree in Engineering or Town Planning from a recognized University and must have served as Junior Engineer for period of not less than five years.

25. Therefore, the departmental test also should be passed by the candidate, who is holding the post of Junior Engineer for getting further promotion to the post of Assistant Engineer.

26. After citing this amended rule, the learned Senior Counsel for the 1st respondent would contend that in view of the amendment, having been made, option to be exercised by the 1st respondent / writ petitioner shall be given to the 1st respondent / writ petitioner to exercise such option to go for such a recruitment by way of transfer to the post of Assistant Engineer, as he has acquired the qualification of B.E., in the year 2009 itself.

27. Here, in view of the amended rule, the 1st respondent / writ petitioner since acquired the qualification of B.E., degree in the year 2009, as per the explanation to the amended rule, he shall be considered to be qualified for recruitment by way of transfer to the post of Assistant Engineer from the date of acquiring such qualification. Therefore, even though five years experience rule had been provided for getting promotion to the post of Assistant Engineer, in the



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case of the 1st respondent / writ petitioner instead of applying five years rule, the five years rule can be applied not from the date of original appointment but from the date of his acquiring B.E., qualification, as explanation has been made very clearly that he shall be eligible to consider further promotion on acquiring B.E., qualification.

28. Here, in the case on hand, the 1st respondent / writ petitioner acquired B.E., qualification in the year 2009. Therefore, from the year 2009, if he completes five years period, he shall complete the period in the year 2014 and he become eligible to be considered for promotion by way of transfer to the post of Assistant Engineer subject to the seniority.

29. Therefore, if he is able to exercise such option, he can get the promotion to the post of Assistant Engineer in time after 2014 and once he gets promotion for the post of Assistant Engineer, where his seniority can be reckoned, from where further promotion to the post of Assistant Executive Engineer can be awarded by the existing rule of adopting the ratio 3:1.

30. Therefore, the learned Senior Counsel for the 1st respondent / writ petitioner wants to exercise such option, for which, he seeks permission of this Court.



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31.Having considered all these rule position and the factual matrix, as the writ petitioner, admittedly, is having the qualification of B.E., degree from the year 2009 as per the amended rule, he shall be considered to the post of Assistant Engineer from the date when he acquired the qualification of B.E., degree coupled with five years experience he must have gained in the category of Junior Engineer. Since he acquired such qualification in the year 2009, as the five years period can be reckoned only from the date on which he acquired qualification in the year 2009, he shall be eligible to consider for promotion to the post of Assistant Engineer in the year 2014, provided if he reached the seniority depending upon the vacancy available in the Assistant Engineer category.

32.In that view of the matter, this Court is inclined to pass the following order:-

“(i)The reasons stated by the Writ Court in the order impugned by applying the import of the said G.O.(Ms)No.221 since are not permissible, because G.O.(Ms)No.221 would not apply to the service of the Municipal Corporation, the direction consequently given by allowing the said Writ Petition by the Writ Court is erroneous. Hence, it is liable to be interfered with. Therefore, the direction given by the learned Single Judge in the order impugned is hereby set aside;



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(ii) However, the 1st respondent / writ petitioner is entitled to claim seniority and promotion for the post of Assistant Engineer as per the amended rule and he shall be considered for the promotion to the post of Assistant Engineer subject to the seniority in that category;

(iii) Once he earns promotion after 2014 seniority, accordingly, he shall be placed in the post of Assistant Engineer subject to the availability of vacancy and once he is notionally fixed, he can take the seniority as Assistant Engineer and based on which, if he becomes eligible to be considered for further promotion to the post of Assistant Executive Engineer by adopting 3:1 ratio, he shall be entitled to make such claim also; and

(iv) Needful / compliance shall be made by the appellants on getting such an option to be exercised by the 1st respondent / writ petitioner, at the earliest point of time, preferably, within a period of two months from the date of request / option to be given / exercised by the 1st respondent / writ petitioner.



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33. With these directions, the order impugned passed by the learned Single Judge is modified to that extent. Accordingly, this Writ Appeal is allowed in part. No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K., J.] & [G.A.M., J.]
09.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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Note: Issue Order copy on 23.09.2024.

To

The Secretary to the Government,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai-600 009.



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