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W.A(MD)No.677 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.677 of 2024
and
CMP(MD)No.4980 of 2024**

1. The Secretary to Government of Tamilnadu,
Public Works Department,
Secretariat,
Chennai 9.

2. The Engineer in Chief and Chief Engineer (General),
Public Works Department,
Water Resource Department,
Chepauk,
Chennai 5.

3. The Superintending Engineer,
Public Works Department,
Water Resource Department,
Trichy Region,
Trichy.

4. The Executive Engineer,
Public Works Department,
Building Construction and Maintenance Division,
Ariyalur District-621 704.

... Appellants

vs.

V.Mahadevan

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 29.11.2021 made in W.P(MD)No.15687 of 2018.



W.A(MD)No.677 of 2018

For Appellants : Mr.N.Satheesh Kumar
Additional Government Pleader
For Respondent : Mr.M.Jerin Mathew

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JUDGMENT

(Judgment of the Court was made by **R.SURESH KUMAR, J.**)

This intra-court appeal has been directed against the order passed by the Writ Court, dated 29.11.2021, made in W.P(MD)No.15687 of 2018.

2. The respondent/writ petitioner was appointed as Irrigation Assistant in the 4th appellant department on 24.04.1991. As per the relevant service rules governing the service conditions of the respondent/writ petitioner, the next promotional avenue is the Work Inspector, where, there are three feeder categories. One is, Head Irrigation Assistant, another is, Irrigation Assistant and the third one is, Helper. If candidates are available in the first category, other two categories will be excluded, like that, it goes in descending order.

3. Since the respondent/writ petitioner is an Irrigational Assistant and if he is having the necessary qualification, which has also been prescribed under the rule, by which, a candidate must have passed 8th standard and have experience of 10 years as in the feeder category, then, he will be eligible to be considered for promotion.



4. Accordingly, the respondent/writ petitioner had been considered for promotion and promotion had been effected with effect from 05.02.2014.

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5. However, the respondent/writ petitioner had given a representation on 23.11.2017, to consider him for promotion to the post of Work Inspector from 01.05.2001, the date on which he has completed the 10 years of service in the feeder category namely, Irrigation Assistant, which is one of the feeder categories among the three, as stated in the rule.

6. In support of his contention, the respondent/writ petitioner had projected before the Writ Court that, two individuals similarly placed that of the writ petitioner/respondent, though had attempted to get such promotion, one case was rejected and another case was accepted. This was also admitted by the learned Additional Government Pleader who appeared before the Writ Court, that has been recorded in paragraph 3 of the order impugned by the learned Judge. Therefore, the learned Judge in the operative portion of the order impugned, had directed the appellant department to consider the representation of the respondent/writ petitioner in the light of the service rule, i.e., G.O.Ms.No.12, Public Works Department, dated 23.11.2017, and also in the light of the observation that has been made in the order, where, the similarly placed person had been considered and promotion had been given to him.



Aggrieved over the same, even though this appeal has been filed, Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the appellants, has canvassed the point that, the appellants though are ready and willing to consider the representation given by the respondent/writ petitioner dated 23.11.2017, such a consideration must be on the basis of the law, which is in vogue i.e., the service regulation, not any other condition beyond the service regulation, he contended.

7. In this context, the observation that has been made by the learned Judge in paragraph 4 of the impugned order, to consider such representation and to decide the same, on the basis of the similarly placed persons, who had been considered and granted such a promotion, is going beyond the scope of the service regulation. Therefore, to that extent, if that observation is eschewed, then, the order passed by the learned Judge can very well be complied with by the appellants, that is the reason why, mainly, this appeal has been filed, he contended.

8. However, Mr.M.Jerin Mathew, learned counsel appearing for the respondent/writ petitioner, would submit that, even though time had been given by the learned Judge to the appellant department, who are the respondents before the Writ Court, no other plea, as has been raised by them before this



Court, had been raised before the Writ Court and they simply stated that, as in the case of one Ravi, whose case identically situated, since has been considered, in the same line, it would be considered. The said submission made on behalf of the appellant department having been considered, was recorded by the learned Judge in paragraph 3 of the impugned order. Therefore, it cannot be canvassed further against the said finding given by the learned Judge in the impugned order, he contended.

9. We have considered the said rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

10. Though such a rival contentions have been made by the learned counsel appearing for the parties, insofar as the operative portion of the order is concerned, which is impugned herein, the learned Judge has simply given a direction to consider the representation of the writ petitioner dated 23.11.2017.

11. The only hitch according to the appellants is that, the observation made in paragraph 4 of the order that, it is to be considered by taking into account of the other cases, which have been considered and granted the relief, as the same may not be available to the writ petitioner/respondent. The reason



being that, the service rule does not permit such a consideration to give such promotion by overlooking the seniority and also such promotion cannot be operated for want of vacancy.

12. Though these issues had not been canvassed before the learned Judge, it cannot be stated that, the learned Judge erred in giving such a direction, but at the same time, if it is a simple Mandamus that has been issued by the Writ Court, to give a direction to the appellant department to consider the representation given by the respondent/writ petitioner dated 23.11.2017, it is a Mandamus that has been issued to consider the representation only, of course, on merits and in accordance with law.

13. 'In accordance with law' means, in accordance with the service regulations which is in vogue as well as the eligibility of the writ petitioner/respondent. If certainly, the writ petitioner/respondent is eligible to seek for such a promotion earlier than 2014, it depends also on the basis of the vacancy that has been available on a particular post. These are all the factors to be gone into by the appellant department in considering the representation.

14. Therefore, we feel that, while disposing this writ appeal, we can give a modification to the order passed by the learned Judge, which is



impugned herein, by giving a direction to the appellant department to consider the representation of the respondent/writ petitioner, dated 23.11.2017, and pass orders thereon, on merits and in accordance with law, which is in vogue, as per the observation that we have made in the afore-stated paragraphs. It is made clear that, in this regard, if the respondent/writ petitioner wants to give any further additional particulars for the consideration of the appellant department, that can also be made to the appellant department within a period of two weeks from the date of receipt of a copy of this judgment and those additional particulars also shall be taken into account while considering the representation of the respondent/writ petitioner.

15. With this modification of the order impugned, this Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (G.A.M., J.)
15.04.2024

Index : Yes / No
Neutral Citation : Yes / No
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R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

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To

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Secretariat,
Chennai 9.

2. The Engineer in Chief and Chief Engineer (General),
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Chepauk,
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