



WP(MD). No.11041 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 03/06/2024

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THE HON'BLE Ms.JUSTICE R.N.MANJULA

WP(MD) No.11041 of 2024

and WMP(MD) Nos.9839 and 9840 of 2024

S.Lenin

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9.
2. The State of Tamil Nadu,
Rep by the Additional Chief Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9.
3. The Commissioner of Municipal Administration,
O/o.The Commissioner of Municipal Administration,
Chennai 5.
4. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.

... Respondents

PRAYER :- Writ Petition, filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th



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respondent vide his impugned proceedings vide Na.Ka.No.C1/3667/23, dated 25.08.2023 and quash the same as illegal and consequently directing the respondents to promote the petitioner as Assistant Executive Engineer with effect from the date on which the petitioners immediate junior was promoted with all other consequential and monetary benefits, within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmal Khan
Senior counsel for M/s.Ajmal Associates
For Respondents : Mr.J.Ashok for R1 to R3
Additional Government Pleader
Mr.S.P.Maharajan for R4

ORDER

Heard Mr.M.Ajmal Khan, learned senior counsel for the petitioner, Mr.J.Ashok learned Additional Public Prosecutor, for the respondents 1 to 3 and the learned standing counsel for the respondent No.4.

2.This writ petition has been filed challenging the impugned order of the 4th respondent dated 25.08.2023 and consequently directing the respondents to promote the petitioner as Assistant Executive Engineer with effect from the date on which the petitioners immediate junior was promoted with all other consequential and monetary benefits.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.



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4. The issue lies in a narrow compass. Through the impugned order, dated 25.08.2023, the petitioner's promotion has been rejected stating that he has not cleared the departmental examination, which is said to be the mandatory requirement of promotion.

5. It is the contention of the learned counsel for the petitioner that the petitioner, who had originally joined as a Junior Engineer, was re-designated as Assistant Engineer considering the acquiring of engineering degree. However, when the petitioner's juniors were promoted to the post of Assistant Executive Engineer, the petitioner's promotion was withheld, in view of the non passing of departmental examination, which was challenged by the petitioner before this Court in WP(MD) No.16322/2020, wherein, a direction was issued in favour of the petitioner and hence, there cannot be any difficulty for the respondents to consider the petitioner to the post of Assistant Executive Engineer on par with his juniors from the date on which his juniors were promoted.



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6. The learned counsel for the respondent Municipality has raised an objection stating that the mandatory requirement for promotion to the post of Assistant Executive Engineer is that the person had to pass the departmental examination. Since the petitioner did not pass such test at the time of promotion, his case was not considered and hence, the petitioner's promotion can be given only with effect from the date on which he passed the departmental examination.

7. The said contention is vehemently denied by the learned Senior counsel for the petitioner stating that the requirement of pass in the departmental examination is only for those Assistant Engineers, who are recruited through direct recruitment. Admittedly, the petitioner was not recruited to the post of Assistant Engineer through direct recruitment, however, his post has been redesignated. He further submitted that the petitioner has passed the departmental examination as on today.

8. Admittedly, when the juniors of the petitioner were promoted, the rule that for promotion, one has to pass the departmental examination, was not in force. Even if the technical condition is taken to



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be valid, as on date, the petitioner has cleared the departmental examination. However, the promotion goes back to the date on which his juniors were promoted in pursuant to the orders passed in WP(MD) No. 16322/2020 dated 26.07.2021.

9. The impugned proceedings involved in the above writ petition is to the punishment imposed on the petitioner. However, the punishment was set aside and the petitioner has come out of the charges. Hence, there cannot be any impediment for the respondent to promote the petitioner to the post of Assistant Executive Engineer with effect from the date on which his juniors were promoted. As on the date, when the juniors were promoted, there was no condition of passing any departmental examination. Even if it is mandatory, that has been acquired by the petitioner now. The post of the petitioner is a redesignated one, which was not stopped, in which case, the respondent Municipality shall not fret upon the said qualification in order to postpone the date of the petitioner's promotion or to give effect to the date of promotion to any future date.



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10. In view of the above, the writ petition is allowed and the impugned proceedings of the 4th respondent dated 25.08.2023 in Na.Ka.No.C1/3667/23, is set aside and the fourth respondent is directed to promote the petitioner to the post of Assistant Executive Engineer with effect from the date on which the juniors were promoted. No costs. Consequently connected Miscellaneous Petitions are closed.

03.06.2024

NCC : Yes/No
Index : Yes/No

RR

To

1. The Principal Secretary to Government, State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9.
2. The Additional Chief Secretary to Government, State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9.
3. The Commissioner of Municipal Administration,
O/o.The Commissioner of Municipal Administration,
Chennai 5.
4. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.

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R.N.MANJULA, J.

RR

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