



W.P.(MD)No.14492 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2024

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.14492 of 2021
and
W.M.P.(MD).No.11422 of 2021

M.Balamurugan

... Petitioner

Vs.

1.Engineer in Chief,
(Water Resource Department)
and Public Works Department,
Chennai-5.

2.The Chief Engineer (Buildings),
Public Works Department,
Madurai Region,
Madurai-2.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in S5(2)/24451/2021, dated 08.04.2021, passed by the first respondent and quash the same and directing the first respondent by transfer from the post of Junior Assistant to the post of Junior Draughting Officer with all other monetary benefits within the time frame.

For Petitioner : Mr.S.Sivaprakash

For Respondents : Mr.S.Kameswaran,
Government Advocate



W.P.(MD)No.14492 of 2021

ORDER

This Writ Petition has been filed challenging the order dated 08.04.2021, passed by the first respondent, rejecting the petitioner's request for transfer to the post of Junior Draughting officer.

2. In the impugned order, the request of the petitioner has been rejected by the first respondent on the following grounds:

(a). The petitioner has not completed five years of service as Junior Assistant.

(b). As per G.O.(Ms).No.69, Public Works (D1) Department, dated 28.02.2020, the Officers in the Department of the first respondent are only eligible to be appointed by transfer to the post of Junior Draughting Officer.

3. The petitioner has challenged the impugned order on the following grounds:

(a). G.O.(Ms).No.69, Public Works (D1) Department, dated 28.02.2020, relied upon by the respondents for rejecting the petitioner's request is only prospective in nature. According to the petitioner, the Circular for appointment



W.P.(MD)No.14492 of 2021

by transfer of post dated 03.08.2019, is applicable to the petitioner. Since the application submitted by the petitioner was prior to the date of G.O.(Ms).No.69, Public Works (D1) Department, dated 28.02.2020, there is no necessity for the petitioner, to have completed five years of service in the post of Junior Assistant. The petitioner claims that the said Government Order is prospective in nature and since the petitioner had submitted his application on 21.08.2019 itself, he is entitled for the post of Junior Draughting Officer, as the said Government Order does not apply to his case.

(b).The petitioner claims that a similarly placed person was promoted to the post of Junior Draughting Officer by transfer vide proceedings of the respondents dated 01.03.2019. Therefore, according to him, he is also entitled to be promoted by transfer to the post of Junior Draughting Officer.

4. According to the petitioner, a candidate without completion of five years of service period in the post of Junior Assistant was promoted as Junior Draughting Officer under the control of the first respondent, prior to the passing of the said Government Order and hence, according to the petitioner, he is also entitled to be promoted as Junior Draughting Officer.



W.P.(MD)No.14492 of 2021

5. Learned counsel drew the attention of this Court to the impugned order as well as G.O.(Ms).No.69, Public Works (D1) Department, dated 28.02.2020 and would submit that by total non application of mind, the petitioner's request for being promoted by transfer to the post of Junior Draughting Officer has been rejected under the impugned order, despite the fact that the said Government Order is only prospective in nature and cannot be acted upon retrospectively. According to the learned counsel appearing for the petitioner, since the petitioner sought for promotion through his application dated 21.08.2019 is prior to the date of the said Government Order, he is eligible to be promoted by transfer to the post of Junior Draughting Officer.

6. On the other hand, learned Government Advocate appearing for the respondents would reiterate the contents of the impugned order as well as the counter affidavit filed by the respondents before this Court. In particular, he referred to Paragraph No.6 of the counter affidavit, which is as per G.O. (Ms).No.69, Public Works (D1) Department, dated 28.02.2020. He would further submit that only in accordance with G.O.(Ms).No.69, Public Works (D1) Department, dated 28.02.2020, the petitioner's request has been rejected.

7. The contentions of the petitioner as raised in this Writ Petition have not been considered in the impugned order rejecting his request for being promoted by transfer to the post of Junior Draughting Officer. The contention of the



W.P.(MD)No.14492 of 2021

petitioner that G.O.(Ms).No.69, Public Works (D1) Department, dated 28.02.2020, is only prospective in nature and hence, there is no necessity for the petitioner, to have completed five years of service as Junior Assistant prior to the passing of G.O.(Ms).No.69, Public Works (D1) Department, dated 28.02.2020, has not been considered in the impugned order.

8. The contentions of the petitioner as raised in this Writ Petition have not been considered in the impugned order rejecting his request for being promoted by transfer to the post of Junior Draughting Officer. Whether G.O.(Ms).No.69, Public Works (D1) Department, dated 28.02.2020, is prospective or retrospective in nature has not been considered. The fact that the petitioner's application seeking for being promoted by transfer to the post of Junior Draughting Officer was prior in point of time to the above said Government Order, which is dated 28.02.2020, has also not been given due consideration in the impugned order, while rejecting the petitioner's request for being promoted by transfer to the post of Junior Draughting Officer.

9. Since the impugned order is a non speaking order with regard to the contentions raised by the petitioner in this Writ Petition, necessarily, the impugned order dated 08.04.2021, passed by the first respondent, has to be



W.P.(MD)No.14492 of 2021

quashed and the matter will have to be remanded back to the first respondent for fresh consideration on merits and in accordance with law after giving due consideration to the contentions raised by the petitioner in this Writ Petition, which have been referred to supra.

10. In the result, the impugned order dated 08.04.2021, passed by the first respondent, is hereby quashed and the matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law on the petitioner's request for being promoted from the post of Junior Assistant to the post of Junior Draughting Officer after giving due consideration to the contentions raised by the petitioner in this Writ Petition within a period of twelve weeks from the date of receipt of a copy of this order.

11. With the aforesaid direction, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

24.09.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG



W.P.(MD)No.14492 of 2021

To

1.Engineer in Chief,
(Water Resource Department)
and Public Works Department,
Chennai-5.

2.The Chief Engineer (Buildings),
Public Works Department,
Madurai Region,
Madurai-2.



WEB COPY



W.P.(MD)No.14492 of 2021

ABDUL QUDDHOSE, J.

TSG

W.P.(MD)No.14492 of 2021

24.09.2024