



W.P(MD) No.9037 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.11.2024

Delivered on : 03.12.2024

CORAM

THE HON'BLE MS.JUSTICE R. POORNIMA

W.P(MD) No.9037 of 2016

V.James

... Petitioner

Vs

1. The Chairman and Managing Director,
Tamil Nadu Police Housing Corporation Ltd.,
132, E.V.R.Salai,
Kilpauk,
Chennai 600 010.

2.The State of Tamil Nadu
Rep. by the Principal Secretary to Government,
Home (Police X) Department,
Secretariat,
Chennai.

3.The Principal Accountant General,
Office of the Principal Accountant General,
Anna Salai,
Chennai.

... Respondents



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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 of the impugned order in Letter No.TNPHC/A1/1439/2014-15 dated 22.01.2016 passed by the 1st respondent, quash the same as illegal and pass a consequential direction to the 1st respondent directing him to grant notional promotion as Executive Engineer to the petitioner with effect from 14.10.2008 and to grant monetary retirement and service benefits to the petitioner.

For Petitioner : Mr.R.R.Kannan

For Respondents : Mr.R.Baskaran – for R1 & R2

Additional Advocate General

assisted by Mr.M.Siddharthan

Additional Government Pleader

Mr.P.Gunasekaran – for R3

ORDER

This Writ Petition is filed by the petitioner with a prayer to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Letter No.TNPHC/A1/1439/2014-15 dated 22.01.2016 passed by the 1st respondent, quash the same as illegal and



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pass a consequential direction to the 1st respondent directing him to grant notional promotion as Executive Engineer to the petitioner with effect from 14.10.2008 and to grant monetary retirement and service benefits to the petitioner.

2. Case of the petitioner in brief are as follows:

(i) He had joined as Junior engineer under the first respondent department on 10.11.1993, subsequently promoted as Assistant Engineer on 29.4.2002. The mode of promotion to the post of Assistant Executive Engineer is that one must possess B.E. Degree, must have rendered service as Assistant Engineer for the period of not less than five years or Diploma with 10 years service as junior engineer and must have passed the account for Public Works Department Officers and Subordinates. Since the petitioner had fulfilled the requisite qualification for the post of Assistant Executive Engineer, he has been promoted as Assistant Engineer.

(ii) The first respondent as per the RC number A1/4701/2005 dated 31.05.2005 has released the seniority list of



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JE/AEES as on 15.6.2001. In the seniority list for Junior engineer as on 15.6.2001, his name found place in serial No.6. In the seniority list of Assistant Executive Engineer as on 01.04.2005, adopting 3:1 ratio among the Assistant Engineers and Junior Engineers, his name found place in serial No.32.

(iii) One of the prerequisite for promotion to the post of Assistant Executive Engineer is that apart from the educational qualification, one should have passed the account test for the Public Works Department Officers and Subordinate.

(iv) The petitioner further state that one P.Kumareshwaran and S.Nachimuthu working as Assistant Engineers under the respondents have passed the test only in the month of May, 2002. They have been promoted as Assistant Executive Engineers on 13.08.2001, which is not correct. The official respondents ought not to have promoted the said persons to the post of Executive Engineer even though the petitioner is eligible and qualified to be promoted as Assistant Executive Engineer, prior to that the above two persons were promoted as Assistant Executive Engineer.

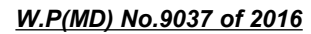


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(v) The petitioner came to know about the details only through an application filed by his friend under Right to Information Act. As per the information furnished under the above Act dated 25.02.2014 Mr.P.Kumareswaran and S.Nachimuthu were not eligible to be promoted as Assistant Executive Engineer, but they have been conferred with post of Assistant Executive Engineer as on 13.08.2001. Subsequently, both P.Kumareswaran and S.Natchimuthu promoted as Executive Engineer as per the order of the second respondent G.O.(Ms)No.1375 dated 13.10.2008 and subsequently, they were promoted as Executive Engineer as per proceedings of the first respondent in Proc.No.A1/2048/07 O.O.No.33/08 dated 14.10.2008 by relaxing the service condition in favour of them along with five other persons. When the eligible candidate is available at the stage of Assistant Executive Engineer, without taking into account, both Kumareswaran and P.Natchimuthu were promoted as Assistant Executive Engineer and thereafter, Executive Engineers.

(vi)After knowing the same, he had constrained to send



(vii) The Writ Petitioner submitted his representations dated 14.02.2015 and 24.03.2015 to the respondents, in order to set aside the order of promotion. He sought for the similar benefits as per Tamil Nadu Service Special Rules, but his representations were not considered and sent a reply on 18.02.2015 as infructuous. Since he was aggrieved, he filed W.P.(MD)No.5870 of 2015 before this court, praying for a Writ of Certiorari and Mandamus with request to quash the order, dated 14.10.2008 and to direct respondents to include the petitioner in the appropriate place in the panel for promotion to the post of Assistant Engineer and consequently, direct the respondents 1 and 2



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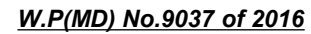
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to give notional promotion to him with all consequential service, monetary benefit and retirement benefit within time stipulated.

(viii) In the above petition, the petitioner impleaded both P.Kumareswaran and S.Natchimuthu as respondents 4 and 5. All the respondents, have appeared. The first respondent filed counter when the writ petition was filed he retired from service on 30.04.2015. In the above circumstances, he had submitted that he is not interested in objecting to the promotion given to Kumareswaran and Nachimuthu requested for the first respondent to provide notional promotion and consequential benefits to him on par with his juniors. The Court ordered in the said writ petition on 14.10.2015, as follows :

“This court, accepting the limited request of the petitioner direct the first respondent to consider the representation of the petitioner dated 04.02.2015 and pass appropriate orders on merit and in accordance with law, within a period of three months from the date of receipt of representation.”

(ix) The petitioner had also sent a copy of the order of the



(x) In the impugned order, the first respondent stated that no vacancy in the post office Executive Officer and no promotion was given to him. The impugned order is not false information given in the impugned order. Varan and P.Natchimuthu passed account test during May 2002, therefore, the above persons ought to have promoted as Assistant Executive Engineer only after May 2002, both are his juniors.

(xi) The petitioner is legally entitled to be promoted as Executive Engineer with effect from 14.10.2008 and hence, the impugned order is liable to be set aside.



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3. The first respondent filed counter as follows:

(a) The writ petition is not maintainable, since no seniority for consideration of promotion of the petitioner is affected has no legally sustainable claim. The educational qualification and condition of the petitioner with Thiru.Kumareswaran and S.Nachimuthu totally different and cannot be equated or compound with them in the matter of promotion. The claim for notional promotion on par with his senior P.Kumareswaran and Nachimuthu pertaining to the year 2001, and 2008 by latches, illogical and unsustainable in law.

(b) The Tamil Nadu Police Housing Corporation Limited formed as per G.O.(MS) No.2500, dated 27.09.1980, home department and incorporated as government company under the companies act 1956, which is managed by its Board of Directors.

(c) The first respondent being a Government company incorporated under the Company Act 1956, framed separate Service Rules viz., TNPHC Employee Service Regulation 2012, prior to that they followed adhoc rules which required modifications as per Lr.No.42228/BPE/2000, FIN (BPE) dated 15.09.2003, based on which present Service



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Rules are framed and the same was approved by the Board of Directors in circular Board Note 5/2012–2013 dated 31.01.2013 and came into force.

(d) The Tamil Nadu Engineer Service Special Rules referred in the affidavit filed by the petitioner is applicable to government department like PWD, TWAD Board, whereas TNPHC is a Government company thus reported in the separate Rules.

(e) As per the service rules of the first respondent (TNPHC), the following qualifications are prescribed for promotion to the post of Assistant Executive Engineer :-

(a) He/she possess B.E., qualification, must have completed five years of service as Assistant Executive Engineer.

(b) For Diploma holders, must have completed 10 years of service in the post of Junior Engineer or in case the Junior engineer acquires B.E., degree, he must have rendered eight years of service as Junior Engineer, including post qualification of service of three years from the date of acquiring B.E., degree.

(f) The petitioner was a Diploma holder in Civil Engineering at the



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entry into service. Diploma Holder joined as Junior Engineer in the first respondent company on 10.11.1993 and is eligibility for consideration of his promotion to the post of Assistant Executive Engineer due only on 10.11.2003. But he and the Junior Engineer should have completed five years of service as Assistant Engineer the ratio is 3:1 between the Assistant Engineer and Junior Engineer was promoted to the same post earlier on 29.04.2002, in view of vacancy and necessity from the Junior Engineer is also one of the beneficiaries by attaining promotion prior to the date of eligibility.

(g) Kumareswaran and S.Nachimuthu were B.E., graduates appointed directly as Assistant Engineers in the first respondent's company on 27.07.1995 and 04.03.1996, respectively. Their eligibility for consideration of promotion to the post of Assistant Executive Engineer was five years service, which fell on 27.07.2000 and 04.03.2001 respectively. Whereas the petitioner's eligibility for consideration fell only on 10.11.2003. The educational qualification of the petitioner and Kumareswaran and Nachimuthu are totally different and cannot be compared or equated with each other to claim the benefits



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accrued to the service during relevant time

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(h) The promotion to the post of Assistant Engineer is from senior list among Assistant Engineers and Junior engineers in the ratio of 3:1 by following the rules promotion to the post of Assistant Executive Engineer was made as per seniority in the 3:1 ratio. In order to meet out the necessity of completing the construction of projects, the petitioner also the benefit of promotion one and half year prior to the actual due falls on 29.04.2002.

(i) The year 2005, seniority list of Assistant Executive Engineer issued as on 15.06.2001 was revised vide RC.No.A1/4701/2005 dated 31.05.2005, wherein the seniority position of P.Kumareswaran was Sl.No.3, Nachimuthu was Sl.No.8 and the petitioner Jamesh was Sl.No. 17. The petitioner is junior to both Kumareswaran and Nachimuthu. Both Kumareswaran and Nachimuthu were B.E. graduates were promoted to Assistant Engineer on 13.08.2001. Most of TNPSC employees promoted to higher post who have not passed the required Departmental test which is prerequisite on par with Public Works Department Rules. However, vide RC.No.A1/244/2009 O.O.No.30 of



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2004 dated 27.03.2004 issued stating that the promoted candidates who had not possessed the Departmental test should pass that test within one year from the date of order on or before 27.03.2005 failing which they would be reverted to the lower post. Mr.P.Kumareswaran and Nachimuthu and others passed Department test within prescribed time. There is no ineligibility in their promotion.

(j) P.Kumareswaran and S.Nachimuthu were promoted as Executive Engineer on 14.10.2008 by the first respondent vide PROC.No.A1/2048/07 Office Order No.33/08 dated 14.10.2008, based on relaxation given by Government in G.O.(MS)No.1375 Home (Police X), dated 13.10.2008. During the relevant time, there was shortage of qualified candidates to the post of Executive Engineers, in the first respondent Company and post of Executive Engineers were pending vacant for long time. In order to carry out ongoing projects like Police Academy, Director General of Police, Annex building, Commissioner of Police office Building, Police Quarters, other office building construction works, the first respondent convened a meeting on 21.07.2008 and unanimously resolved to address the Government, seeking relaxation of



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relevant rule in order to promote seven Assistant Engineers as Executive Engineers.

(k) The petitioner had not come within the zone of consideration for promotion, as his seniority was 32 during 2008 for filling up seven existing vacancies. Further, none of the seniors to the petitioners did not make any claim on bar with seven promote for want of vacancy. Hence, during the relevant period, relaxation made by the Government is within the power conferred on them under the Service Rules, there is no discrimination or arbitrary exercise of power, but in accordance with the Statutory Rules to meet the agency and warranting circumstances.

(l) Modification of a Rule was sought in LR.No.4228/BPE/2003, Finance (BPE) Department, dated 5.9.2003 and based on which Service Rules framed and came into force with effect from 31.01.2013, but Thiru.Kumareswaran and Natchimuthu had already passed the test in May 2002. The petitioner stated that he has fulfilled the requisite eligibility is not correct, since the petitioner has fulfilled the request eligibility for the post of Assistant Executive Engineer only on 10.11.2003.



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(m) The petitioner's claim for notional promotion, comparing with Kumareswaran and Natchimuthu whose educational qualification and service condition are entirely different. They are direct appointee as Assistant Engineer with B.E., graduate on 27.07.1995 and 04.03.1996, respectively, and their next promotion date of five years services, whereas the petitioner was appointed as Junior Engineer with Diploma Course on 10.11.1993 and his promotion date was 10.11.2003 after completion of 10 years in the present post of Junior Engineer, hence the matter of eligibility for promotion, will not arise as P.Kumareswaran and S. Nachimuthu Senior with the petitioner. In view of the exigencies warranting to complete the Government projects. Petitioner was promoted on 29.04.2002 itself earlier to the due date.

(n) It is further stated that since there was no Service Rule in the first respondent company during the relevant time and only Rules were followed which required modification. The modification for Rules were sought in LR.No.4228/BPE/2003, FIN. (BPE.) DEPT dated 15.09.2003 and based on which Service Rules were framed and came into force with effect from 31.01.2013, but the said P.Kumareswaran and S.Nachimuthu



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were already passed the account test in May 2002. Hence, the contention made in the affidavit bereft of material particulars, suppression of truth and misleading by making allegation, after more than 15 years. The petitioner being one of the beneficiaries for promotion as Assistant Executive Engineer, prior eligibility and has no locus standi to question the same after lapse of 15 years.

4. The respondents denied the contention of the petitioner that he came to know the details of passing of account test by Thiru.P.Kumaresan and Nachimuthu only under Right to Information Act on 25.02.2014 and not eligible to be promoted on 2001 is also not correct. They said P.Kumareswaran and S.Nachimuthu were also subsequently promoted as Executive Engineer as per the order of the second respondent in G.O.(MS)No.1375 dated 13.10.2008 and further proceedings of first respondent in PROC.NO.A1/2048/07 as per office order No.33/08 dated 14.10.2008 by relaxing the service condition in their favour and five others



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5. With regard to the contention made in paragraph No.6 that one C.Ramesh Babu was promoted as Senior Drafting Officer designated as Senior Officer as he was not passed the account test is no relevant to promotion of Thiru.P.Kumareswaran and Thiru.S.Nachimuthu. As stated earlier want of separate Rule time limit was granted to the promotees during 2004 to complete the account test within a year and hence, those who have not completed or failed in account test were reverted back.

6. The petitioner became eligible for the post of Executive Engineer only on 29.04.2010, after eight years of service as Assistant Executive Engineer. At that time, his senior position was 17, therefore, promotion was given to M. Rajakumar on 22.03.2012. (whose senior position at No.8).

7. In W.P(MD)No.5870/2015 filed by the petitioner challenging the promotion of Thiru.P.Kumareswaran and S.Nachimuthu and he had given up his objection to the promotion of his seniors, final



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orders passed on 14.10.2015 in the writ petition filed by the petitioner to consider the representation of petitioner's representation was rejected, and therefore, now under the challenge in the present petition. Since having given up his objection and challenge to the promotion of seniors. In fact, no seniors above petitioner who were junior to P.Kumareswaran and S.Nachimuthu so far did not make any claim or objection since such promotion was made under different circumstances that as per seniority when the seniority and promotion of the petitioner is in no way affected. His claim is bad in law and hence, the writ petition is liable to be dismissed.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The petitioner relied upon Tamil Nadu Engineering Service Rule 5 of the above and deals with the qualification for promotion of the Assistant Executive Engineers

.... promotion :



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1.(i) must possess the BE degree

(ii) must have rendered service as Assistant Engineer for a period of not less than five years on duty and

(iii) must have passed the account test for Public Works Department Officers, and Subordinates.

2.Service as Junior Engineers or Draughts Man in the Tamil Nadu Engineering Subordinate Service for period of not less than 10 years.

(b) Upper Subordinate or LCE Diploma of the College of Engineering, Guindy.

(c) service for a period of not less than 20 years on duty as Draughts Man are overseer and Junior Engineer, Draughts Man Grade 1 and Head, Draughts Man in the Tamil Nadu Engineering Subordinate Service.

11. It is the grievance of the petitioner that one Thiru.P.Kumareswaran and S.Nachimuthu were promoted before they posses required qualification as conditions stipulated in Rule 5(iii) of the Tamil Nadu Engineering Subordinate Service viz., they failed to pass the account test.



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12. It is the contention of the respondents that the Tamil Nadu Police Housing Corporation Limited was formed as per G.O.(MS) No.2500 dated 27.09.1980 framed Separate Service Rule viz, TNPHC Employees Service Regulation 2012, prior to that they had followed the adhoc rules which required certain modification as per LR.No. 4228/BP/2003, FIN(BPE) dated 15.9.2003, based on which the present service rules were framed and the same was approved on 30.01.2013 and stated that the rules referred by the petitioner viz., Tamil Nadu Engineers Service Special Rules is applicable only to the Department like PWD, TWAD Board not applicable to TNPHC.

13. It is true that the Tamil Nadu Engineering Service Rule is not applicable to the TNPH Corporation Limited. It is further noted that TNPH Corporation Limited Service Regulations, 2012 came into effect from 31.01.2013 as contended by the first respondent. It was contended by the respondent that prior to that they have followed adhoc rules, but the said Rules was not produced, however, it is clearly shows



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that the Tamil Nadu Engineering Service Rules not applicable to the TNPHC Limited, which is a Government Limited Company under Companies Act 1956, whereas the Tamil Nadu Engineering Service Rules applicable to public works and allied branches.

14. It is admitted by the respondents that some of the TNPHC employees including Thiru.Kumareswaran and Thiru.Nachimuthu were promoted to higher post in TNPHC but they have not possessed the required Departmental test. However, in order to regularize their service, TNPHC vide proceedings No. RC.No.A1/244/2004 O.O.No.30/2004 dated 27.03.2004 was issued with the direction to those promoted candidates who had not passed the Departmental test, account test etc., with conditions that they should pass the same within one year from the date of order or they would be reverted to lower post. The respondents also enclosed the circular dated 27.03.2004, which reads as follows :-

“most of the employees promoted to the higher post in TNPHC Limited have not passed the departmental test prescribed. The employees



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of the TNPHC Limited are therefore once again informed that they should pass the prescribed test within one year from the date of receipt of the above circular, failing which they will be reverted to the lower post and further increments will not be sanctioned.”

The above proceedings proved that the candidates who did not possessed the required Departmental test were promoted with certain conditions. The above candidates were promoted by the Department and it is permissible as per Service Act.

15. The Tamil Nadu Government Servants (Conditions of Service) Act, 2016, Section 47(1) provides that where it is necessary in the public interest owing to an emergency which has risen immediately a vacancy in a post borne on the higher category in service class by promotion from lower category and there would be undue delay in making such promotion in accordance with the provision of the Act, the appointing authority may temporarily promote a person, who possess the qualifications prescribed for the post, otherwise than in accordance with this Act.



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16. In this case, both Kumareswaran and Nachimuthu were promoted among other members due to exigency arose in the Department.

17. Further it was contended by the respondents that the seniority list was published for the year 2001 to 2005 and the same was enclosed in the typed set, in which the name of Thiru.Kumareswaran found in serial No.3. Thiru.Nachimuthu name found in serial No.7 in the cadre of Assistant Executive Engineer and the petitioner name found in serial No.6 in the cadre of Junior Engineer. The seniority list of Assistant Executive Engineer as on 01.04.2005, adopting 3:1 ratio among the Assistant Engineers and Junior Engineers. Thiru.Kumareswaran name found in Serial No.3, Thiru.Nachimuthu name found place in serial No.7 and Thiru.V.James, the petitioner name found in Serial No.32.

18. Normally seniority list prepared for every year would be circulated to all the staff in advance in order to obtain their objections, and then only it will come into effect. But the petitioner has not raised



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any objection till 2014, and now stated that he came to know about the promotion of the above person through a friend who had filed an application under Right to Information Act seems to unbelievable. The petitioner ought to have objected the same immediately, but he has done so. Further, the conditional promotion was given by the Employer with certain conditions to their employee with further condition to pass the Departmental test within time stipulated and the above candidates viz., Thiru.Kumareswaran and Thiru.Nachimuthu were passed their account test during the year 2002 itself, and complied the conditions. The candidates not violated the Rules. The decisions taken by the Department due to exigency cannot be questioned by the petitioner that too after 13 long years, the writ petition is liable to be dismissed on account of delay. Further, the petitioner himself admitted that he is not going to question about the promotion given to Thiru.Kumareswaran and Thiru.Nachimuthu, but pray to give him notional promotion as Executive Engineer as on 14.10.2008. However as on 14.10.2008 the petitioner not attained the seniority and he is therefore not eligible to be promoted as Executive Engineer. Therefore, his application was properly rejected and



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there is no irregularity in the impugned order dated 22.01.2016.

Therefore, the writ petition has no merit and hence, the writ petition is liable to be dismissed.

18. In view of the above, the Writ Petition stands dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

.12.2024

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

RM



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1. The Chairman and Managing Director,
Tamilnadu Police Housing Corporation Ltd.,
132, E.V.R.Salai,
Kilpauk,
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2. The State of Tamil Nadu
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R.POORNIMA, J.

RM

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