



W.P.(MD)No.21201 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2024

CORAM

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.21201 of 2017

B.Kathiresa Pandian

: Petitioner

Vs.

1.The Agricultural Production Commissioner,
and Secretary to Government of Tamil Nadu,
Agriculture Department,
Fort St. George,
Chennai – 600 009.

2.The Chief Engineer,
Agricultural Engineering Department,
No.487, Annasalai, Nandanam,
Chennai – 600 035.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter No.MePa5/97/2014 dated 24.10.2017 on the file of the second respondent and quash the same as illegal and consequently for a direction, directing the respondents to promote the petitioner to the post of Assistant Engineer within the time stipulated by this Court.



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For Petitioner : Mr.G.Karthik
for M/s.T.Lajapathi Roy & Associates
For Respondents : Mr.G.Suriya Ananth
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the impugned order dated 24.10.2017 passed by the second respondent rejecting the petitioner's request to promote him to the post of Assistant Engineer.

2.Pursuant to directions issued by this Court on 06.04.2017 in W.P.(MD)No.18569 of 2013, filed by the very same petitioner, the respondents have passed the impugned order rejecting the petitioner's request for promotion.

3.In the aforesaid order passed in W.P.(MD)No.18569 of 2013, the petitioner was directed to give a fresh representation to the respondents by narrating all the facts within a period of 15 days from the date of receipt of a copy of that order. On receipt of the said representation, the respondents were directed to consider the petitioner's representation by giving personal opportunity to the petitioner and pass appropriate orders for giving promotion to the petitioner in the post of Assistant Engineer.



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

a) The second respondent has not granted an opportunity of hearing to the petitioner despite the fact that a specific direction was given by this Court to grant an opportunity of hearing to him before passing final order.

b) The second respondent has mechanically issued the impugned order which states that Mr.Sithyvinayagamoorthis and Mr.Vijayan had acquired B.E. Degree in the years 1990 and 1992 respectively and were appointed as Assistant Engineers on recruitment by transfer in G.O.Ms.No.403 dated 15.10.2007, G.O. (3D).No.131 dated 16.06.2008, in the light of G.O.Ms.No.958 dated 27.12.1990. According to the petitioner, the said reasoning which is already stated in the counter affidavit filed in the earlier writ petition was rejected by this Court and without considering the same, the second respondent has issued the impugned order stating the very same reason once again. It is further contended by the petitioner that the first respondent has also stated the very same reason which is already rejected by this Court in the earlier writ petition filed by the petitioner in his communication dated 21.09.2017 based on which the impugned order is issued.



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c) The above said persons namely Mr.Sithyvinayagamoorathi and Mr.Vijayan have completed their B.E. Degree in the years 1990 and 1992 respectively, but they were appointed only in the years 2007 and 2008, respectively, ie., after the amendment of Service Rules vide G.O.Ms.No.582 dated 09.11.1995. Therefore, according to the petitioner, there is no impediment for the respondents to grant permission to the petitioner as well in the post of Assistant Engineer on the same basis.

d) The rejection of the request of the petitioner on the ground that the two other persons referred to supra were considered as a Special case is highly arbitrary. According to the petitioner if the service benefit is provided to some persons, the same should be extended to all in the same position.

5.A counter affidavit has been filed by the second respondent before this Court denying the contentions of the petitioner and reiterating the contents of the impugned order.

6.However, as noticed from the impugned order, no personal hearing was afforded to the petitioner prior to the passing of the impugned order rejecting the petitioner's request. This Court in its order dated 06.04.2017 passed in W.P.(MD)No.18569 of 2013 filed by the very same petitioner issued the following directions:



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"9.In the result:

a) the writ petition is disposed of with direction to the petitioner to send a fresh representation to the respondents within a period of 15 days from the date of receipt of copy of this order;

b) on receipt of the said representation, the respondents are hereby directed to consider the case of the petitioner, by giving personal opportunity to the petitioner and to pass appropriate orders for giving promotion to the petitioner in the post of Assistant Engineer;

c) the said exercise shall be done within a period of eight weeks from the date of receipt of the petitioner's representation. No costs."

7.The impugned order has been passed only based on the aforesaid directions issued by this Court in the earlier writ petition filed by the very same petitioner. However, as seen from the impugned order, it is clear that no opportunity of personal hearing was granted to the petitioner prior to the passing of the impugned order. Learned Additional Government Pleader for the respondents also agrees to the same. The contentions of the petitioner as raised in this Writ Petition have not been considered in entirety. Only if a personal hearing is accorded as directed by this Court in the earlier writ petition filed by the very same petitioner, full justice can be



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rendered in the subject matter. The petitioner has also contended in this writ petition that the reasons for rejection as noticed in the impugned order were rejected by this Court in its order dated 06.04.2017 passed in W.P.(MD)No.18569 of 2013.

8.This Court is not expressing any opinion with regard to the merits of the petitioner's contentions in this writ petition. Only on the ground that no opportunity of personal hearing was granted to the petitioner, in accordance with the directions given by this Court on 06.04.2017 in the earlier writ petition filed by the petitioner, this Court has to necessarily quash the impugned order and remand the matter back once again to the second respondent for fresh consideration on merits and in accordance with law within a time frame to be fixed by this Court after giving due consideration to the contentions raised by the petitioner in this Writ Petition and also by affording a personal hearing to him.

9.All the grounds raised by the petitioner in this Writ Petition will have to be considered by the second respondent while deciding the issue afresh pursuant to the orders passed by this Court in that writ petition.

10.For the foregoing reasons, the impugned order dated 24.10.2017 passed by the second respondent is hereby quashed and



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the matter is remanded back to the second respondent for fresh consideration on merits and in accordance with law. The second respondent is directed to afford one personal hearing to the petitioner and after giving due consideration to the contentions of the petitioner as raised in this writ petition shall pass final orders on merits and in accordance with law within a period of twelve [12] weeks from the date of receipt of a copy of this order.

11.With the aforesaid direction, this Writ Petition stands disposed of. There shall be no order as to costs.

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



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To

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ABDUL QUDDHOSE, J.

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