

W.P.No.35171



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.08.2025

Pronounced on : 26.08.2025

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.35171 of 2014
and
M.P.Nos.1 and 2 of 2014
and
W.M.P.No.34816 of 2016

V.Kaliannan

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai – 600 005.
 2. The Secretary to Government,
Welfare of Differently Abled Person Department,
St.Fort George, Chennai – 600 009.
 3. The Commissioner/ Principal Secretary for
Differently Abled Persons,
Chennai – 600 078.
- ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to follow G.O (Ms) No.5 dated 29.01.2013 while filling the post of Executive Engineer and to



promote the petitioner in the appropriate post of Assistant Executive Engineer and Executive Engineer with retrospective effect in accordance w with Act, 1995 with all consequential benefits including the arrears of pay and other benefits, seniority etc.,

For Petitioner : Mr.R.Syed Mustafa

For R1 : M/s.G.Thilagavathi, Senior Counsel
assisted by Mr.S.Karthikeyan
Standing Counsel for TNUHDB

For R2 & R3 : Mr.K.H.Ravikumar,
Government Advocate

ORDER

The facts of the case that are relevant for disposal of this writ petition are as under:-

1.1. The petitioner herein, who is a physically challenged person with locomotor disability of 50%, was appointed as 'Assistant Engineer' in the year 1986 in the first respondent Board and, thereafter, he was promoted to the post of 'Assistant Executive Engineer' in the year 2008. While working in the post of 'Assistant Executive Engineer', the petitioner, having become eligible for consideration for further promotion to the post of 'Executive Engineer' by the year 2013, approached this court by filing the present writ petition, seeking a



direction to the Respondent No.1 to follow the orders issued by Respondent

No.2/ Government in G.O (Ms) No.5, மாற்றுத்திறனாளிகள் நல (மா.தி.ந.2.1)த்

துறை, னated 29.01.2013, while filling up the post of 'Executive Engineer', and to promote the petitioner from the post of 'Assistant Executive Engineer' to the post of 'Executive Engineer' with retrospective effect in accordance with the provision contained in Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act, 1995' for short), with all consequential benefits. The Act, 1995 provides for reservation of posts in every establishment and mandates that the appropriate Government shall appoint persons with disabilities in such percentage of vacancies not less than 3%.

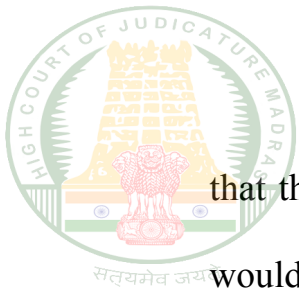
1.2. Section 32 of the Act, 1995 also provides for identification of posts which can be reserved for persons with disabilities. In terms of the said Act, the Government of Tamil Nadu issued orders in G.O (Ms) No.46, SW & NMP Department, dated 11.05.2000, and G.O (Ms) No.243, SW & NMP Department, dated 26.12.2002, identifying various posts in Group A and B. It was thereafter, the Government issued orders in G.O (Ms) No.53, SW & NMP Department, dated 11.04.2005, providing for reservation at 3% to disabled persons in Group



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A and B category of identified posts. In furtherance thereof, the Government also issued orders in G.O (Ms) No.200, SW & NMP Department, dated 22.12.2006, providing for 100-point roster divided into three blocks and earmarking one post for each 33 vacancies for differently-abled persons. Thereafter, yet another order was passed in G.O (Ms) No. 87, SW & NMP Department dated 17.07.2008, providing for 200-point roster and dividing the same into six blocks, and in each block to earmark the first vacancy for differently-abled persons with visually impaired, hear impaired and orthopedically differently-abled persons in the ratio of 1:1:1 as far as possible. That is how all the above-referred Government Orders are made applicable to all the Government Departments. It was thereafter, the Government issued orders in G.O (Ms) No.5, dated 29.01.2013, requiring all the Departments and Recruitment Agencies, including public sector undertakings, to fill up all the posts by making a provision for 3% reservation in terms of the Act, 1995, and also to arrive at backlog vacancies from the year 2002 and to fill up such posts immediately with suitable employees who are differently-abled. It was at that stage, the petitioner approached this court by filing the present writ petition.

2. The respondents filed a counter-affidavit and contested on the ground

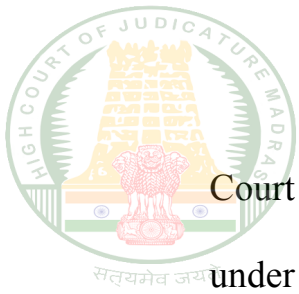


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that the orders issued by the Government in G.O (Ms) No.5 dated 29.01.2013, would be applicable only in case of direct recruitment but not applicable to the case of promotion, and the identification of posts made through G.O (Ms) No. 5, dated 29.01.2013, cannot be the basis for claiming for reservation in promotion.

3. Heard Mr.R.Syed Mustafa, learned counsel for the petitioner, M/s.Thilagavathi, learned Senior Counsel for the Respondent No.1 and Mr.K.H.Ravikumar, learned Government Advocate appearing for the respondents 2 and 3.

4. “Whether the benefit of reservation provided under Section 33 of the Act, 1995, would be applicable to posts that can be filled up by promotion or not?”, is no longer res integra and the very same issue has fallen for consideration before the Hon'ble Apex Court on more than one occasion, in the cases of ***“Government of India through Secretary and another -vs- Ravi Prakash Gupta and another”*** reported in (2010) 7 SCC 626, ***“Rajeev Kumar Gupta and others -vs- Union of India and others”*** reported in (2016) 13 SCC 153, and in Civil Appeal No.59 of 2021 dated 28.06.2021. The Hon'ble Apex



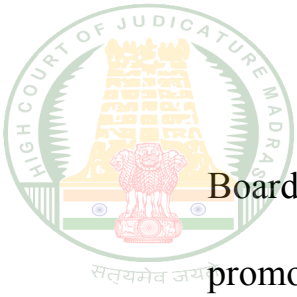
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Court has concluded the issue holding that the benefit of reservation provided under Section 33 of the Act, 1995, would be applicable even in case of promotion also. In Civil Appeal No.59 of 2021 dated 28.06.2021, the Hon'ble Apex Court, having framed an issue, as to whether the Act, 1995 mandates reservations in promotions for persons with disabilities or not, answered the same in Paragraph No.14, which reads as under:-

“14. The legislative mandate has to be understood in the aforesaid context as it provides for equal opportunity for career progression, including promotion. Thus, it would be negation of the legislative mandate if promotion is denied to PwD and such reservation is confined to the initial stage of induction in service. This would in fact result in stagnation of the disabled in a consequential frustration.”

5. In the light of the law laid down by the Hon'ble Apex Court, as noted above, and having been confronted with the said situation, the learned Senior Counsel appearing for the Respondent No.1 contended that the question of implementing reservation in promotion would arise only on identification of the promotional post in terms of Section 32 of the Act, 1995, and not earlier.

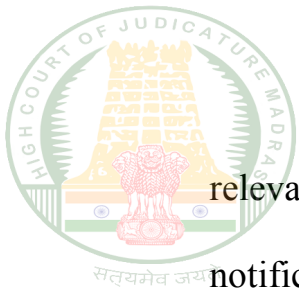
6. Though, through G.O (Ms) No. 5, dated 29.01.2013, the identification of posts have taken place, which is admittedly applicable to the Respondent



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Board, the learned Senior Counsel contended that the fresh identification of promotional posts also required to be made in order to give effect to the reservation in promotion. According to her, the said process of identifying the posts for providing reservation in promotion in terms of Section 34 of the Rights of Persons with Disabilities Act, 2016, is under process, and the Government also issued orders in this regard in G.O (Ms) No. 6, Welfare of Differently-Abled Persons Department, dated 21.06.2025, and once the posts are identified in terms thereof, the reservation in promotion will be implemented. However, this Court is unable to agree with the said contention of the learned Senior Counsel appearing for the Respondent No.1.

7. As rightly contended by Mr. R.Syed Mustafa, learned counsel for the petitioner, the Government of India issued a notification dated 29.07.2013 under Section 32 of the Act, 1995, duly identifying different posts and laying down certain guidelines in the matter of identifying the posts in terms of Section 32 of the Act, 1995. In terms of the said notification, if a post is already held by a person with disability, it shall be deemed to have been identified. Further, it also provides that if a post is identified in the feeder grade, the corresponding post in the promotional grade should also stand identified. The



relevant Clauses (ii) and (iii) incorporated in the Annexure-B of the said notification is extracted hereunder:-

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“(ii) If a post is already held by a person with disability, it should be deemed to have been identified.

“(iii) If a post is identified in the feeder grade, the posts in the promotional grade should also stand identified.”

8. Here is a case where the Petitioner herein, who is a differently-abled, was already appointed to the post of 'Assistant Engineer' as early in the year 1986 and was promoted to the post of 'Assistant Executive Engineer' in the year 2008. The post of 'Assistant Executive Engineer' is admittedly in the feeder category to the post of 'Executive Engineer'. In terms of the notification dated 28.07.2013, both the posts of 'Assistant Engineer' as well as 'Assistant Executive Engineer' held by the Petitioner are deemed to have been identified in terms of Section 32 of the Act, 1995. Consequently, the promotional post of 'Executive Engineer' also stands identified as the feeder category for the post of 'Executive Engineer' is the post of 'Assistant Executive Engineer', which is deemed to be a post identified under Section 32 of the Act, 1995. In the light of the above, the contention of learned Senior Counsel appearing for the Respondent No.1, that the fresh identification of posts is required to be undertaken to give effect to the reservation in promotion, cannot be accepted.



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9. Be that as it may, admittedly under G.O (Ms) No.5, dated 29.01.2013, 117 posts were identified in Government Departments as well as Public Sector Undertakings, including the Respondent Board under Section 32 of the Act, 1995, though it is contended to be applicable only for direct recruitment. In case if there are any posts among the 117 identified posts that can be filled up only by way of promotion, the question of once again identifying the posts that can be earmarked for reservation in promotion does not arise.

10. In the light of the law laid down by the Hon'ble Apex Court, as noted above, it is not open for any of the respondents to contend that the reservation provided under Section 33 has no application in promotion. Thus, it is concluded that the Respondents are bound to provide reservation in promotion in favour of differently-abled persons (PWD candidates) in terms of Section 33 of the Act, 1995. But, admittedly, the Respondent Board has not given effect to the provisions of the Act, 1995, though they are very much applicable to the Respondent Board, on the ground that the Respondent No.2 Government has not issued appropriate instructions and identification of posts has not taken place.



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11. In the light of the discussion above, the posts of 'Assistant Engineer', 'Assistant Executive Engineer' and 'Executive Engineer' and further promotional post of 'Superintendent Engineer' are all deemed to have been identified independently in terms of the Notification No.16-15/2010-DO.III, dated 28.07.2013. The petitioner was promoted to the post of 'Assistant Executive Engineer' in the year 2008 and he became eligible for consideration of his case for promotion to the post of 'Executive Engineer' by the year 2013, on completion of five years of service in the post of 'Assistant Executive Engineer'. By the time the petitioner became eligible for consideration for promotion to the post of 'Executive Engineer', the Government also issued orders in G.O (Ms) No.5, dated 29.01.2013, identifying the posts in the respondent Board and making a provision for reservation in favour of PWD candidates in terms of Section 33 of the Act, 1995, though made applicable for direct recruitment alone.

12. In the light of the above, the orders issued in G.O (Ms) No.5, dated 29.01.2013, would automatically be applicable to the promotional post and provide for reservation in favour of the PWD candidates. In spite of the law declared by the Hon'ble Apex and the mandatory provisions contained in



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Sections 33 and 35 of the Act, 1995, the respondent Board failed to give effect to the binding statutory provisions and thereby deprived the petitioner of consideration of his case, duly applying the reservation in promotion while filling up the post of 'Executive Engineer' in the respondent Board.

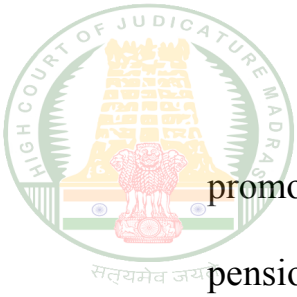
13. No doubt, the petitioner was subsequently promoted to the post of 'Executive Engineer' in the year 2016 and then he retired from service on attaining the age of superannuation on 30.04.2019. But, the respondent Board, which failed to discharge its obligation under a binding statute read with the law laid down by the Hon'ble Apex Court, cannot be allowed to escape simply on the ground that there was no identification of posts for giving effect to the reservation in promotion.

14. As already noted above, the post of 'Executive Engineer' stood identified in terms of Section 32 of the Act, 1995. Thus, it is a failure on the part of the respondent Board in giving effect to the statutory provision as interpreted by the Hon'ble Apex Court, and failed to consider the case of the petitioner for promotion, duly providing for reservation in favour of the PWD candidates.



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15. In the light of the above, this court does not see any impediment to issue appropriate directions to the respondent Board to extend the true benefits of the provisions of the Act, 1995 to the petitioner in the matter of consideration of his case for promotion to the post of 'Executive Engineer'. Accordingly, there shall be a writ of mandamus, directing the Respondent No.1 to consider the case of the petitioner for notional promotion to the post of 'Executive Engineer' with reference to the vacancies that were filled up after the date on which the petitioner completed five years of service in the post of 'Assistant Executive Engineer' and became eligible for promotion to the post of 'Executive Engineer', duly applying the reservation in promotion at the rate of 3%, by taking into consideration the orders issued by the Respondent No.2/ Government in G.O (Ms) No.5, dated 29.01.2013, by considering the said Government Order as though applicable while filling up the promotional post also, and also taking into consideration the applicable roster points fixed under G.O (Ms) No.200, dated 22.05.2006 and G.O (Ms) No.87, dated 17.07.2008, and grant notional promotion to the petitioner to the post of 'Executive Engineer', subject to the petitioner fulfilling all other criteria. The petitioner shall be extended notional benefit for the period during which he was extended the benefit of notional



promotion and his pay shall be fixed and, consequently, the terminal and other pensionary benefits of the petitioner shall be revised accordingly.

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16. Accordingly, the writ petition is allowed. No costs. Connected miscellaneous petitions, if any, shall stand closed.

26.08.2025

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Chairman, Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Chennai – 600 005.
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W.P.No.35171



MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
W.P.No.35171 of 2014

26.08.2025