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W.P.No.23344 of 20...



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 30.01.2025

ORDERS PRONOUNCED ON : 04.04.2025

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.23344 of 2019

D.Charles Soundararajan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Tamil Development, Religious Endowments &
Information (த.அ.இ) Department,
Secretariat,
Chennai 600 009.
 2. The Commissioner of Stationery & Printing,
111, Anna Salai,
Chennai 600 002.
 3. The Principal Accountant General (A & G) Tamil Nadu,
No.361, Anna Salai,
Chennai 600 018.
- ... Respondents

[R3 impleaded as per the order of this Court
dated 28.01.2025 in WMP.No.2016 of 2025
in WP.No.23344 of 2019]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records on the file of the 2nd respondent in his proceedings in இயக்.செ.மு.ஆ.எண்.சீ3/14771/2018, dated 05.07.2018 and quash the same and direct the respondents to give subsequent due promotions notionally such as Senior Foremen, Top Senior Foreman, Overseer, and Asst. Works Manager respectively with re



fixation of pay to the petitioner with all service and monetary benefits within the limit fixed by this Court.

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For Petitioner : Mr.M.Vijayakumar

For Respondents : Mr.P.Kumaresan, AAG
asst. by Mr.G.Ameedius, G.A.

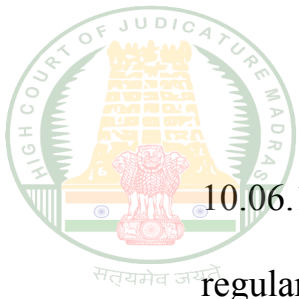
ORDER

This petition has been filed seeking for issuance of Writ of Certiorarified Mandamus to quash the proceedings of the second respondent in இயக்.செ.மு.ஆ.எண்.சி3/14771/2018, dated 05.07.2018 and direct the respondents to give subsequent due promotions notionally such as Senior Foremen, Top Senior Foreman, Overseer, and Asst. Works Manager respectively with re-fixation of pay to the petitioner with all service and monetary benefits within the limit fixed by this Court.

2. The brief facts as per the averments made in the affidavit of the

Writ Petition:

i) It is the case of the petitioner that he was initially appointed as Mazdoor in the Government Central Press, Chennai through Employment Exchange and he joined the service on 10.03.1975. By an order dated



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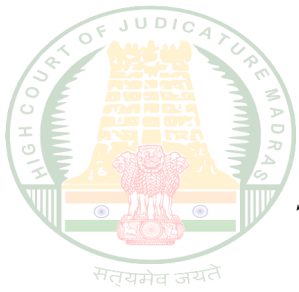
10.06.1976 his service has been regularized in the post of Mazdoor in regular time scale of pay. According to the petitioner, the next avenue of promotion for the post of Mazdoor is the Junior Foreman in the Government Press. The required qualification for the post of Junior Foreman in the Government Central Press is Diploma in Printing Technology. In the month of April 1982, the petitioner acquired the qualification of Diploma in Printing Technology and he was directed to discharge the duties of Junior Foreman in the vacant place. Since the petitioner was discharging duties of the Junior Foreman, he sought promotion to the said post. However, the respondents rejected the same stating that the Rules do not permit his promotion to the post of Junior Foreman from the post of Mazdoor. Therefore, the petitioner filed OA.No.1924 of 1996 before the Administrative Tribunal, Chennai seeking direction directing the second respondent to promote him to the post of Junior Foreman from the post of Mazdoor. Pursuant to the order of the Tribunal dated 10.09.2003, by proceedings dated 07.07.2008, the petitioner was promoted to the post of Junior Foreman on 31.05.2005. However, the petitioner's promotion has not been considered from April 1982, on which date the petitioner acquired Diploma in Printing Technology and therefore, he filed Writ Petition in



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WP.No.19774 of 2006. This Court by order dated 08.04.2008 directed the respondents to grant promotion to the post of Junior Foreman if there was any vacancy available in the post on any day prior to the actual date of promotion of the petitioner, in accordance with law. But the respondents did not adhere to the orders of this Court and violated the specific direction given in the said Writ Petition. Therefore, the petitioner gave a representation dated 21.07.2008, which was not considered. Hence, the petitioner filed another Writ Petition in WP.No.18672 of 2008, which was disposed of with a direction to the respondents to consider and pass orders on merits. However, the respondents without considering the merit of the case, issued letter dated 22.10.2008 without applying his mind. In the meantime, the petitioner also retired from service on 31.08.2009. In these circumstances, the petitioner filed WP.No.13362 of 2009 seeking retrospective promotion with all monitory and service benefits. This Court by order dated 02.07.2012 passed the following order:

“4. When the order is so categorical, directing the respondent to consider the claim of the petitioner for grant promotion to the post of Junior Foreman, if there was any vacancy available in that post on any day prior to the actual promotion of the petitioner as has been granted in the order dated 31.05.2005. The respondent is bound to implement the



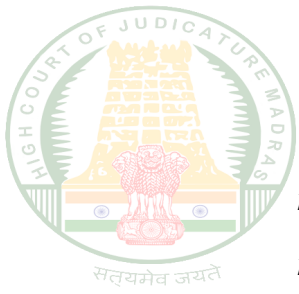
said order.

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5. Admittedly, there is a vacancy as on 10.06.1983, which is proved by the proceedings of the second respondent dated 10.06.1938. As per the above proceedings, one Mr.Arjunan was promoted as Junior Foreman (composing) and the said vacancy was available as on 10.06.1983. In that event, as per the order of this Court dated 08.04.2008, the respondent is required to give promotion notionally to the petitioner from 10.06.1983. Without doing so the respondent relied upon Rule 7 of the Tamil Nadu Government Servant Service which enables the respondent to make promotion based on merit and ability. The Rule 7 reads as follows:

“Rule-7 Promotion to the following posts shall be mad on the grounds of merits and ability and seniority being considered, only where merit and ability are approximately equal”

6. The above said rule was neither relied on before Tamil Nadu Administrative Tribunal by the respondent in O.A.No.1925 of 1996 or before this Court in WP.No.19774 of 2006 by the respondent. That apart, the rule was notified only on 29.11.2007, whereas, the claim of the petitioner relates to the year 1983 and the said rule cannot be applied to the petitioner's case. Therefore, relying upon the Special Rule-7 which was incorporated on 29.11.2007, the respondents cannot deny the promotion to the petitioner retrospectively. For the



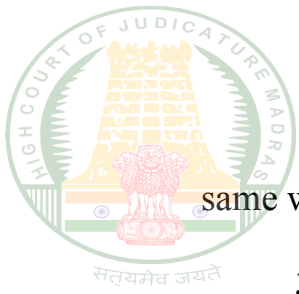
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reasons stated above the impugned order is set aside and the respondents are directed to give notional promotion to the petitioner from 10.06.1983 and settle all his benefits including re-fixation of pay within twelve weeks from the date of the receipt of a copy of the order. The petitioner is entitled to all the benefits including re-fixation of pay.”

The said order was confirmed by a Division Bench of this Court in W.A.No.2557 of 2012 dated 17.04.2014.

ii) Subsequently, the first respondent granted notional promotion w.e.f. 10.06.1983 and also refixed the pay in the post of Junior Foreman only for the purpose of pensionary benefits in G.O.Ms.No.74, Tamil Development and Information A1-1 Department, dated 13.07.2015. The respondent has passed the order refixing the pay in the post of Junior Foreman and paid the arrears in the Junior Foreman w.e.f. 01.06.2005.

iii) The grievance of the petitioner is that the respondents have not considered for any notional promotion in the subsequent promotional posts, which are purely on the basis of seniority. He is entitled for promotion for the promotional post viz., Senior Foreman, Top Senior Foreman, Overseer and Assistant Works Manager as it was given to one Mr.Arjunan, but the



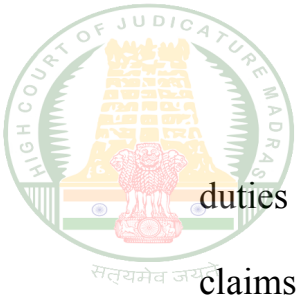
same was denied. Hence, the present Writ Petition has been filed.

3. Averments in the counter affidavit of respondents:

i) It is stated that the petitioner while retiring from service worked as Senior Foreman, however, he filed this Writ Petition stating that as if he was holding the post of Junior Foreman.

ii) It is further stated that the duties and responsibilities attached to the post of Junior Foreman are of sensitive in nature and could be discharged only after having sufficient experience in the field of printing. The duties of a Junior Foreman are allocate printing jobs to the employees working under his control, ensuring timely completion of jobs, certifying the out-turn based on the fixed norms. An individual possessing the qualification in Printing Technology without sufficient expertise/experience in the field of printing could not discharge all the duties attached to the post of Junior Foreman.

iii) It is further stated that at the time of appointment, the petitioner had passed S.S.L.C. and therefore, the appointment of the petitioner in the post of Mazdoor itself is irregular. The petitioner was holding the post of Mazdoor from 1976 to 2005 and the petitioner had not discharged any of the

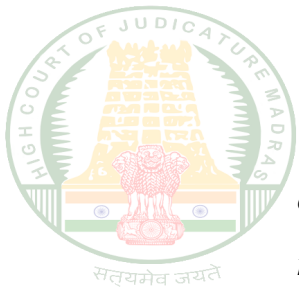


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duties attached to the post of Junior Foreman during the said period as he claims. Further, the respondents at no point of time issued any orders directing the petitioner to discharge the duties of Junior Foreman. It is submitted that mere acquiring the qualification prescribed for a post does not entitle an employee to the said post and the promotion to that post could be made only in accordance with the Service Rules for the post. The post of Mazdoor comes under Class IV Category-6 in the Tamil Nadu Basic Services. But the post of Junior Foreman comes under the Government Press Subordinate Services. As per the Special Rules for Press Subordinate Service, the post of Mazdoor is a feeder category for the initial posts like Junior Binder, Compositor, Machine Minder. These posts have higher scale of pay than the scale of pay of Mazdoor post. The petitioner without opting to get promoted to the posts comes under the Press Subordinate Services, requested to promote him to the post of Junior Foreman direct from the post of Mazdoor.

iv) It is further stated that the Tamil Nadu Government Press Subordinate Service prescribes the following as Rules for making promotion to the posts come under press Subordinate Service:

“Promotion shall be admissible from any category or grade of a category in any class to any other category or grade



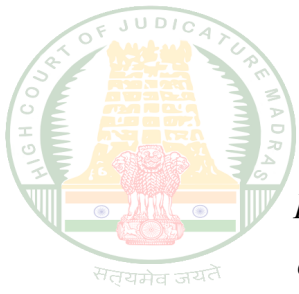
of a category in that class, of which the scale of pay or the maximum of pay is higher”

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According to the said Rules, promotion to any of the posts coming under the Tamil Nadu Government Press Subordinate Service shall be made within the category or grade in the class. But the post of Mazdoor comes under the class of Basic Service. As there were no specific rules/precedent/convention for giving promotion direct from the post of Mazdoor from the basic service to the post of Junior Foreman in Press Subordinate Service, the request of the petitioner to promote him direct from the post of Mazdoor to the post of Junior Foreman, was rejected. The post of Mazdoor is administered under the Department Rules, while the post of Junior Foreman is governed under the Press Subordinate Service.

v) It is further stated that Clause (1) of Rule 41 of Tamil Nadu State and Subordinate Service Rules, 1973 now, second proviso of sub-section (1) of Section 41 of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016, (Tamil Nadu, Act 14 of 2016) prescribes the procedure to be adopted for making promotion in public service, which reads as follows:

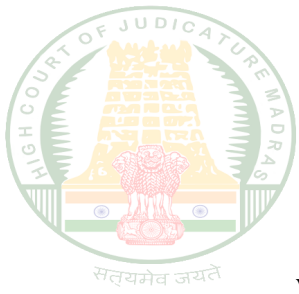
“provided further that if the scales of pay or pay band of posts in the feeder categories are different, the person holding



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post carrying a higher scale of pay or pay band in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay or pay band in the descending order in other feeder categories shall be considered.”

vi) It is submitted that as per the above said Rule, promotion to the post of Junior Foreman could be made from the posts of Imposer, Technical Assistant and Diploma Holders serving in the posts such as Binder, Compositor and Machine Minder coming under the Tamil Nadu Government Press Subordinate Services, in the ratio of 1:2:1 respectively, since the said posts have higher rate of scale of pay than that of the scale of pay prescribed for the post of Mazdoor. As there were many Diploma Holders waiting for promotion to the post of Junior Foreman from the posts of Binder, Compositor and Machine Minder, covered under Press Subordinate Services, the request of the petitioner to promote him from the post of Mazdoor below having lesser scale of pay than that of the posts come under feeder category to the post of Junior Foreman and Tamil Nadu Government Press Subordinate Service is unjustifiable and hence the request of the petitioner was rejected.

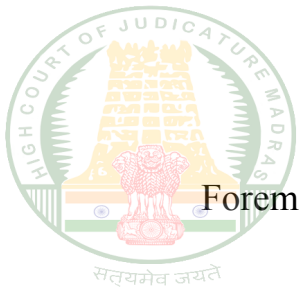


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vii) It is further stated that aggrieved by the rejection order, the petitioner along with another filed OA.No.1924 of 1996 before the Administrative Tribunal. The Tribunal by order dated 10.09.2003 directed the respondents to consider the case of the petitioner for promoting and posting as Junior Foreman. Pursuant to the order, the petitioner was promoted to the post of Junior Foreman w.e.f. 31.05.2005. However, the petitioner filed W.P.No.19774 of 2006 to promote the petitioner to the post of Junior Foreman from the date of acquiring the qualification. This Court by order dated 08.04.2008 passed the following order:

“The respondent is directed to consider the claim of the petitioner for grant of promotion to the post of Junior Foreman, if there was any vacancy available in the post on any day prior to the actual promotion of the petitioner as has been granted in the order dated 31.05.2005. If the petitioner was eligible to be considered on any date prior to the date on which he was promoted to the post of Junior Foreman and if the petitioner entitled for grant of any of such promotion, the respondent shall pass appropriate orders granting such promotion in accordance with law.”

Pursuant to the said order, the petitioner was promoted to the post of Junior



Foreman w.e.f. 06.11.2004, the date from which actual vacancy exists.

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viii) It is further stated that the petitioner once again filed WP.No.13362 of 2009 to give retrospective promotion with effect from 10.06.1983 with all monitory and service benefits. This Court by order dated 02.07.2012 passed the following order:

“The respondents are directed to give notional promotion from 10.06.1983 and settle all his benefits including re-fixation of pay within twelve weeks from the date of receipt of a copy of the order. The petitioner is entitled to all the benefits including the re-fixation of pay”

Accordingly, the petitioner was given notional promotion in the post of Junior Foreman w.e.f. 10.06.1983.

ix) Subsequently, the petitioner was promoted to the post of Senior Foreman w.e.f. 30.06.2009 and he retired from service on attaining the age of superannuation on 31.08.2009. As per the revised pay fixation based on the notional promotion given to the petitioner on a date prior to the date of actual promotion, revised pension and retirement gratuity were paid to the petitioner.

x) It is further stated that with regard to the grounds of the petitioner

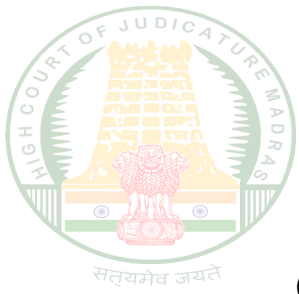


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that he could be sanctioned with promotions as in the case of Arjunan, it is their submission that the said Arjunan was appointed in higher category in the post of Junior Binder and he was 8 years senior in service that of the petitioner. Therefore, comparison should be made only with equals and not the unequals. The previous orders of the High Court have been complied with wholly and the petitioner is not entitled to raise the same issue afresh by filing a similar writ petition on the same grounds seeking additional relief, which he had not sought for previously.

4. Submissions of the learned counsel for the petitioner and the learned Additional Advocate General:

(i) The learned counsel for the petitioner would submit that the respondents while implementing the order of this Court dated 02.07.2012 in WP.No.13362 of 2009, which was confirmed in appeal, granted notional promotion to the post of Junior Foreman alone from 10.06.1983 by their order dated 13.07.2015. He contends that though such notional promotion was granted, the respondents failed to grant subsequent promotions to the promotional posts to which the petitioner is entitled basing on his seniority, which is illegal, unjust, arbitrary and hence, sought to allow this Writ Petition.



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(ii) On the other hand, the learned Additional Advocate General appearing for the respondents would submit that the petitioner was promoted notionally to the post of Junior Foreman with effect from 10.06.1983 in compliance of the order of this Court in WP.No.13362 of 2009 and he is not entitled for subsequent notional promotions and sought to dismiss the Writ Petition.

5. This Court gave anxious consideration to the submissions made by the respective counsels and carefully examined the materials available on record.

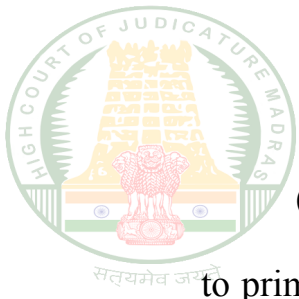
6. Analysis, Reasons and Findings:

(i) Admittedly, the respondents promoted the petitioner to the post of Junior Foreman in compliance of the order of this Court dated 02.07.2012 in WP.No.13362 of 2009. The said order was confirmed by a Division Bench of this Court in its judgment dated 17.04.2014 in WA.No.2557 of 2012. While allowing the said Writ Petition, this Court categorically held that by relying upon Special Rule 7 of the Tamil Nadu Government Service, which



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was incorporated on 29.11.2007, the respondents cannot deny promotion to the petitioner retrospectively because the claim of the petitioner relates to the year 1983 and the said Rule cannot be applied to the petitioner's case. As such it is clear that the petitioner is entitled for promotion to the post of Junior Foreman with effect from 10.06.1983. Consequent to the dismissal of the Writ Appeal filed by the respondents, the petitioner was granted notional promotion with effect from 10.06.1983 and the pay was also refixed in the post of Junior Foreman. It is clear that if the petitioner is promoted to the post of Junior Foreman on 10.06.1983, when the vacancy of Junior Foreman arose, definitely he is entitled for consideration of promotion to the subsequent promotional posts basing on his seniority. But till the retirement of the petitioner from service on 31.08.2009, the request of the petitioner for promotion to the post of Junior Foreman was not considered. After prolonged legal battle only the respondents granted notional promotion to the petitioner with effect from 10.06.1983 in the post of Junior Foreman. Considering all these aspects, this Court is of the considered view that the petitioner is entitled for promotion to the promotional posts i.e., Senior Foreman, Top Senior Foreman, Overseer and Assistant Works Manager basing on his seniority.



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(ii) In fact considering the entitlement of the petitioner and on coming to prima facie opinion, this Court directed the respondents to furnish details of the petitioner's revision of pay and pension particulars if he is granted notional promotion to the subsequent promotional posts. Accordingly, the respondents filed a memo before this Court on 27.11.2024, which is placed on record.

(iii) If the claim of the petitioner for notional promotion to the subsequent promotional posts basing on the seniority is not considered, definitely the petitioner would suffer irreparable loss as it was confirmed by this Court in earlier orders and not granting promotion to the petitioner to the post of Junior Foreman on 10.06.1983 is illegal. As such this Court held that the petitioner is entitled for due promotions notionally to the subsequent promotional posts.

7. Accordingly, this Writ Petition is allowed with following directions:

(i) The proceedings of the second respondent impugned in this Writ Petition is hereby quashed.

(ii) the respondents are directed to give subsequent promotions



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notionally, such as Senior Foreman, Top Senior Foreman, Overseer and

Assistant Works Manager with refixation of pay and service and monetary

benefits to the petitioner basing on his seniority.

iii) The respondents shall complete the said exercise within period of four weeks from the date of receipt of copy of this order.

There shall be no order as to costs.

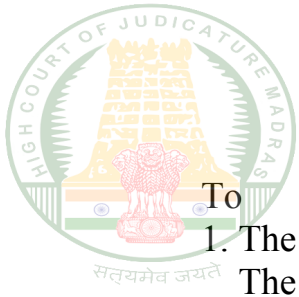
04.04.2025

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs/CM



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To

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Tamil Development, Religious Endowments &
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BATTU DEVANAND.J.,

pvs

Pre-delivery order in

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