

WEB COPY

WP No. 26951 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-02-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

**WP No. 26951 of 2018
and W.M.P.No.31323 of 2018**

1. T.S.Parthibhan

Assistant Engineer, Public Works
Department, Buildings Construction
and Maintenance Section, Medical
Works, Pudukkottai.

Petitioner(s)

Vs

1. Government of Tamil Nadu

Rep. by Secretary to Government,
Public Works Department, Secretariat,
Chennai 600 009.

2.The Engineer-in-Chief (WRD)

and Water Resources Department and
Chief Engineer (General), Public Works
Department Chepauk, Chennai 600 005.

Respondent(s)



PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the second respondent in proceedings bearing PWD Lr.No.C1(3)/05012/2017 dated 27.10.2017 and quash the same and direct the respondents to include the name of the petitioner in the Seniority list of Junior Engineers for the year 2013/14 fit for promotion to the post of Assistant Executive Engineer and consequently grant promotion to the petitioner to the post of Assistant Executive Engineer with retrospective effect from the date on which his immediate Junior was promoted as per the revised Seniority of Junior Engineers fixed vide Executive Order No.S2(2)/45860/2016 dated 01.08.2017 issued by the second respondent along with all consequential benefits .

For Petitioner : Mr.R.Rajmohan
for Ms.T.Hemalatha

For Respondent(s) : Mrs.S.Anitha
Special Government Pleader

ORDER

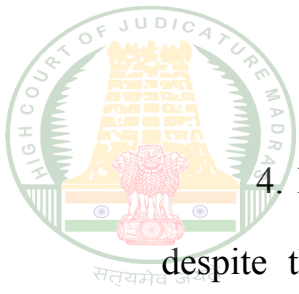
The writ petition has been filed challenging the proceedings of the second respondent bearing PWD Lr.No.C1(3)/05012/2017 dated 27.10.2017 and to direct the respondents to include the name of the petitioner in the Seniority list of Junior Engineers for the year 2013/14 and consequently grant promotion to the petitioner to the post of Assistant Executive Engineer with retrospective effect from the date on which his immediate Junior was promoted as per the



revised Seniority of Junior Engineers fixed vide Executive Order No.S2(2)/45860/2016 dated 01.08.2017 issued by the second respondent along with all consequential benefits.

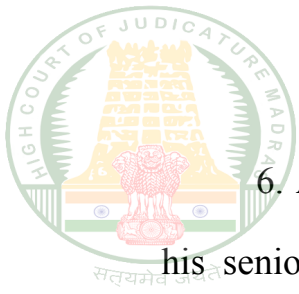
2. The petitioner was promoted as Junior Engineer on 06.12.2004 and he was re-designated as Assistant Engineer by transfer on 24.02.2006. Earlier the petitioner filed a writ petition in W.P.No.31513/2016 for including his name in the appropriate place in the panel of the year 1997 for promotion to the post of Junior Engineer and to promote him with retrospective effect from the date of his promotion of his immediate junior in the cadre of Technical Assistant and on notional basis and to grant all consequential benefits. The said writ petition was disposed by giving liberty to the petitioner to submit a fresh representation to the respondent therein by directing the respondent to consider the representation of the petitioner and to pass orders.

3. On his fresh representation filed on 09.11.2016 the respondent passed an order on 01.08.2017 by duly fixing his seniority in the cadre of Junior Engineer by assigning No.57 (I-A) / 1997. The petitioner wanted his name to be included for the promotion to the post of Assistant Executive Engineer for the year 2013 and 2014, but the said request was rejected on the ground that he did not complete 10 years of service in the cadre of Assistant Engineer on or before the crucial date of 01.04.2013. According to the respondents, the petitioner would complete 10 years of service on 05.12.2014.



4. Mr.R.Rajmohan, the learned counsel for the petitioner, submitted that despite the petitioner has been given with seniority in his earlier post of Technical Assistant and he was placed under seniority No.57, he was not promoted to the next level in accordance with the seniority but his juniors were promoted to the post of Assistant Executive Engineer. The further contention of the learned counsel for the petitioner is that similarly placed persons like the petitioner for whom the promotion to the post of Assistant Executive Engineer has not been given in accordance with the revised seniority list have filed writ petitions in W.P.Nos.26616 to 26620/2006 & 187 to 189 of 2014, and got an order in their favour.

5. Mrs.S.Anitha, the learned Special Government Pleader for the respondents, submitted that as per Rule 2 of Special Rules for the Tamil Nadu Engineering Service (TNES), a person who has to be promoted to the post of Assistant Executive Engineer ought to have completed 10 years of service in the post of Junior Engineer. As the petitioner has not completed 10 years of service as on the crucial date on 01.04.2013, he cannot be included in the promotional panel of the year 2013-2014 and he can be included only in the next promotion panel as he would complete 10 years of service only as on 05.12.2014. In fact in the writ petition the petitioner had not raised any issues but had simply stated that he was not included in the panel through his juniors have been promoted.



6. Admittedly, in view of the earlier writ petition filed by the petitioner his seniority got reassigned. The writ petitions referred by the petitioner in W.P.Nos.26616, 26620/2006 & 187 to 189 of 2014 relates to not granting promotion to those petitioners on the ground that their willingness have been obtained after the cut off date. By finding that the Service Rules does not provide to get any willingness from the employees for giving them promotion, an order has been issued to grant promotion to the individual to restore the seniority. But the petitioner's case does not fall under the above category. He did not state that his seniority was affected only because he had sent his willingness letter later and that was the reason for placing his seniority below any of his juniors. In the impugned order it has been only stated that the petitioner did not get the qualifying service of 10 years in the cadre of Junior Engineer. Unless the petitioner completes the minimum qualification of 10 years from the date of his promotion to the post of Junior Engineer i.e. on 06.12.2004, the petitioner cannot expect his name to be included in the panel for the year 2013 – 20014.

7. In the impugned order it has been stated that the persons who have already been promoted to the post of Assistant Executive Engineer were found to be qualified as they have completed 10 years of service on the crucial date on 01.04.2013. The petitioner has further contended that had he been given with notional promotion to the post of Junior Engineer with retrospective effect in view of his revision of seniority, he would have completed 10 years of service as on the crucial dated on 01.04.2013. But this issue has not been addressed by



the second respondent in his impugned order dated 27.10.2017. Even though the petitioner might have joined duty on 06.12.2004, it ought to be found out whether the petitioner's name could have been included anywhere along with others who have already been promoted to the post of Junior Engineer in view of his revision of seniority.

8. As the essential aspect of the petitioner's representation has not been considered in the impugned order and no findings have been rendered as to whether the petitioner is entitled to notional promotion in view of his revised seniority in the post of Junior Engineer and consequent eligibility of 10 years of service in the cadre of Junior Assistant as on 01.04.2013, I feel the impugned order is liable to be set aside.

9. In view of the above stated reasons, the Writ Petition is allowed and the impugned order passed by the second respondent in PWD Lr.No.C1(3)/05012/2017 dated 27.10.2017 is hereby quashed and the second respondent is directed to consider the representation of the petitioner dated 24.08.2017 in its true letter and spirit and pass order as to the eligibility of the petitioner to get notional promotion by virtue of the revision of seniority in the cadre of Junior Engineer and also pass order as to whether the petitioner's promotion to the post of Junior Engineer is given with retrospective effect and whether he completes 10 years of service on 01.04.2013 in view of the above benefit, within a period of four weeks from the date of receipt of a copy of this



order. No costs. Connected miscellaneous petition is closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

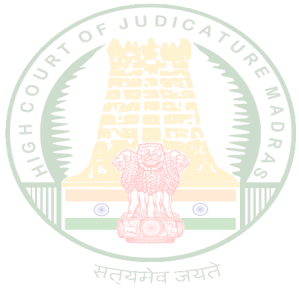
Neutral Citation: Yes/No

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To

1. The Secretary to Government, Public Works Department, Secretariat, Chennai 600 009.

2. The Engineer-in-Chief (WRD) and Water Resources Department and Chief Engineer (General), Public Works Department Chepauk, Chennai 600 005.



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R.N.MANJULA J.

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