

W.A(MD) No.1944 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2025

Pronounced on : 26.08.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.A(MD) No.1944 of 2024

and

C.M.P.(MD)No.14391 of 2024 & CMP(MD)No.4248 of 2025

1.The Secretary to Government,
Micro Small Medium Enterprises Department,
State of Tamil Nadu,
Secretariat,
Fort St.George, Chennai – 09.

2.The Industries Commissioner and
Director of Industries and Commerce,
SIDCO Office Building,
Guindy, Chennai – 600 032.

... Appellants

Vs.

Prabhu Jayakumar Moses

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 21.06.2023 in WP(MD)No.16738 of 2018.



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For Appellants : Mr.N.Satheeshkumar,
Additional Government Pleader

For Respondent : Mr.J.Ravikumar

JUDGMENT

(By G.R.SWAMINATHAN, J.)

The Government of Tamil Nadu has filed this writ appeal challenging the order dated 21.06.2023 made in WP(MD)No.16738 of 2018 filed by the respondent (hereinafter referred to as the writ petitioner).

2.The writ petitioner was recruited through TNPSC and appointed as Tester on 19.06.1995. He was promoted to the post of Assistant Director (Electrical and Electronics) on 19.10.2009. The further avenues of promotion are to the post of Deputy Director and then to the post of Joint Director. The petitioner was promoted to the post of Deputy Director vide G.O (2D) No.07 Micro, Small and Medium Enterprises (E1.1) Department dated 19.07.2022. In the department of Industries,



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there were several wings such as Electrical and Electronics, Technical Wing and Chemical Wing. Each wing maintained separate seniority list, and promotion to the post of Assistant Director and from the post of Assistant Director to Deputy Director and from the post of Deputy Director to Joint Director was made accordingly. There was a Joint Director for each wing. The posts of JD (E&E), JD (General), JD (Chemical) were merged and called as JD (Engineering). Pursuant to the merger, the special rules for the Tamil Nadu Industries Services was also amended vide G.O (2D) No.10 Micro, Small and Medium Enterprises (E1.1) Department dated 20.02.2014.

3.The grievance of the writ petitioner is that while merging the posts of Joint Director of the various wings, there was no corresponding merger of the posts in the feeder grade. The writ petitioner points out that since those belonging to the technical wing have greater chances of promotion, persons who were posted as Assistant Director after the writ petitioner had been promoted as Deputy Directors earlier in point of time. Since persons who were junior to the writ petitioner in the post of Assistant Director had been promoted as Deputy Directors



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ahead of him in the technical wing, while they would be promoted as Joint Directors in due course, the writ petitioner will have to stagnate in the post of Deputy Director till his retirement. That led to the filing of WP(MD)No.16738 of 2018 for directing the government to refix inter se seniority among the Assistant Directors of the various wings and to make promotion by fixing a quota in the post of Joint Director (Engineering) for the various wings. The respondents filed a detailed counter affidavit opposing the writ petitioner's claim. The learned Single Judge found mercy in the petitioner's contentions and allowed the writ petition vide order dated 21.06.2023 in the following terms :

“13. It is seen that the petitioner is not questioning the policy decision of merging or the creation of post and granting promotion to Technical Wing. The petitioner is only questioning the illegality that has occurred to the petitioner and the Electrical and Electronics Wing, while considering for merging. Therefore, this Court is of the considered opinion mere questioning the policy decision is different from infringement occurred during while implementing the policy decision. In the present case there is the infringement in implementing the policy decision and hence the writ petition is maintainable.



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14.The respondents have passed G.O.Ms. No.10, Micro, Small and Medium Enterprises [E1(1)] Department, dated 20.02.2014, wherein the Government has taken a policy decision to merge the post of Joint Director (Chemicals) and Joint Director (Electrical and Electronics) with Joint Director (Engineering). The feeder category to the post would be the Deputy Director (Chemicals), Deputy Director (Electrical and Electronics) and Deputy Director (Technical). The respondents without merging the candidates in the post of Deputy Director level and Assistant Director level, but has merged the post in the level of Joint Director alone has created this infringement. This would be evident from the communication, dated 15.09.2020 issued by the Director of Industries and Commerce to the Principal Secretary wherein Seniority List were prepared by taking the persons in Serial No.47 to 75 of Deputy Director (Technical), Deputy Director (Electrical and Electronics) and Deputy Director (Chemicals).

15. On perusal of the list, it is seen that one V.Umarani who was appointed as Deputy Director (Chemical) on 30.09.2019, was placed in Serial No.66 whereas the petitioner was appointed on 29.10.2019 as Deputy Director (Electrical and Electronics) was placed in Serial No.65. Admittedly, if these two persons are compared by date of appointment to the



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post of Deputy Director post, the said Umarani would be senior to the petitioner, thereby the said Umarani's rights would be affected while considering for promotion. Likewise, one K.Sivasankaran, who was appointed as Deputy Director (Technical) on 20.02.2020 who is placed in Serial No.61, whereas the petitioner was appointed as Deputy Director (Electrical and Electronics) on 29.10.2019 is in Serial No.65. If these two persons are considered, admittedly, the said K.Sivasankaran is junior to the petitioner by the date of appointment to the post of Deputy Director post, thereby creating imparity while considering for promotion to the post of Joint Director. If the inter se seniority is fixed in the post of Deputy Director Level by taking the date of appointment in the post of Deputy Director Level then there would not be any illegality. The respondents failed to follow the same, thereby infringed the rights of the petitioner and similarly placed like that of the petitioner.

16.In the aforesaid list the respondents had listed 16 persons from Deputy Director (Tech) and thereafter included the name of Deputy Director (E&E) and Deputy Director (Chem), then again Deputy Director (E&E), then again listed 8 Deputy Director (Tech). The respondents had not stated explicitly the method to fix the seniority in the Deputy Director Level. Therefore, this Court is of the considered



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opinion that the list is not in accordance with settled principles of law that the seniority is to be prepared by taking the date of appointment when there is more than one mode of recruitment. As stated supra if the respondents are fixing the seniority based on the date of appointment at Deputy Director level then there will not be any illegality and the merging of three categories would be smooth without affecting anybody rights.

17. It is pertinent to state if the merger is from the lower level that is from Assistant Director level, then there will not be any illegality at all. But the respondents have merged only at the Joint Director level and is continuing the division in the lower level i.e. in Deputy Director level and Assistant Director Level, which has created this illegality. Therefore, this Court is of the considered opinion that the claim of the respondents that merging is not necessary at lower level is clearly absurd since it is creating infringement of rights. Likewise, without taking the date of appointment in the post of Deputy Director posts / Assistant Director post in the electrical and electronics, technical and chemical division is absurd. Therefore, the method followed by the respondents has clearly infringed the rights of the persons.



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18. That is why, the Principal Secretary has rightly advised the Government to provide ratio among the candidates. At least if the ratio is granted among the candidates, there will not be any illegality.

19. The respondents have neither followed merging from Lower Level post i.e. Assistant Director post nor prepared any seniority list based on the date of appointment in the Assistant Director Post / Deputy Director post nor granted any ratio among the electrical and electronics, technical and chemical division has infringed the rights of the petitioner and similarly placed persons.

20. Therefore, this Court is of the considered opinion that illegality has occurred and the petitioner's claim is absolutely right. Therefore, this Court is directing the respondents either to fix ratio among electrical and electronics, technical and chemical division or merge the post of electrical and electronics, technical and chemical division from Assistant Director post by taking the date of appointment in the Assistant Director post and prepare a seniority list. Thereafter, promotion shall be given to the eligible candidates. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. Until the completion of the re-working of the panel,



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the respondents shall not effect any promotions. If the respondents have promoted anybody, the same shall be reverted and any promotion should be in accordance to the directions stated above.”

Aggrieved by the same, this writ appeal has been filed.

4.The learned counsel appearing for the respondents reiterated all the contentions set out in the memorandum of grounds of appeal. Relying on a catena of decisions including the recent order of the Kerala High Court in **OP (KAT) No.130 of 2021** dated 18.11.2024 (***Unni K.E and ors v. State of Kerala***), he contended that integrating categories and fixing seniority based on Special Rules is a policy decision and it is not within the court's domain to rectify the anomalies. According to the appellants, the learned Single Judge had interfered with the policy decision of the government. The learned Additional Government Pleader would also point out that the petitioner had earlier filed WP(MD)No.12754 of 2014 for including his name in the panel for promotion of the year 2013-14 to the post of Deputy Director (Engineering). But the said writ petition was dismissed on 13.07.2019. The petitioner had not filed any appeal challenging the same.



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According to him, on account of the dismissal of WP(MD)No.12754 of 2014, the direction impugned in the present writ petition is not sustainable. He called upon this Court to set aside the order of the learned Single Judge and allow this writ appeal.

5.Per contra, the learned counsel appearing for the writ petitioner submitted that the order of the learned Single Judge is eminently sustainable. Relying on the decisions reported in **(2001) (1) SCC 475 (Kuldeep Kumar Gupta v. H.P. SEB)**, **(1975) 1 SCC 319 (A.K. Subraman v. Union of India)** and **2007 SCC OnLine Bom 931 (Dattatraya G. Wankar v. State of Maharashtra)**, he contended that the order of the learned Single Judge does not deserve to be interfered with.

6.We carefully considered the rival contentions and went through the materials on record. The data set out in the following table would speak eloquently for itself:

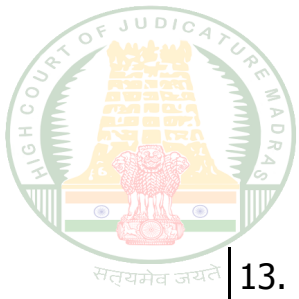


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List of date of retirement for the 14 persons in the panel for Joint

Director (Engineering)

Sl.No.	Name and Designation	Date of Joining as AD	Date of Retirement
1.	Thiru.T.Kannan, Deputy Director (Technical)	17.02.2010	31.07.2028
2.	Thiru.B.Monikandan Deputy Director (Technical)	10.03.2011	31.01.2034
3.	Thiru.T.Ramesh, Deputy Director (Technical)	21.03.2013	30.04.2028
4.	Tmt.P.Esaiselvi Deputy Director (Chemicals)	24.05.2013	NA
5.	Tmt.A.Swarnalatha Deputy Director (Technical)	20.05.2015	31.01.2034
6.	Thiru.A.Berbet, Deputy Director (Technical)	22.05.2015	31.07.2026
7.	Tmt.M.Vidya, Deputy Director (Technical)	22.05.2015	31.05.2029
8.	Tmt.S.Thiripurasundari, Deputy Director (Technical)	22.05.2015	30.06.2034
9.	Thiru.A.Sekar, Deputy Director (Technical)	20.05.2015	31.07.2029
10.	Thiru.P.S.Kamalakannan, Deputy Director (Technical)	21.05.2015	31.05.2029
11.	Thiru.D.Sivakumar, Deputy Director (Technical)	20.05.2015	31.07.2027
12.	Thiru.G.Thirumurugan, Deputy Director (Technical)	20.05.2015	30.06.2023



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13.	Thiru.S.Prasanna Balamurugan, Deputy Director (Technical)	20.05.2015	30.04.2031
14.	Thiru.J.Prabhu Jayakumar Moses Deputy Director (Technical)	19.10.2009	26.01.2030

The petitioner joined as Assistant Director (Electrical and Electronics) on 19.10.2009. It can be seen from the above table that the petitioner is ranked at Sl.No.14. All the 13 persons who rank above him had joined only subsequently. In fact, as many as 9 of them joined only in May 2015 as Assistant Directors. But not only they have been promoted as Deputy Directors earlier but also promoted as Joint Directors vide G.O (2D) No.15, MS&ME (E1(1)) Department dated 01.08.2025.

7.We can understand the agony of the writ petitioner. Persons who had joined the same grade in another wings six years later are now working in a higher post. It is this fact that completely swayed the mind of the learned Single Judge which led to the issuance of the impugned directions. The Hon'ble Bombay High Court in the decision reported in **2007 SCC OnLine Bom 931 (Dattatraya G.Wankar v. State of Maharashtra)** held as follows :



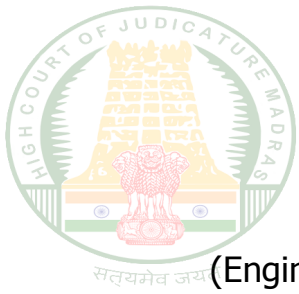
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"We have earlier adverted to this issue of providing quota for cadres based on different sources of recruitment and noted that the Supreme Court has held that this would not be violative of Articles 14 and 16. We have referred to the observation of the Supreme Court in Direct Recruit Class H Employees (supra) in respect of the very service. Making provisions and providing quotas for persons coming from different feeder categories, would not be violative of Articles 14 and 16 of the Constitution of India. This finding in respect of the very service and in respect of the same cadres, must result in holding that it is permissible to provide for quotas for promotions for the different cadres based on the source of recruitment."

8. We are clearly of the view that the grievances projected by the writ petitioner will have to be redressed. The case of the writ petitioner has to be treated as a special one. The Government is endowed with sufficient powers and to set right injustice done to a particular employee, appropriate orders can always be issued. When the writ petitioner joined service, there were different wings. Each wing had its own separate seniority. The writ petitioner had a legitimate expectation that he would be promoted to the post of Joint Director



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(Engineering) in due course. In fact, his immediate senior in the post of Deputy Director had long since retired. But on account of the merger of the posts of Joint Director and the non-merger of the posts of Assistant Directors and Deputy Directors in various wings, the writ petitioner's expectation has been frustrated. While the writ petitioner cannot impugn the policy decision of the Government in merging the posts of Joint Director, he can definitely call upon the Government to consider earmarking a quota for each wing.

9.However, when due to merger of the two categories into a common pool anomalies arise, the situation has to be remedied not by the court but by the executive. It is on this ground, we set aside the order of the learned Single Judge. The writ petitioner is permitted to submit a fresh representation to the Government. In normal circumstances, we would rest content to issue a direction to pass an appropriate order on merits and in accordance with law. In this case, we would go one step further. We direct the Government to pass such an order that would redress the grievances raised by the writ petitioner within a period of twelve weeks from the date of receipt of copy of this order.



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10. With the above direction, this writ appeal stands allowed. No costs. Consequently connected miscellaneous petitions are closed.

**(G.R.S., J.) & (K.R.S., J.)
26.08.2025**

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
SKM

To

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