

(1993) 06 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 10661 of 1982

K. Manickavasagam

APPELLANT

Vs

Managing Director, TWAD Board and Others

RESPONDENT

Date of Decision : 18-06-1993

Acts Referred:

Tamil Nadu Water Supply and Drainage Board Employees (Discipline and Appeal) Regulations, 1972 — Regulation 19

Citation : (1994) 1 LLJ 949 : (1993) 2 MLJ 351

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : R. Sukantharaj, for the Appellant; B. Yamini, for the Respondent

Final Decision : Dismissed

Judgement

Somasundaram, J.—This writ petition has been filed for the issue of a writ of declaration for declaring that Regulation 19(2)(C)(ii)(3)(C) of

Tamilnadu Water Supply and Drainage Board Service Regulations, 1972 is illegal and void.

2. The Tamilnadu Water Supply and Drainage Board (hereinafter referred to as "TWAD Board") was formed on April 14, 1971 by an Act called

the Tamilnadu Water Supply and Drainage Board Act, 1970 (hereinafter referred to as the Act). The Regulations governing the service conditions

of the Officers and employees of the TWAD Board called Tamilnadu Water Supply and Drainage Board Service Regulations, 1972 (hereinafter

referred to as the Regulations) were made under Sub-sections (1) and (2) of Section 73 of the Act and these Regulations were issued on

December 13, 1972. The employees of the TWAD Board are classified under various services such as TWAD Board General Service, TWAD

Board Engineering Service, TWAD Board Engineering Subordinate Service, TWAD Board Subordinate Service, TWAD Board General

Subordinate Service and TWAD Board Last Grade service. The petitioner, being a Junior Engineer (formerly Supervisor) belongs to TWAD

Board Engineering Subordinate Service. The Draftsman of all grades also belong to TWAD Board Engineering Subordinate Service. Assistant

Executive Engineer (formerly Assistant Engineer) is a post in the TWAD Board Engineering Service. This post has to be filled up either by direct

recruitment or by promotion of Assistant Engineers (formerly Junior Engineers) and Junior Engineers (formerly Supervisors). As per Regulation

19(2)(C)(ii) of the Board's Service Regulations, so far as suitable and qualified hands are available, out of every four vacancies successively arising

otherwise than substantively among the Assistant Executive Engineer the first three vacancies should be filled or reserved to be filled by recruitment

by promotion from among the Assistant Engineers (formerly Junior Engineers) possessing the B.E. Degree and who have rendered more than 5

years of service, Municipal Engineers Grade-III taken over to the Department of Public Health Engineering and Municipal Works possessing

Diploma qualification and not less than 10 years of service and Municipal Engineers Grade-III taken over to the Department of Public Health

Engineering and Municipal works with lower subordinate qualification having put in 18 years of service. The fourth vacancy has to be filled or

reserved to be filled by recruitment by transfer from (1) Junior Engineers (formerly Supervisors) with 10 years of service; (2) the Junior Engineers

(formerly Supervisors) promoted from the rank of Draftsman possessing upper subordinate, L.S.E., L.C.E., or D.C.E. Diploma having put in not

less than 15 years of service, or A.M.I.E. with 15 years of service or with L.E. qualification with 18 years service; (3) Draftsman Grade-I and

Head Draftsman possessing the above qualifications having put in not less than 10 years of service out of which at least one year must have been

spent on outdoor field work and (4) Draftsman Grade-I and Head Draftsman with lower subordinate having put in not less than 18 years of service

out of which atleast one year should have been spent on outdoor field work. Thus as per Regulation 19(2)(C) (ii) for every four vacancies, three

vacancies have to be filled up with graduate engineers and the fourth vacancy by diploma-holders working as Junior Engineer and as Draftsman

Grade-I and Head Draftsman.

3. Clause (2)(C)(ii) of Regulation 19 runs as follows:

(ii) So far as suitable and qualified candidates are available out of every four vacancies successively arising otherwise than substantively among

Assistant Engineers the first three vacancies shall be filled or reserved to be filled by recruitment by promotion from among the Junior Engineers of

the Tamilnadu Water Supply and Drainage Board Engineering Subordinate Service-

(1) possessing the B.E. Degree and who have rendered not less than five years of service;

(2) Municipal Engineers, Grade-III taken over to the Department of Public Health Engineering and Municipal works, possessing upper subordinate

LCE Diploma of the College of Engineering, Guindy or LSE or LCE Diploma of State Board of Technical Education and Training, Madras or a

pass in Sections A and B of the AMIE (India) Examination having not less than 10 years of service; or

(3) Municipal Engineers, Grade III taken over to the Department of Public Health Engineering and Municipal works with L.S. qualification having

not less than 18 years of service and the fourth vacancy shall be filled or reserved to be filled by recruitment by transfer from among-- (A)

Supervisors of the Tamilnadu Water Supply and Drainage Board Engineering Subordinate Service having put in not less than 10 years of service;

(B) Supervisors of the TWAD Board Engineering Subordinate Service promoted from the rank of Draftsman in the same service with US or LCE

or LSE Diploma of College of Engineering, Guindy or State Board of Technical Education and Training, Madras or a pass in sees: A and B of

AMIE (India) Examination having put in not less than 15 years of service or with L.S. qualification having put in not less than 18 years of service;

(C) Draftsman, Grade-I and Head Draftsman of the TWAD Board Engineering Subordinate Service possessing the upper subordinate or LCE.

Diploma of the College of Engineering, Guindy or LCE or LSE of the State Board of Technical Education and Training, Madras or a pass in

Sections A and B of the AMIE (India) Examination having put in not less than 10 years of service out of which atleast one year must have been

spent on outdoor field work;

(D) Draftsman, I grade and Head Draftsman of the TWAD Board Engineering Subordinate Service with LS qualification having put in not less than

18 years of service out of which atleast one year must have been spent on outdoor field work"".

4. The case of the petitioner is that he joined the TWAD Board as Draftsman Grade-III on November 2, 1968 and then he was appointed as

Junior Engineer on April 14, 1973. According to the petitioner, respondents 3 and 4 who were working as Draftsman Grade-I were promoted as

Assistant Executive Engineer, invoking Regulation 19(2)(C)(ii)(3)(C). In the above circumstances, the petitioner has challenged the said regulation

by filing the present writ petition.

5. Mr. R. Sukantharaj, learned counsel for the petitioner, challenged the validity of Regulation 19(2)(C)(ii)(3)(C) on the following two grounds.

6. The first contention of the learned counsel for the petitioner is that the impugned regulation is invalid because, it includes the post of Head

Draftsman and Draftsman Grade I, which are non-engineering posts involving only clerical work as a feeder category for promotion to the post of

Assistant Executive Engineer along with Junior Engineers like the petitioner who are holding executive post and doing engineering and executive

type of work. According to the learned counsel for the petitioner, the impugned Regulation is bad, because, it treats the Head Draftsman and

Draftsman Grade-I on the one hand and the Junior Engineer on the other who are unequals, as equals for the purpose of promotion to the higher

post of Assistant Executive Engineer. The learned counsel for the petitioner further contended that the job of the Junior Engineer is executive in

nature, whereas the job of the Head Draftsman and Draftsman Grade-I is a non-executive and purely office work of a clerical nature, and

therefore, the services of Head Draftsman and Draftsman Grade-I cannot be equated with the services of Junior Engineers who are holding

executive post. The learned counsel for the petitioner also contended that, in any event, the post of Assistant Executive Engineer cannot be a

promotional avenue for non-engineers like the Head Draftsman and Draftsman Grade-I.

7. I am unable to accept the above contention of the learned counsel for the petitioner. It is seen from the counter-affidavit filed on behalf of the 1st

respondent that the posts of Head Draftsman and Draftsman Grade-I are engineering posts and for those posts a degree in engineering or diploma

in engineering is the basic qualification. The factual position is set out clearly in para 6 of the counter- affidavit filed by the 1st respondent, in the

following terms:

6. With regard to paragraph 5, it is submitted that the contention that the posts of Draftsman are non-engineering posts is not correct. For these

posts degree in engineering or diploma in engineering is the basic qualification and they are also engineering posts as in the case of Junior Engineers.

The Junior Engineers are mostly doing execution of Investigation in the field. There are few who are working in the office also as in the case of

Draftsman. The works of the draftsman are confined to the office. They have to deal with technical references in the Division, Circles and the

Junior Engineers, Assistant Engineers, Assistant Executive Engineers and Executive Engineers are also working in Office dealing with technical

references. The Junior Engineers in the field are attending field works and the Junior Engineers in the Office are doing Office works connected with

technical matters. The Draftsman are working in the office only because their duty is in dealing with technical matters. The Regulations provide for

appointment of Draftsman Grade-I and Head Draftsman as Assistant Executive Engineers after a prescribed period of their experience because of

the fact that while working in office they are having only theoretical knowledge of works and the field experience is required to manage the post of

Assistant Executive Engineer. The work of Draftsman is technical in nature and not clerical as alleged in the affidavit and what is lacking is only

actual field experience. They are deputed to field to acquaint themselves with the various aspects in the field on which they are having theoretical

knowledge as Draftsman. All the Junior Engineers/Assistant Engineers are not working in the field only and some of them are working in the offices

also. That does not mean, that the Assistant Engineers/Junior Engineers working in the office are doing only clerical work. Their work is

Engineering in nature and the work of Draftsmen are also Engineering in nature. The post of Assistant Executive Engineer is the next higher post

available for Assistant Engineer/Junior Engineer/Head Draftsmen and Draftsmen Grade-I and the above categories are the feeder posts for

Assistant Executive Engineer. The Draftsman post is not a non-Engineering post as alleged. What they are lacking is only experience in field and

that is why experience in field work is prescribed as a condition for promotion as Assistant Executive Engineer in respect of Draftsman Grade-I

and Head Draftsman"".

In view of the above factual position, it cannot be contended that the nature of work done by persons holding the posts of Head Draftsman and

Draftsman Grade-I on the one hand and Junior Engineers on the other is different and therefore, unequals are treated as equals by the impugned

Regulation by making the post of Junior Engineer, Head Draftsman and Draftsman Grade-I as feeder categories for promotion to the next post of

Assistant Executive Engineer. Therefore. I have no hesitation in rejecting the first contention of the learned counsel for the petitioner.

8. The second ground of attack on the validity of the impugned regulation is stated by the petitioner in paragraph 6 of the affidavit filed in support

of the writ petition in the following terms:

I submit that under Rule 23 III(1) the post of Junior Engineer in the Board's Engineering Subordinate Service is filled up either by direct

recruitment or by diploma-holders or by promotion from category of Head Draftsman and Draftsman Grade-I. This makes it clear that the post of

Head Draftsman and Draftsman Grade-I are only feeder cadres for promotion to the post of Junior Engineer. This obviously establishes that the

Head Draftsman and Draftsman Grade-I cannot be directly promoted to the post of Assistant Executive Engineer by skipping through two

categories of Engineering cadre posts namely Junior Engineer and Assistant Engineer. It is opposed to the very basic conditions of service

regulations which certainly cannot provide for double promotion from lower category to third higher category. I therefore, submit that Head

Draftsman and Draftsman Grade-I cannot be promoted as Assistant Executive Engineer by giving a go by to the promotion through intermediary

post. In this view, the existence and provision of Rule 19(2)(c)(ii)(3)(c) for promotion of Head Draftsman and Draftsman Grade-I to the post of

Assistant Executive Engineer is illegal and opposed to the basic structure of service conditions in the Board's Engineering Subordinate Service and

is liable to be struck down"".

9. Mr. R. Sukantharaj, learned counsel for the petitioner, while reiterating the contention raised in paragraph 6 of the affidavit filed in support of the writ petition submitted that the impugned regulation providing for promotion of Grade-I Draftsman and Head Draftsman to the post of Assistant Executive Engineer by skipping two cadre posts is violative of Article 14 of the Constitution of India. The learned counsel for the petitioner further submitted that, it is clear from Regulation 23 III that the only avenue of promotions for persons holding the post of Head Draftsman and Draftsman Grade-I is the post of Junior Engineer (formerly Supervisor) and the impugned Regulation is bad, because it runs counter to Regulation 23 III and makes Head Draftsman and Draftsman Grade-I eligible for recruitment by transfer to the higher post of Assistant Executive Engineer. In other words the contention of the learned counsel for the petitioner is that the impugned regulation treats persons holding higher post of Junior Engineers and the persons holding the lower post of Junior Engineer and the persons holding the lower post of Head Draftsman and Draftsman Grade-I as equals and they are made eligible for recruitment by transfer to the post of Assistant Executive Engineer and inasmuch as the impugned regulation treats unequals as equals, for the purpose of filling up the post of Assistant Executive Engineer reserved for Diploma Holders, it is violative of Article 14 of the Constitution and therefore, it is invalid and liable to be struck down. There is no merit in the second contention of the learned counsel for the petitioner also. The impugned Regulation 19(2)(ii)(3)(C) provides for filling up the vacancies arising in the post of Assistant Executive Engineer in the TWAD Board Engineering Service. Regulation 19(2) (c) (ii) says that out of 4 vacancies arising in the post of Assistant Executive Engineer, the first three vacancies must go to the graduate engineers and the 4th vacancy must go to Diploma Holders. Regulation 19(2) (c)(ii)(3) provides that the 4th vacancy referred above and reserved for diploma-holders shall be filled by recruitment by transfer from among:

- (A) Junior Engineer (formerly Supervisor) of TWAD Board Engineering Subordinate Service having put not less than 10 years of service;
- (B) Head Draftsman; and
- (C) Draftsman Grade I of the TWAD Board Engineering Subordinate Service having put in not less than 10 years of service out of which atleast

one year must have been spent on out door field work.

It must be remembered that in the case of filling up a post by recruitment by transfer, the only relevant consideration is that the feeder categories

from which the persons are drawn for filling up the higher post must have like or similar attributes. In the present case, the three categories of posts

among others which are treated as feeder categories by the impugned regulation for filling up the post of Assistant Executive Engineer by

recruitment by transfer namely, Junior Engineer, Head Draftsman and Draftsman Grade-I are having the following like or similar attributes:

(A) The persons holding the above three posts are having the same educational qualification, that is, all of them are diploma-holders in Engineering;

(B) All of them must have put in 10 years of service in the respective post.

However, in the case of Head Draftsman and Draftsman Grade-I, they must have put in 10 years of service out of which one year must have been

spent on outdoor field work. Further, it is seen from paragraph 7 of the counter affidavit that the post of Draftsman Grade I carries higher scale of

pay than the post of Junior Engineer. In these circumstance, it cannot be contended that the persons occupying the three categories of posts,

namely Junior Engineer, Head Draftsman and Draftsman Grade-I are unequals and by the impugned Regulation the unequals are clubbed together

for the purpose of filling up the post of Assistant Executive Engineer reserved for diploma-holders.

10. Regulation 23 III also does not support the case of the petitioner. Regulation 23 III deals with one of the methods of recruitment to the post of

Junior Engineer, that is by promotion, from the categories of Head Draftsman and Draftsman Grade-I provided that they have put in service for a

minimum of 10 years in the category of Draftsman Grade-I, whereas, the impugned Regulation provides for filling up the vacancy arising in the post

of Assistant Executive Engineer and which is reserved for diploma-holders, by recruitment by transfer. Once when a Head Draftsman and

Draftsman Grade-I are promoted a Junior Engineers, such Junior Engineers become eligible for recruitment by transfer as Assistant Executive

Engineer after acquiring the field experience prescribed under the impugned regulation. In such cases, the Head Draftsman and Draftsman Grade-I

who are promoted as Junior Engineers, need not put in 10 years of service in the

post of Junior Engineer to become eligible for recruitment by transfer as Assistant Executive Engineer, because, they have already put in 10 years of service in the post of Draftsman Grade-I. In this context, it is relevant to refer to the stand taken by the 1st respondent in paragraph 7 of the counter affidavit in the following terms.

However Regulations 19(2)(C)(ii) and 23 III provides that Head Draftsman and Draftsman Grade-I shall be eligible for appointment as Assistant

Executive Engineer after putting a service of not less than 10 years and practical experience for the prescribed period. It implies that a Draftsman

Grade I or Head Draftsman promoted as Junior Engineer is also eligible to be considered for appointment as Assistant Executive Engineer if he is

in possession of the service of not less than 10 years as Draftsman and gained field experience"".

Thus when the Head Draftsman and Draftsman Grade-I who have put in 10 years of service, including field experience for the prescribed period,

are promoted as Junior Engineers, they are eligible to be appointed as Assistant Executive Engineer, as the Junior Engineer are also treated as a

feeder category for the 4th vacancy in the post of Assistant Executive Engineer reserved for Diploma holders under Regulation 19(2)(c)(ii). In

other words, the Head draftsman and Draftsman Grade I who are eligible to be promoted as Junior Engineers and who have put in one year

service in the outdoor field work and those Head Draftsman and Draftsman Grade-I who are actually promoted as Junior Engineers and acquired

the necessary field experience are treated as feeder categories for filling up the vacancy in the post of Assistant Executive Engineer, reserved for

Diploma Holders, by recruitment by transfer.

11. In these circumstances, I have no hesitation for rejecting the second contention of the learned counsel for the petitioner that the impugned

regulation treats unequals as equals for the purpose of filling up the 4th vacancy of Assistant Executive Engineer reserved for diploma-holders and

that it is violative of Article 14 of the Constitution of India. For all the reasons stated above, it has to be held that the impugned Regulation 19(2)

(C)(ii)(3)(C) is perfectly valid and is not liable to be struck down. There is no merit in the writ petition and it is liable to be dismissed. Accordingly,

the writ petition is dismissed. No costs.