

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-08-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

WRIT APPEAL Nos.1157 & 1158 OF 2015

W.A.No.1157/2015 :

Chennai Metropolitan Water Supply and
Sewerage Board,
represented by its Managing Director,
No.1, Pumping Station Road,
Chintadripet,
Chennai-600 002.

Appellant/Respondent

-vs-

A.Paranjothi

....

Respondent /Petitioner

W.A.No.1158/2015 :

1. Chennai Metropolitan Water Supply and
Sewerage Board,
represented by its Board of Directors,
No.1, Pumping Station Road,
Chintadripet,
Chennai-600 002.

2.The Principal Secretary/Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board,
No.1, Pumping Station Road,
Chintadripet,
Chennai-600 002.

Appellants/Respondents

-vs-

Y.Amarnath

....

Respondent /Petitioner

W.A.No.1157 of 2015 Under Clause 15 of the Letter Patent Act is filed against the order, dated 19.06.2014, made in W.P.No.4781 of 2014, on the file of this Court.

WP.NO.4781 of 2014: Petition filed Under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus Calling for the records from the respondent relating to the issue of

the panel of Assistant Executive Engineers fit for promotion as Executive Engineers for the year 2013-2014 approved and communicated to all by the first respondent in their proceedings Proc. No.CMWSSB/P&A/ STF/RA1/16128/2013 dated 28.1.2014 and quash the same in so far as not including the petitioner in the impugned panel at appropriate place i.e. above his junior Thiru.G.Nagarajan in accordance with the law and consequently to direct the respondent to revise the impugned panel of Assistant Executive Engineers fit for promotion as Executive Engineers for the year 2013-14 by placing the petitioner in the panel above Thiru.G.Nagarajan and to give the Petitioner national Promotion as Executive Engineer from the date on which his, junior, Thiru G.Nagarajan was promoted as Executive Engineer with all service and monetary benefits accordingly and pay him all the Consequential arrears thereof within a time frame as may be fixed by this Court.

W.A.No.1158 of 2015 Under Clause 15 of the Letter Patent Act is filed against the order, dated 02.03.2015, made in W.P.No.21722 of 2014, on the file of this Court.

WP.NO.27122 of 2014: Petition under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus after calling for the concerned records from the 1st respondent quash the order of the 1st respondent dated 10.5.2012 bearing Proceedings NO. P & A/ STF/RA1/16190/2012 communicated by the 2nd respondent in so far as passing over the name of the petitioner in the panel as illegal arbitrary and contrary to law and promote the petitioner to the post of Executive Engineer from the date when his immediate junior was promoted with all consequential benefits.

For appellant(s) in both W.As.: Mr.V.Perumal
For respondent in W.A.No.1157/2015 : Mr.N.Subramanian
For respondent in W.A.No.1158/2015 : Mr.Balan Haridas

J U D G M E N T

(Judgment of the Court was delivered by S.Manikumar,J.)

Common question in both the appeals, namely, W.A.Nos.1157 of 2015 and 1158 of 2015, filed by Chennai Metropolitan Water Supply & Sewerage Board, Chennai, in short, "the Board", is, whether the learned single Judge was right in quashing the proceedings, issued by the Managing Director of the Board, Chennai, impugned in the Writ Petitions, and consequently, issuing directions to the appellant to include the name of the respondents in both the Writ Petitions for the panel of Executive Engineers in the Board, and promote them, from the date on which their immediate juniors came to be promoted. The learned Single Judge has directed the appellant to pay the service benefits, after giving promotion within a period of six weeks from the date of receipt of a copy of the order, made in the Writ Petitions.

2. Respondent in W.A.No.1157 of 2015, namely, A.Paranjothi was not included in the panel for the year 2013-2014, for promotion as Executive Engineer, for the reason that the punishment of stoppage of increment for one year without cumulative effect imposed against him vide proceedings No.CMWSSB/P&A/VC2/16452/2008, dated 06.11.2009, was within a check period of five years, on the crucial date. He was considered for promotion for the first time and the punishment was held against him. His name was passed over till any clarification issued by the Government.

3. In W.P.No.4781 of 2014, A.Paranjyothi has sought for a prayer, to quash the proceedings No.CMWSSB/P&A/STF/RA1/16128/2013, dated 28.01.2014, in which, his name was not included for the abovesaid reasons, and for a consequent direction to revise the panel of Assistant Executive Engineers, fit for promotion, as Executive Engineers, for the year 2013-2014, and place him in the panel, above Thiru G.Nagarajan, and to give all consequential benefits. In the Writ Petition, Paranjothi has contended that the appellants ought to have considered the punishment with reference to check period, for denying promotion to an employee and promotion can be denied only during the currency of punishment. According to him, period of punishment was one year, commencing from 06.11.2009, and, thus, it expired on 05.11.2010, and, therefore, when the impugned panel was drawn for the year 2013-2014, there was no currency of punishment, and hence, the petitioner ought to have been included in the panel of Assistant Executive Engineers, fit for promotion to the post of Executive Engineer, for the year 2013-2014.

4. Before the Writ Court in W.P.No.21722 of 2014, Y.Amarnath (respondent in W.A.No.1158 of 2015) has sought for a writ of certiorarified mandamus, calling for the concerned records from the Board and prayed to quash the order, dated 10.05.2012, bearing proceedings No. P&A/STF/RA1/16190/2012, communicated by the second respondent therein, in so far as passing over of his name, in the panel, and to quash the same.

5. In Writ Petition, Y.Amarnath has submitted that his name was not included in the panel to the post of Executive Engineer for the year 2012-13, on the ground that the punishment of stoppage of increment for one year was in operation during the check period of five years. According to him, the punishment was over by 01.04.2010 and, as such, there was no impediment to include his name in the panel, prepared on 10.05.2012. Though he was subsequently promoted as Executive Engineer on 03.02.2014, in Writ Petition, he has prayed for a writ of certiorari, to quash the order, dated 10.05.2012, in which, his name was not included for the abovesaid reason of promoting him to the post of Executive Engineer from the date on which his immediate junior was promoted.

6. In both the Writ Petitions, after advertng to the pleadings and arguments advanced by the learned counsel for the partes, in the order made in W.P.No.4781 of 2014, at paragraph 5, the learned single Judge has opined that the reason stated by the appellant to deny inclusion of the names of the respondents in the panel was not legal.

7. In W.P.No.4781 of 2014, filed by A.Paranjothi (respondent in W.A.No.1157 of 2015), vide order, dated 19.06.2014, the learned single Judge, at paragraph 6, has ordered as follows :

"6. In view of the above, the writ petition is allowed with a direction to the respondent to include the name of the petitioner in the panel for the year 2013-2014 for promotion to the post of Executive Engineer and promote him from the date on which his immediate junior was promoted and pay him all service benefits. Such consequential order giving promotion to the petitioner shall be issued by the respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed."

8. In W.P.No.21722 of 2014, filed by Y.Amarnath (respondent in W.A.No.1158 of 2015), vide order, dated 02.03.2015, the learned single Judge, at paragraph 5, has ordered as follows :

"5. In the result, the impugned order dated 10.05.2012 passed by the 1st respondent is set aside. The 1st respondent is directed to pass consequential order giving promotion to the petitioner from the date on which his immediate junior was promoted. He should also be given all the consequential benefits except monetary benefits. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order."

9. Being aggrieved by the directions issued by the learned single Judge, allowing the Writ Petitions, the present Writ Appeals have been filed.

10. When the appeals came up for admission, Mr.V.Perumal, learned counsel for the appellant Board, has submitted, that as per G.O.Ms.No.22, Personnel & Administrative Reforms (S) Department, dated 24.02.2012, amendments have been issued to Tamil Nadu State and Subordinate Service Rules, in short, "the Rules", wherein Rule 4 (a) of the said Rules now mandates, inter alia, that a panel for promotion can be made only on the basis of Schedule VII to the Rules. According to him, Item (1-HH) inserted in Schedule VII of the abovesaid Rules reads that "Any punishment (other than 'Censure') imposed on a member of servie within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year, prior to the crucial date, shall be held against a member of service and his name shall not be considered for

inclusion in the approved list". Insertion further reads that "Any punishment, concluding 'censure', imposed on a member of service after the crucial date, but before actual promotion or appointment, shall be held against the member of service and he shall not be given promotion or appointment.

11. With reference to the Full Bench decision of this High Court in Deputy Inspector General of Police v. V.Rani, reported in 2011 (3) CTC 129, Mr.V.Perumal, learned counsel for the Board, further submitted that the Hon'ble Full Bench found that the concept of check period, introduced by various Government letters, issued by the Government, has no statutory backing. Therefore, the Government have thought it fit to make an amendment to the Rules, by issuing G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 24.02.2014, and, that, therefore, the decision of the Hon'ble Full Bench, rendered earlier to the amendment made, ought not to have applied to the case of the respondents, while they sought for quashing of the orders impugned in the Writ Petitions.

12. It is his further submission that both the respondents were inflicted with punishment of stoppage of increment, within the check period of five years and in the light of the recent G.O.No.22, dated 24.02.2014, giving a statutory backing, by the inclusion in Schedule VII of the Rules, the learned single Judge ought not to have quashed the orders impugned in the Writ Petitions, and, consequently, ought not to have issued any directions to the appellant Board, to promote the respondents to the post of Executive Engineers in the Board, and place them in the seniority list above their immediate juniors in service.

13. On the above submissions, Mr.N.Subramanian and Mr.Balan Haridass, learned counsel appearing for the respondents in the appeals, submitted that Tamil Nadu State Subordinate Service Rules, cannot ipso facto be applicable to Chennai Metropolitan Water Supply and Sewerage Board, which has a separate set of service rules, called Employees Service Regulations, 1978, , in short, "the Regulations" of Chennai Metropolitan Water Supply and Sewerage Board.

14. On the above submission of the learned counsel appearing for the respondents, Mr.V.Perumal, learned counsel for the appellant Board, was requested to get instructions, as to, whether there is any corresponding rule or regulation in the Board, or for that matter, the Board has made any amendments to the Regulations. Thus, we adjourned the hearing of Writ Appeals to this day.

15. Reverting to the above query, Mr.V.Perumal, learned counsel for the Board, submitted that the Board has separate service regulations and that there is no such amendment in the Regulations, similar to the one made in item (1-HH) to Schedule VII of Tamil Nadu State Subordinate Service Rules.

16. By inviting the attention to Regulation 22 of the Regulations of the Board, both the learned counsel appearing for the respondents submitted, that as per the regulations applicable to the employees of the Board, 10% of the promotions subject to a minimum of at least one to Board Services in supervisory or managerial grades shall be made, on grounds of merit, and the balance 90% promotions in these grades in all promotions to the lower grades, on the basis of only seniority. Regulation 22 further states, that promotion to fill the vacancies, not set apart for merit promotion in the supervisory and managerial categories, will also be decided on the basis of seniority. Even in merit promotions, seniority will be the deciding factor as between the candidates, eligible for being considered for such promotions, and the Board shall be the deciding authority, for making merit promotions.

17. It is the candid admission of Mr.V.Perumal, learned counsel for the Board, that Regulations do not provide for taking into consideration punishments imposed within the check period of five years.

18. In the case of one of the respondents, namely, A.Paranjothi (writ petitioner in W.P.No.4781 of 2014), punishment of stoppage of increment for one year without cumulative effect was imposed on 06.11.2009 and it expired on 05.11.2010.

19. In the case of Y.Amarnath (writ petitioner in W.P.No.21722 of 2014), punishment of stoppage of increment for one year with cumulative effect was awarded on 27.08.2008 and it expired on 26.08.2009. The panel of Executive Engineers for the year 2012-2013 was drawn on 10.05.2012. Another panel of Executive Engineers for the year 2013-2014 was drawn on 28.01.2014.

20. By applying the Government orders/circulars, issued for the preparation of the panel, as per Rule 4(a) of the General Rules for Tamil Nadu State Subordinate Services, case of the respondents has not been considered for promotion to the post of Executive Engineer in the Board, for the recruitment years, stated supra.

21. Y.Amarnath has been omitted to be included in the panel for the year 2012-2013. A.Paranjothi has been omitted to be included in the panel for the year 2013-2014. Misapplying the circulars/rules applicable to State Government servants, their names have not been considered. First of all, in the absence of any amendment to the Regulations of the Board, circular memorandum issued for drawal of panel for Government servants cannot ipso facto be applied to the employees of the Board. Notwithstanding the above, when the validity of circulars or instructions, issued by the Government in the matter of preparation of panels, was tested, the Hon'ble Full Bench of this Court, in the case of Deputy Inspector General of Police v. V.Rani, reported in 2011 (3) CTC 129, has struck down the said instructions/circulars. When those Government

instructions/circulars have already been struck down by the Hon'ble Full Bench of this Court, the Board ought not to have applied the same to the employees of the Board.

22. We have already recorded the submission of Mr.V.Perumal, learned counsel for the Board, that there is no such regulation, for taking into consideration punishments imposed within the check period of five years, while a panel is drawn. In H.C.Sharma and Others v. Municipal Corporation of Delhi, reported in AIR 1983 SC 881, on the facts and circumstances of the said case, the Hon'ble Apex Court in paragraph 37 held as under :

"37. It would appear from what has been stated above that the Municipal Corporation of Delhi which is a statutory authority is not automatically bound by any decision that may be taken by the CPWD in regard to direct recruitment of Assistant Engineers and that it is open to the Corporation to adopt any policy of the CPWD by a resolution when alone that policy will become binding on the Corporation.

The above said decision in H.C.Sharma's case would lend support to the case of the respondents.

23. Regulation 22 of the Employees Service Regulations 1978 of Chennai Metro Water Supply and Sewerage Board reads as follows :

"22. Promotion to Supervisory or managerial grade :

10% of the promotions subject to a minimum of at least one to Board Services in Managerial grades shall be made on grounds of merit and the balance 90% promotions to these grades and all promotions to the lower grades on the basis of only seniority. Promotions to fill the vacancies not set apart for merit promotion in the supervisory and managerial categories will also be decided on the basis of seniority. Even for merit promotions, seniority will be deciding factor as between the candidates eligible for being considered for such promotion. The Board shall be the deciding authority for making merit promotions."

24. In both the cases, when the panels were drawn, the period of punishment imposed on the respondents had already expired. Juniors of the respondents have been included and promoted to the post of Executive Engineers. No other impediment was shown except the imposition of punishment within the check period of five years, which condition ought not to have been applied to the respondents.

25. Writ Court has observed that the decision made in Deputy Inspector General of Police v. V.Rani, reported in 2011 (3) CTC 129, has to be read as a binding precedent on all the authorities, under Article 141 of the Constitution of India. As observed earlier, the circular/executive instructions, issued for preparation for panel of Government servants are not ipso facto applicable to the employees of the Board, and it is also admitted by the learned counsel, that there is also no corresponding amendment in the Regulations.

26. When the circulars/executive instructions have not been adopted by the Board, the Board is bound to follow Regulation 22 of the Regulations. Even though the Board has contended that the case of the respondents cannot be considered for inclusion in the respective panels on the ground that they are not meritorious, this Court is not inclined to accept the same, for the reason, that on the dates of preparation of panels, period of punishment had already come to an end. Whether meritorious or non-meritorious under the abovesaid Regulations, the respondents are eligible to be considered for promotion, to the post of Executive Engineers. As rightly pointed out by the learned counsel for the respondents, even in merit promotions, seniority will be the deciding factor as between the candidades, eligible for being considered for promotion.

27. For the reasons stated supra, this Court is of the view, that the appellants have not made out a case, for interfering with the orders impugned in the present appeals. Both the appeals are dismissed. No costs. Connected M.P.Nos.1 of 2015 are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dixit
To,

1. The Managing Director
Chennai Metropolitan Water Supply and
Sewerage Board,
No.1, Pumping Station Road,
Chintadripet,
Chennai-600 002.

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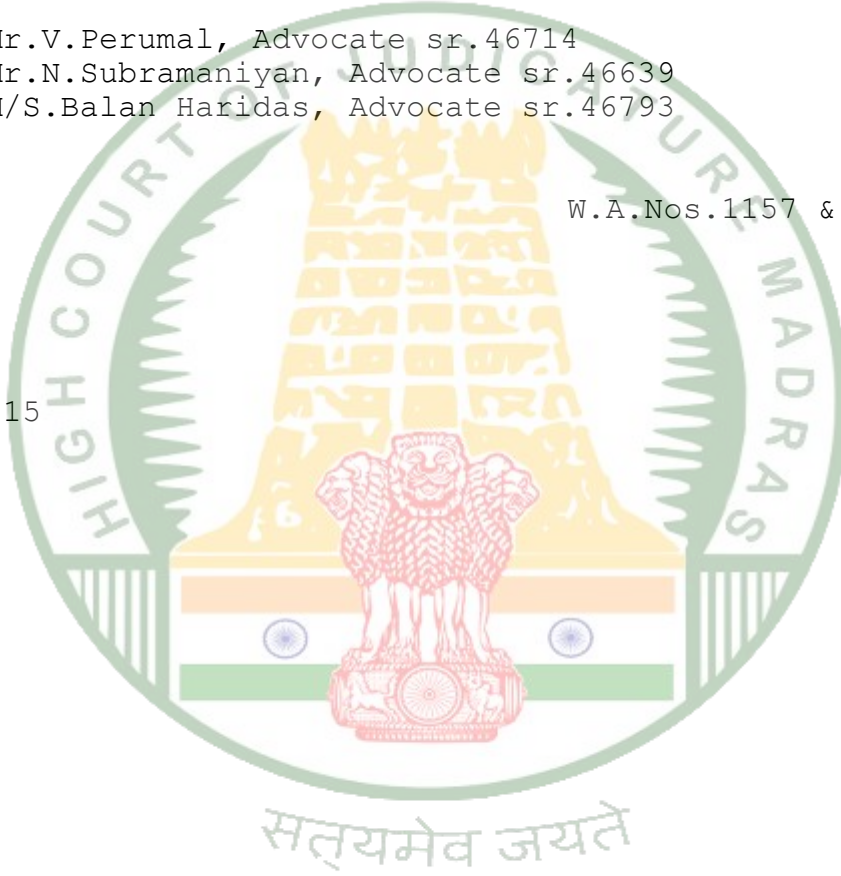
2. The Principal Secretary/Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board,
No.1, Pumping Station Road,
Chintadripet,
Chennai-600 002.

3.The Principal Secretary/Managing Director
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+1 cc to Mr.V.Perumal, Advocate sr.46714
+1 cc to Mr.N.Subramaniyan, Advocate sr.46639
+1 cc to M/S.Balan Haridas, Advocate sr.46793

W.A.Nos.1157 & 1158/2015

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