

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 6.2.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.24406 OF 2013

V.Subbiyan

...Petitioner

versus

- 1 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY TO GOVT. SMALL
INDUSTRIES (ESTABLISHMENT 2) DEPT. FORT ST.
GEORGE CHENNAI 600 009.
- 2 THE PRINCIPAL SECRETARY TO
GOVERNMENT MICRO SMALL AND MEDIUM
ENTERPRISES (E1.1) DEPT. GOVT. OF TAMILNADU
FORT ST. GEORGE CHENNAI 9.
- 3 THE INDUSTRIES COMMISSIONER
AND DIRECTOR OF INDUSTRIES AND COMMERCE NO.
36 SOUTH BUNK CANAL ROAD R.A.PURAM
MANDAVELLIPAKKAM CHENNAI 28.

...Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus Calling for the records relating to the order dated 19.08.2013 in letter No.7403/E1(1)/2009-36 and quash the same and consequently direct the Respondents herein to grant notional promotion to the Petitioner with retrospective effect by placing the Petitioners name in the Panel drawn for the year 2005-06 for the post of Joint Director of Industries & Commerce (Engineering) with all attendant benefits.

For petitioner

Ms.AL.Ganthimathi

For respondent

Mr.M.S.Ramesh, A.G.P.

O R D E R

The petitioner earlier filed a Writ Petition in W.P.No.17276 of 2009, to quash the order dated 22 July 1999 and to grant him notional promotion with retrospective effect, by placing his name in the panel drawn for the year 2005-06 for the post of Joint Director of Industries & Commerce (Engineering) with all attendant benefits. The Writ Petition was allowed by this Court by order dated 30 November 2012. This Court has given a categorical finding that the petitioner ought to have been considered for inclusion in the panel for the post of Deputy Director of Industries and Commerce, for the year 1997-98 as well as for the year 2005-06. The first respondent was directed to consider the case of the petitioner for promotion and to grant all attendant benefits, in the light of the relevant observation. The said order was misconstrued by the first respondent to be one of simple Mandamus to consider the representation and the same resulted in passing the impugned order, rejecting the request for inclusion of petitioner's name in the panel for the post of Joint Director for the year 2005-06.

2. The petitioner joined the Government Service on 1 November 1973, as Inspector of Industries, Department of Industries and Commerce. He was promoted as Assistant Director of Industries and Commerce, by order dated 4 April 1995. The next avenue of promotion was Deputy Director, Department of Industries and Commerce. The petitioner was fully eligible for promotion. The Government approved the names of 8 candidates for regular appointment by promotion to the post of Assistant Director of Industries and Commerce in the panel drawn for the year 1993-94. However, name of the petitioner was excluded on account of initiation of disciplinary proceedings pursuant to the charge memo dated 3 December 1997. The case of the petitioner was not considered for promotion even for the year 2005-06 in spite of the fact that there were three vacancies.

3. The Government later dropped all the charges framed against the petitioner, after a period of four years and six months. In the meantime, the petitioner retired on attaining the age of superannuation, on 31 December 2006. The case of the petitioner was considered in detail by this Court in the earlier round of litigation in W.P.No.17276 of 2009. The learned Judge observed that the petitioner was eligible for appointment to the post of Joint Director of Industries and Commerce for the year 2005-06. The relevant observation reads thus :-

"10. In view of the averments made on behalf of the petitioner, as well as the respondents, and on the perusal of the records relating to the

matter, it is found that the charges levelled against the petitioner, on 3.12.1997, and on 26.6.2002, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, were frivolous in nature. Therefore, the charges levelled against the petitioner had been dropped, as not proved. As such, the name of the petitioner ought to have been considered for being included in the panel, for the post of Deputy Director of Industries and Commerce, for the year 1997-98 as well as for the year 2005-06.

11. Further, as the charges levelled against the petitioner had been dropped, as not proved, this Court finds it appropriate to direct the respondents to consider the name of the petitioner, for being promoted to the post of Joint Director of Industries and Commerce, (Engineering), notionally, and to grant him all attendant benefits due to him, as per the applicable provisions of law. Accordingly, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed."

4. The first respondent was bound to pass orders pursuant to the direction given by this Court in its order dated 30 November 2012. The first respondent instead of implementing the order, considered the matter afresh and rejected the claim on the ground that the petitioner had not possessed the required qualification of 7 years in the post of Deputy Director, for inclusion of his name in the panel year 2005-06. According to the first respondent, the petitioner is short of 4 months service for completing the required period of 7 years. In case the date on which the immediate senior of the petitioner was promoted is taken into consideration, the petitioner would have completed more than 7 years. The petitioner is therefore perfectly correct in his submission that he has already completed 7 years of service and as such, his case was wrongly rejected by the first respondent.

5. The petitioner must succeed on the ground that he completed more than 7 years of service thereby making him eligible for promotion to the post of Joint Director of Industries and Commerce, for the year 2005-06. He must also succeed on the strength of the earlier order dated 30 November 2012 in W.P.No.17276 of 2009. The order in the earlier Writ Petition has become final. The first respondent is bound to honour the said order. The first respondent has no business to interpret the order passed by this Court. The first respondent was bound to include the name of the petitioner for

promotion to the post of Joint Director for the year 2005-06, on the strength of the order passed by this Court. I am therefore of the view that the impugned order is liable to be set aside.

6. In the result, the impugned order dated 19 August 2013 is set aside. The first respondent is directed to include the name of the petitioner for promotion to the post of Joint Director, Industries and Commerce (Engineering), for the year 2005-06, in the light of the above observation and taking into account the order passed by this Court in W.P.No.17276 of 2009 dated 30 November 2012. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

7. In the upshot, I allow the Writ Petition. No costs. Consequently, M.P.No. is also closed.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

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To

- 1 THE SECRETARY TO GOVT.
SMALL INDUSTRIES (ESTABLISHMENT 2) DEPT.
FORT ST. GEORGE CHENNAI 600 009.
- 2 THE PRINCIPAL SECRETARY TO
GOVERNMENT MICRO SMALL AND MEDIUM
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1 CC to Ms.AL.Ganthimathi, Advocate SR.No. 6598

1 CC to the Government Pleader, SR.No.6691

W.P.No.24406 OF 2013

TM (CO)

PSI (05.03.2015)