

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.10120 of 2016
and
WMP.Nos.9015 and 9016 of 2016

P. Pichumani

.. Petitioner

Versus

Tamil Nadu Water Supply & Drainage Board
Represented by its Managing Director
TWAD House
Chepuak
Chennai 600005

.. Respondent

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the Respondent in proceeding No.C1/Ho/EE/25155/2015 dated 02.03.2016 and quash the same in so far as rejection of promotion of the petitioner is concerned and consequently directing the Respondent Board herein to forthwith promote the petitioner as Assistant Executive Engineer on par with his immediate Junior namely Thiru. S. Dhandapani (Seniority Number, 3013 E.Code No.5443) together with all attendant benefits in view of the quashing of the criminal case by order of this Court dated 26.08.2015 in Crl.O.P.No.9468 of 2015.

For Petitioner : Mr.M.Muthumani Doraisami
Senior Counsel

For Respondents : Ms.Thamizharasi

O R D E R

This Writ Petition has been filed challenging the order dated 02.03.2016 in so far as it relates to refusal on the part of the respondent to promote the petitioner to the post of Assistant Executive Engineer.

2. The case of the petitioner is that he was initially appointed as Assistant Draughtsman on 27.09.1980 and thereafter he was appointed as Technical Assistant on 05.01.1981. On 06.06.1986, the petitioner was promoted as Junior Engineer and designated as Assistant Engineer in TWAD Board. According to

the petitioner, he has completed 29 years of service in the very same cadre. It is further submitted by the petitioner that on 27.11.2002, he was suspended from service pending investigation in Crime No.3/AC88 HQrs of 88. According to the petitioner, similar order of suspension was issued to several other employees in the respondent-Board on the basis of the registration of the above said criminal case.

3. As far as the petitioner is concerned, he filed W.P. No. 43497 of 2002 before this Court challenging the order of suspension and obtained an interim order. Ultimately, by an order dated 26.06.2013, the said Writ Petition was allowed by this Court and the order of suspension passed by the respondent was quashed. On the basis of the order passed by this Court, the respondent passed an order dated 30.10.2013 thereby reinstated the petitioner in service. After reinstatement, the petitioner submitted a representation dated 17.03.2014, through proper channel enclosing the various orders passed by the respondent Board in similar circumstances and requested to consider his claim for promotion on par with his immediate junior. In response, the respondent by proceedings dated 10.06.2014 informed the petitioner that "he is eligible for promotion as Assistant Executive Engineer as per his seniority only in the year 2012-2013. But a criminal case was filed and charge sheeted on 23.04.2008 that is in the year 2008 itself. As he was charge sheeted he could not be considered for promotion."

4. According to the petitioner, his claim for promotion was not considered only on the ground of pendency of criminal case against him. According to the petitioner, by an order dated 26.08.2015 in Crl.O.P.No.9468 of 2015, this Court has quashed the criminal case pending against the petitioner. Therefore, there is no impediment for the respondent to consider his claim for promotion. Highlighting the above, the petitioner submitted a detailed representation to the respondent on 26.08.2015, through proper channel, enclosing the order of this Court dated 26.08.2015 and sought for promotion on par with his immediate junior. As no orders have been passed on such representation, the petitioner submitted reminders dated 22.12.2015 and 25.02.2016 to the Managing Director in person. While the petitioner was anticipating for favourable orders on the basis of his representation, the respondent passed the impugned order 02.03.2016 refusing to consider his claim for promotion on the ground that charge sheet filed against him is pending as on 01.07.2015. Challenging the same, the petitioner has come up with this writ petition.

5. Heard both sides and perused the materials available on record. The learned Senior counsel for the petitioner submitted that as per G.O.Ms.22, P&AR Department dated 24.02.2014 wherein it was ordered that when once a government servant is acquitted

from the charges he is entitled for consideration of promotion with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion. It is further stated that in such a case of acquittal, the appointing authority shall take suo moto action within fifteen days from the date of issue of final orders in the departmental disciplinary case or criminal case as the case may be. In this case, by virtue of the order passed by this Court on 26.08.2015 in Crl.O.P. No. 9468 of 2015, the criminal complaint registered against the petitioner was quashed and there is no impediment for considering the claim of the petitioner for promotion. The petitioner also invited the attention of the respondent with a representation dated 28.10.2015 enclosing a copy of the order dated 26.08.2015 passed by this Court. In spite of the above, the respondent has passed the impugned order erroneously stating that criminal proceedings is pending against the petitioner. The impugned order has been passed by the respondent without application of mind. The learned Senior counsel appearing for the petitioner further brought to the notice of this Court that the petitioner is due for retirement on 30.06.2016 and therefore he prayed for allowing the writ petition and to direct the respondent to consider the claim of the petitioner for promotion.

6. The respondent has filed a Counter affidavit contending inter alia that as against the order dated 26.08.2015 passed by this Court in Crl.OP No. 9468 of 2015, the Directorate of Vigilance and Anti corruption filed Special Leave Petition before the Hon'ble Supreme Court of India, New Delhi in Diary No.11430 of 2016. It is further stated that as far as other persons who are similarly placed as that of petitioner is concerned, the criminal O.P.Nos.16320 of 2014 filed by them were allowed by this Court on 26.02.2015 by quashing the criminal case filed by DV & AC. Since there is no criminal case pending against them on the crucial date of approving panel i.e. 01.07.2015, their names are included in the approved panel of Assistant Engineers/Junior Engineers fit for promotion as Assistant Executive Engineers for the year 2015-2016 and promoted as Assistant Executive Engineers. The petitioner was not considered for inclusion in the panel since criminal case was pending against him as on 01.07.2015.

7. I heard the learned Senior counsel for the petitioner and the learned Additional Government Pleader for the respondents. On perusal of the material records, it is clear that the petitioner and others were charge sheeted by the Directorate of Vigilance and Anti Corruption Department. The charge sheet filed against them have been quashed by this Court. In the counter affidavit filed, it is stated that as against the order dated 26.08.2015 in Crl.OP No. 9468 of 2015 filed by the petitioner, the Vigilance Department has filed Special Leave

Petition before the Hon'ble Supreme Court in Diary No.14432 of 2016. From the case status sheet produced by the learned senior counsel for the petitioner, it is seen that the SLP was filed on 23.04.2016 and for rectifying certain defects, the papers have been returned. That being so, as on date of filing of the counter i.e. on 28.06.2016, it is stated that the Special Leave Petition has been filed before the Supreme Court and it was in the Diary stage.

8. As rightly pointed by the learned senior counsel for the petitioner, as per G.O. Ms. No.22 dated 24.02.2014, when a government servant is acquitted from charges he or she shall be considered for promotion with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion and in such a case of acquittal, the appointing authority shall take suo moto action within fifteen days from the date of issue of final orders in the departmental disciplinary case or criminal case, as the case may be. As far as the petitioner is concerned, after his acquittal from the criminal case, he has made a representation on 28.10.2015 pursuant to which the the present impugned order was passed on 02.03.2016. When other similarly persons have been promoted subject to the result in Special Leave Petition, the petitioner should have been given the same benefit and that has not been done. Hence, considering the submissions made by the learned Senior Counsel appearing for the petitioner and also in the light of the G.O.Ms.No.22 dated 24.02.2014, the respondent shall consider the representation of the petitioner dated 28.10.2015, by taking into consideration of the fact that charges levelled against him were quashed, and pass orders within period of two months, from the date of receipt of a copy of this order, as the petitioner is retiring on 30.06.2016.

In view of the same, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

Tamil Nadu Water Supply & Drainage Board,
Represented by its Managing Director,
TWAD House,
Chepuak,
Chennai 600005.

+1cc to M/S.Muthumani Doraisamy, Advocate Sr.36383
+1cc to M/S.S.Thamizharasi, Advocate Sr.36122

WP No.10120 of 2016

MP 1[co]
srg 11/08/2016



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