

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 16-09-2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.280 of 2015

- 1.The Secretary to Government,
Highways and Minor Ports (HK1) Department,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Director General,
Highways Department,
Chennai-600 005.
- 3.The Chief Engineer,
Quality Assurance and Research,
Chennai.Appellants/Respondents

-vs-

S.Kalaiarasi Respondent/Petitioner

Appeal under Clause 15 of the Letters Patent against
the order of this Court, dated 27.08.2014, passed in
W.P.No.20364 of 2012.

WP.No.20364 of 2012:Petition filed under Article 226 of the
Constitution of India for the Issuance of a Writ of
Certiorarified Mandamus to call for the records of the 1st
respondent herein made in his letter NO.850/HK1/2012-3 dated
29.06.2012 and quash the same and direct the 2nd respondent
herein to give the promotion post to the petitioner as Assistant
Divisional Engineer as per the promotion order given to the
petitioner on 10.01.2008 in the proceedings NO.10/Nir1(2)/2008-1
with all attended benefits.

For appellants : Mr.P.S.Sivashanmugasundaram,
Spl.Govt.Pleader

For respondent : Mr.Vijay Narayanan,
Senior Counsel,
for Mr.B.Giridhara Rao.

J U D G M E N T

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

Respondent was selected and appointed by Tamil Nadu Public Service Commission by direct recruitment to the post of Assistant Engineer in Highways Department and she worked up to 19.10.2005. Leave was sanctioned to the respondent by the Government initially for a period of three years from 20.10.2005, which was subsequently extended by two years. Thus, totally, she was sanctioned a leave of five years by the Government. In the interregnum, the respondent was considered for promotion to the post of Assistant Divisional Engineer and she was empanelled for the same.

2. According to the respondent, in terms of Rule 36 of the Tamil Nadu State and Subordinate Service Rules, in short, "the Rules", she respondent was entitled to be promoted with effect from 09.01.2008, by which date, the panel had been drawn, and, accordingly, she ought to have been promoted to the post of Assistant Divisional Engineer. It is her further case that since she was in U.S.A., she returned to India and re-joined duty on 20.10.2010 and, on such joining, she was given a lower post, which she was holding earlier, after the leave period of five years, but not the promoted post. Also, it is her contention that Rule 36 (c) will not be applicable to her and, even if it is applicable, since she had already been empanelled to the promotional post and the promotional order was also been issued by the Government, she ought to have been given promotion with effect from the year 2008. Several representations were made by the respondent to the Government in that regard and aggrieved over the decision of the Government, the respondent filed a writ petition vide W.P.No.20364 of 2012, wherein a learned single Judge of this Court, in paragraph 7, has passed the following order :

"7. It is admitted in para 3 that the petitioner was permitted to go abroad for taking up employment and the leave was also sanctioned for five years. While so she was included in the panel by G.O.Ms.No.11 Highways (HK1) Department dated 09.01.2008 for the year 2007-2008. Subsequently, she was promoted to the post of Assistant Divisional Engineer by

the Government by G.O.Ms.No.13, Highways (HK1) Department, dated 09.01.2008. Those Government Orders are still in tact. It is well settled that if there is a conflict between the letter of the Secretary to Government and the Government Order, the latter would alone prevail. Further more, in this case, the petitioner was already empanelled and given promotion. Therefore, on the expiry of the sanctioned leave, when the petitioner came to join duty, she should have been permitted to join in the promoted post. It is a different matter if the petitioner was not included in the panel in G.O.Ms.No.11 Highways (HK1) Department dated 09.01.2008 and subsequently not promoted in G.O.Ms.No.13 Highways (HK1) Department, dated 09.01.2008. Having included in the panel and also given promotion, it is not correct to restrain her from joining the promoted post, when she reported to duty on 20.10.2010. In my view, Rule 36 (c) of the Tamil Nadu State and Subordinate Service Rules is not applicable. If the petitioner seeks further promotion from Assistant Divisional Engineer then Rule 36 (c) could be invoked for further promotion. In this case, already she was promoted and the promotion given by the Government is in tact. In the circumstances the impugned letter, which is contrary to the Government Order cannot stand the scrutiny of law. Accordingly, the same is quashed and the writ petition is allowed. Consequently, a direction is issued to the respondents to treat the petitioner as Assistant Divisional Engineer pursuant to G.O.Ms.No.13 Highways (HK1) Department dated 09.01.2008 and she shall be permitted to draw salary for the said post from 20.10.2010 onwards. No costs. Consequently, connected miscellaneous petitions are closed."

3. We have gone through the order of the learned single Judge. In order to decide the issue in question, Rule 36 (c) of the Rules is relevant. The said rule reads as follows :

"36 (c). Appointment of a member to higher category not to be considered if he had been on leave for three or four years or more continuously.. Notwithstanding anything contained in sub-rules (a) and (b), a member of a service who had been on leave for a period of three years continuously for any reason except

higher studies or for a period of four years continuously for higher studies, shall not be considered for appointment to a higher category either by promotion or by recruitment by transfer unless he has completed service for a period of one year from the date on which he joins duty on return from leave."

4. A reading of the above rule makes it clear that the respondent would be entitled to leave for a period of three years only if she is going abroad for any other reason other than higher studies and it shall be for four years, if it is for the purpose of higher studies. In addition, the said rule is very specific that on return from leave, the person concerned has to complete a period of one year, in order to consider his or her case for appointment to a higher category either by promotion or by recruitment by transfer. There is no ambiguity in the rule. In our view, the Government had erroneously sanctioned the extended leave to the respondent, when the purpose of leave was not for higher studies. But, the said issue is not the subject matter of either the Writ Petition or this Writ Appeal and, therefore, we do not wish to go into that aspect.

5. The learned single Judge held that when the name of the respondent has been included in the panel for promotion, it is not correct to restrain her from joining the promoted post when she reported to duty on 20.10.2010 and that Rule 36 (c) will not be applicable to the facts of the case on hand. We disagree with the said finding of the learned single Judge, for the reason that even assuming that the respondent's name has been empanelled during the period of five years in which the respondent was on leave, she would be entitled for promotional post only after completion of one year, which is a mandatory requirement, as contemplated in the rule, which means, the respondent will have to render service in the lower post for a period of one year from the date of re-joining the duty and, only thereafter, she would be entitled for empanelment to the higher post. Therefore, we set aside the finding of the learned single Judge in paragraph 7 of his order and modify the same to the effect that the respondent would be entitled for promotion to the post of Assistant Divisional Engineer only after completion of one year from the date of her re-joining the duty, after return from the U.S.A. In other words, the respondent would be entitled to the promotional post only from 20.10.2011, the date on which she has completed the one year period as per the rule mentioned supra, and not prior to that. The case of the respondent shall be considered by the appellants/authorities if she is otherwise eligible to the promotional post with effect from 20.10.2011 and she shall be entitled to the said post with effect from that date with all

consequential benefits, if there are no legal impediments.

6. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected M.P.No.1 of 2015 and C.M.P.No.5582 of 2016 are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary to Government,
Highways and Minor Ports (HK1) Department,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Director General,
Highways Department,
Chennai-600 005.
- 3.The Chief Engineer,
Quality Assurance and Research,
Chennai.

+1 cc to Government Pleader sr 53130

W.A.No.280 OF 2015

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