

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2016

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

WP.No.13779/2016
and W.M.P.No. 12090 of 2016

E.Bathiah
Manager
SIPCOT Limited
Egmore
Chennai-600 008. ...Petitioner

Vs

The Chairman & Managing Director
State Industries Promotion Corporation of Tamil Nadu Limited
(SIPCOT Limited)
19-A, Rukmani Lakshmipathy Road
Egmore
Chennai-600 008. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent to promote the petitioner forthwith within a time frame to the post of Assistant General Manager, SIPCOT, with effect from 06.05.2013 and thereafter to the post of Deputy General Manager, SIPCOT, with effect from 19.02.2016, being the dates on which promotion to the said posts were given to his immediate junior Sri.S.P.Meyyappan in view of the punishment imposed on the petitioner being set aside by this Court in W.P.No.22143 of 2015, dated 11.03.2016, with all monetary benefits and arrears of salary and other attendant benefits and pass such further orders as this Court may deem fit and necessary.

For Petitioner : Mr.K.Sridhar

For Respondent : Mrs.Sudharshana Sunder

O R D E R

This Writ Petition has been filed for a mandamus, to direct the respondent to promote the petitioner forthwith to the post of Assistant General Manager, SIPCOT, with effect from

06.05.2013 and thereafter, to the post of Deputy General Manager, SIPCOT, with effect from 19.02.2016, being the dates on which promotion to the said posts were given to his immediate junior S.P.Meyyappan, in view of the punishment imposed on the petitioner being set aside by this Court in W.P.No.22143 of 2015, dated 11.03.2016, with all monetary benefits and arrears of salary and other attendant benefits.

2. The brief facts of the case are as follows:-

(2.1) According to the petitioner, he joined the post of Assistant Manager in the State Industries Promotion Corporation of Tamilnadu Limited (SIPCOT), on 01.07.1988; promoted as Deputy Manager on 07.07.1995; and thereafter, promoted as Manager, SIPCOT, on 10.01.2008, and continued to serve as Manager till date for the past eight years. According to the petitioner, he is eligible for promotion to the post of Assistant General Manager in May, 2010. At that point of time, there were two vacancies to the post of Assistant General Manager and he was second in the seniority list of Managers. While so, he was issued with a charge memo, dated 31.10.2011, alleging he did not get the stay granted in W.P.No.16409 of 2008, vacated, thereby, he has committed lapse and violated Rule 20 of the Tamilnadu Government Servants Conduct Rules. Therefore, by order dated 09.06.2015, the Chairman and Managing Director, SIPCOT, had imposed the penalty of stoppage of one increment with cumulative effect for six months. Aggrieved against the same, the petitioner had filed W.P.No. 22143 of 2015, to quash the said proceedings of granting punishment; that Writ Petition was allowed, on 11.03.2016.

(2.2) According to the petitioner, only in view of the currency of the punishment, he could not be promoted to the post of Assistant General Manager, and thereafter, to the post of Deputy General Manager. In the mean while, his junior S.P.Meyyappan was promoted as Assistant General Manager, on 06.05.2013, and thereafter, as Deputy General Manager, on 19.02.2016. According to the petitioner, the enquiry proceedings were delayed, in order to delay the promotion to him. As the punishment has been set aside, there is no legal impediment to promote him as Assistant General Manager and thereafter, as Deputy General Manager and place him above to his immediate junior S.P.Meyyappan. Therefore, he sent a legal notice dated 17.03.2016, along with a copy of the order of this Court in W.P.No. 22143 of 2015, dated 11.03.2016, whereby, the punishment imposed on the petitioner was set aside. But, it has not been considered. Subsequently, his immediate junior has been promoted as Deputy General Manager. Aggrieved against the same, the petitioner has filed the present Writ Petition.

3. On a perusal of the affidavit filed in support of the Writ Petition, it is seen that the petitioner, among other grounds, has raised the ground that once the punishment imposed on him is set aside, as a matter of right, he is entitled to be promoted to the post of Assistant General Manager and thereafter, as Deputy General Manager.

4. Mr.K.Sridhar, the learned counsel for the petitioner would mainly contend that the petitioner is going to retire, on 30.06.2016, unless, there is a specific direction to promote him forthwith, he will be greatly prejudiced. He would further point out that a subsequent development had taken place in this case. As against the order of quashing of the punishment made in W.P.No.22143 of 2015, dated 11.03.2016, the SIPCOT has preferred a Writ Appeal in W.A.No. 715 of 2016. By judgment, dated 20.06.2016, the Division Bench of this Court dismissed the appeal preferred by the SIPCOT and specifically stated that in view of the submission made by the learned counsel for the respondent in that case (petitioner herein), it is for the appellant-SIPCOT Management to set right the things immediately as the respondent is due to retire by the end of this month and also to pay all the retirement benefits to him, without any delay. He would also state that so far as the punishment that was set aside is concerned, it has been confirmed by the Division Bench of this Court and hence, the petitioner is automatically entitled for promotion.

5. The respondent has filed a detailed counter mainly stating that the minimum service qualification required for considering promotion to the post of Assistant General Manager is not less than eight years. In view of the urgency and necessity for filling up the top level posts, the Government had earlier considered for relaxation and permitted to promote some five officers to their next grade by relaxing the guidelines issued in the Government Letter No.42228/BPE/2003, dated 15.09.2003. Therefore, the petitioner's junior S.P.Meyyappan was promoted as Assistant General Manager with effect from 06.05.2013. In this connection, he would also bring to the notice of this Court that the petitioner had also filed yet another Writ Petition in W.P.No.30418 of 2013, to quash the promotion given to his junior S.P.Meyyappan, dated 06.05.2013, and that is till date pending. He would also state in the counter that the respondent herein has preferred a Writ Appeal as against the Writ Petition order in W.P.No.22143 of 2015, dated 11.03.2016, of course, now that has been dismissed by the Division Bench of this Court, by judgment dated 20.06.2016. He has averred in the counter that, since, the disciplinary proceedings were pending against the petitioner at the relevant point of time, he was not considered for relaxation of required

minimum service qualification and his junior S.P.Meyyappan was promoted as Assistant General Manager, vide proceedings dated 06.05.2013. He has further averred that the respondent does not discriminate any employee either in the name of caste or religion. He was not second in the seniority for promotion to the post of Assistant General Manager. He was number '4' and his junior S.P.Meyyappan was No.5 and that only due to pendency of the charges, the petitioner was not considered for promotion. The disciplinary action was initiated against the petitioner, because, he did not follow up action for vacating the stay granted. Therefore, he would contend that the petitioner cannot be promoted, even otherwise, he was not considered for relaxation during the relevant point of time, only because of the charges were pending. Hence, his junior S.P.Meyyappan was considered and he was promoted.

6. Mrs.Sudharshana Sunder, the learned counsel for the respondent would contend that the petitioner has completed serving as Manager for eight years, therefore, he will be eligible to be promoted as Assistant General Manager. As far as the Deputy General Manager is concerned, the respondent cannot individually relax it, it has to be referred to the Government and it cannot be considered now immediately, at best, he can say that the petitioner's case could be recommended to the Government for relaxation. He has further stated that in view of the subsequent development of the dismissal of the Writ Appeal, the petitioner can be promoted immediately as Assistant General Manager and not as Deputy General Manager.

7. Heard both sides. I have considered the rival submissions.

8. In view of the urgency expressed by the petitioner regarding his retirement on 30.06.2016, and in view of the dismissal of the Writ Appeal No. 715 of 2016, dated 20.06.2016, the main Writ Petition itself is taken up and disposed of at the stage of admission itself.

9. On a careful perusal of the entire records one thing is clear that when his junior S.P.Meyyappan was considered for promotion, by relaxation, to the post of Assistant General Manager in the year 2013, in view of the pendency of the charges, the petitioner's name could not be considered, as against the promotion granted to his junior, the petitioner has filed a separate Writ Petition in W.P.No.30418 of 2013, which is admittedly pending. But, admittedly, subsequent incidents have taken place. First of all, the charges against the petitioner have been quashed by this Court in W.P.No.22143 of 2015, dated 11.03.2016, in which, in paragraph Nos. 9, 10 and 11, it has

been categorically stated by this Court as follows:-

"9. It has been brought to the notice of this Court by the learned counsel appearing for the petitioner that even now, the writ petition is yet to be disposed of. If that is the case, this Court is at last to understand that writ petitioner alone cannot be made responsible for the continued delay. The substantial charge against the petitioner starts from the date - 17.03.2009 on which the case was not taken care of. Therefore, this Court is of the considered view that the petitioner cannot be made to suffer for the inability of the Registry. Though the Writ Petition was directed to be posted for final hearing, the same was not posted during the second week of June, 2009, the same has not been disposed of till now. The only progress appears to be that the case has been put up in the list.

10. The charge memo was issued on 31.10.2011. Suffice, it is to state that atleast from thereon either no steps have been taken to bring the case in the list or the steps have failed. The stand taken by the petitioner about the role of the legal department has not been dealt with in proper perspective. The petitioner was not asked to come to the Court by the counsel. There is no material available about the communication sent by the counsel to the petitioner leading to the interference that he has failed to discharge his duty. There is also no finding on the role said to have been played by the petitioner in forwarding the remarks.

11. Considering the above, this Court is of the view that the order impugned cannot be sustained in the eye of law. Accordingly, the writ petition is allowed."

10. Challenging the order in the Writ Petition in W.P.No.22143 of 2015, dated 11.03.2016, the SIPCOT has preferred a Writ Appeal in W.A.No. 715 of 2016. The Division Bench of this Court, by judgment dated 20.06.2016, dismissed the Writ Appeal, and specifically observed in paragraph Nos. 8, 9 and 10 as follows:-

"8. At this juncture, the learned counsel for the respondent submitted that the petitioner is due to retire on 30.06.2016 on attaining the age of

superannuation. Therefore, he prayed that his terminal benefits be paid without any delay.

9. In view of the above submission made by the learned counsel for the respondent, it is needless to state that it is for the appellant-SIPCOT Management to set right the things immediately as the respondent is due to retire by the end of this month and pay all the retirement benefits to him without any delay.

10. In the result, this writ appeal fails and the same is dismissed with the above direction.
"

11. As per the judgment in the Writ Appeal in W.A.No.715 of 2016 dated 20.06.2016, there is a specific direction to the SIPCOT Management to set right the things immediately, as the petitioner herein is to retire on 30.06.2016. In that view of the matter, the petitioner has filed the present Writ Petition, seeking for a mandamus, to direct the respondent to promote him forthwith to the post of Assistant General Manager from 06.05.2013 and thereafter, to the post of Deputy General Manager from 19.02.2016.

12. I have to state that as per the affidavit filed by the petitioner, he has joined as Assistant Manager on 01.07.1988; promoted as Deputy Manager on 07.07.1995; and thereafter, promoted as Manager, SIPCOT, on 10.01.2008, and continued to serve as Manager for the past eight years. Therefore, as of right, he can be automatically promoted to the post of Assistant General Manager, having completed eight years of service as Manager. Now, the grievance of the petitioner is that, when his junior S.P.Meyyappan was considered for promotion as Assistant General Manager in 2013, the petitioner's name was not considered, due to the pendency of the charges, and now that the charges have been quashed, he has to be put in that position as in 2013 and he has to be given promotion as Assistant General Manager and thereafter, as Deputy General Manager.

13. In the above connection, the learned counsel for the petitioner would rely on the G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department, dated 18.10.1993, as amended, in which, in Clause No.4, it is stated as follows:-

"(iv) Consideration of persons against whom enquiries are pending and specific charges have been framed or charge sheet has been filed in criminal cases - (1) As per orders in the Government Order sixth read above, in the case of pending enquiries

including Vigilance enquiries and in cases where specific charges have not been framed promotions and appointments shall be considered on the basis of the performance of the officers coming under the Zone of selection as on the date of consideration for promotion/appointment as revealed through the personal Files/Record sheets and the seriousness of the punishments, if any previously imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case, promotion/appointment of which persons shall be deferred till the proceedings are concluded. They must however, be considered for promotion, if they are exonerated or acquitted from the charges. If found suitable with reference to all relevant criteria they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

(emphasis supplied)

Thus, from a reading of the above Government Order, it is crystal clear that when the charges have been quashed or cancelled, then, the person concerned will be given promotion with retrospective effect from the date on which his junior was promoted. Therefore, now that the charges against the petitioner having been quashed by this Court and confirmed by the Division Bench, automatically, the petitioner can be considered for promotion at the relevant point of time, on which his junior was promoted.

14. It is the contention of the learned counsel for the respondent that no doubt, the petitioner will be automatically eligible for promotion as Assistant General Manager, he having completed eight years service in the post of Manager. For promotion to the post of Deputy General Manager, he would not have completed eight years of service, for which, the exemption from the Government is necessary, which the Government alone can grant, therefore, though, the respondent is prepared to give promotion to the petitioner to the post of Assistant General Manager, they can only recommend the name of the petitioner to the Government for the post of Deputy General Manager, which the Government has to approve and if approval is granted, thereafter alone, the petitioner will be eligible to get promotion as Deputy General Manager.

15. It is relevant to refer to the proceedings of the respondent, dated 19.02.2016, which is in respect of the promotion given to his junior to the post of Assistant General Manager. In the proceedings, dated 19.02.2016, it has been very clearly stated that, if their seniors, who are now facing

disciplinary proceedings, are exonerated from the charges, they will be reverted, from the junior most, to the post of Manager. Therefore also, the petitioner is entitled to be automatically promoted to the post of Assistant General Manager. As far as his junior S.P.Meyyappan is concerned, the promotion was given pursuant to the exemption granted by the Government. But, as rightly pointed out, in 2013 itself, if there was no disciplinary proceedings, the petitioner would have been considered for promotion. In view of the Rules pertaining to the promotion is very clear that there should not be any charges pending against the person concerned at the time of promotion, the petitioner was not considered for promotion at the relevant point of time. But, at the moment, the petitioner is exonerated from the charges, the SIPCOT Management ought to have taken steps to give promotion to the petitioner. Atleast, after the order was initially passed by this Court in W.P.No.22143 of 2015, dated 11.03.2016, the SIPCOT Management ought to have sought for exemption from the Government to give promotion to the petitioner as Assistant General Manager initially and thereafter, as Deputy General Manager, but, the respondent has not done so. Since, the petitioner is now going to retire on 30.06.2016, definitely, there can be a mandamus to the limited extent that the petitioner shall be immediately promoted as Assistant General Manager, for which, there is no need for any approval, as he has already completed eight years of service in the post of Manager. Further, it was already made clear in the proceedings of the respondent, dated 19.02.2016, which is in respect of the promotion given to his junior to the post of Assistant General Manager, that if their seniors, who are now facing disciplinary proceedings, are exonerated from the charges, they will be reverted, from the junior most, to the post of Manager. As far as the promotion to the post of Deputy General Manager is concerned, since his junior has been promoted with effect from 19.02.2016, based on the exemption given by the Government, the same benefit shall also be extended to the petitioner, as otherwise, the petitioner would have been considered for promotion at the relevant of point, but, he was not given promotion only due to the pendency of the charges, which has now been quashed by this Court and confirmed by the Division Bench of this Court.

16. After having put in prolonged service, always the Government Servant will desire to retire in the higher post in the level, in which, he could reach and definitely, one will aim to retire in the higher post, therefore, a person, who can reach such a higher post should not be deprived of the said position, especially, when the junior to the petitioner is promoted to the higher post, than the petitioner, to which, he is legally eligible, as per the judgment of the Division Bench of this

Court, but, which has not been given to the petitioner. Therefore, this Court is of the view that a limited mandamus could be granted to the effect that the petitioner shall be promoted as Assistant General Manager with effect from 06.05.2013 and the authority concerned shall make all necessary recommendation to the Government for granting exemption to the petitioner to promote him to the post of Deputy General Manager with effect from 19.02.2016, when his junior was elevated. Such proposal should be sent immediately, so that, atleast, either he could retire as Deputy General Manager or the benefit could be accrued to him even after his retirement. In fact, the petitioner shall be deemed to have been promoted as a Deputy General Manager.

17. In the result, this Writ Petition is allowed to the extent as indicated above. It is needless to say that the retirement benefits should be immediately paid to the petitioner and the Division Bench judgment of this Court in W.A.No.715 of 2016, dated 20.06.2016, has to be scrupulously followed, directing the SIPCOT Management to set right the things immediately, as the petitioner is going to retire on 30.06.2016, so that he can retire as Deputy General Manager. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

paa

To

The Chairman & Managing Director
State Industries Promotion Corporation of Tamil Nadu Limited
(SIPCOT Limited)
19-A, Rukmani Lakshmipathy Road
Egmore
Chennai-600 008.

2 ccs to Mr.K.Sridhar Associates, sr.36090

1 cc to Mr.Sudharshana Sundar, Advocate, sr.36011

W.P.No.13779 of 2016

sks co

kra 28.06.2016