

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.9529 of 2013

S.Saravanan

... Petitioner

Vs.

The Principal Secretary to Government,
Government of Tamil Nadu,
Highways and Minor Ports (HK.1) Department,
Secretariat, Fort St. George,
Chennai 600 009.

... Respondent

PRAYER : Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to consider the petitioner for promotion as Assistant Divisional Engineer under rule 39(d) of Tamil Nadu State and Subordinate Service Rules, with all consequential benefits.

For Petitioner : Mr.Ravi Shanmugam

For Respondent : Mr.S.Gunasekaran
Addl. Govt. Pleader

O R D E R

This writ petition has been filed seeking to issue a Writ of Mandamus directing the respondent to consider the petitioner for promotion as Assistant Divisional Engineer under rule 39(d) of Tamil Nadu State and Subordinate Service Rules, with all consequential benefits.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

3. The case of the petitioner is that he joined the services of the respondent as Assistant Engineer on 03.05.1995, and had been assigned seniority No.191 and his immediate junior was one G.Chandrasekaran. Petitioner has maintained a clean record of service and was not subjected to any punishment or 17 (b) charges. Whiles, the Deputy Superintendent of Police, Vigilance and Anti Corruption, Dharmapuri District, on

04.08.2000, registered a criminal complaint under Sections 120 (B), 409, 467 r/w Section 13 of the Prevention of Corruption Act, against eleven officials of Highways Department from the cadre of Divisional Engineer to Divisional Accountant for an allegation of the year 1997-1999. The petitioner's name was shown as 9th accused in the said complaint. On 16.11.2002, a charge sheet had been filed against the petitioner and other accused persons and the same was taken on file by the learned Judicial Magistrate, Dharmapuri in C.C.No.3 of 2008.

4. It is the further case of the petitioner that though charge sheet had been laid as early as on 16.11.2002, the trial has not yet been commenced till date. The petitioner was due for promotion as Assistant Divisional Engineer from the year 2005 and since because the criminal case is pending against him, his immediate junior G.Chandrasekaran was promoted as Assistant Divisional Engineer. Petitioner had been deferred promotion right from the years 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011. Petitioner has also not received any communication from the respondent, quoting any reason for denial of his promotion. Hence, the petitioner has come up with the present writ petition.

5. Learned counsel for the petitioner would submit that the pendency of the criminal case cannot be a bar for promotion as the same had been kept pending for more than 12 years. Learned counsel would further submit that this Court in innumerable decisions had directed the authorities to consider the case of the similar placed persons, on par with their juniors and also refers to the orders made in W.P.Nos.2220/06, 21085/06, 24786/06 and 5568/07. In this regard, learned counsel for the petitioner also relied on the decision of the Honourable Supreme Court in State of Punjab and Others vs. Chamanlal Goyal reported in 1995(2) SCC 570 and prayed for allowing the writ petition.

6. Learned Additional Government Pleader representing the respondent does not dispute the fact that the criminal case is pending against the petitioner, for the past twelve years.

7. Keeping the submissions made by the learned counsel on either side on mind and the fact that the criminal case foisted against the petitioner has been kept pending for the past twelve years and the trial has not yet been commenced, further in addition that in identical situation, this Court has given directions to promote the petitioners therein, I am of the view that following the same, similar orders can be passed in the case of the petitioner also.

8. In view of the same, following the orders passed by this Court in the above referred writ petitions, a direction is issued to the respondent to consider the name of the petitioner for promotion as Assistant Divisional Engineer under rule 39(d) of Tamil Nadu State and Subordinate Service Rules, and pass appropriate orders, within a period of two weeks, from the date of receipt of a copy of this order. With the above observation, this writ petition is disposed of. No Costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

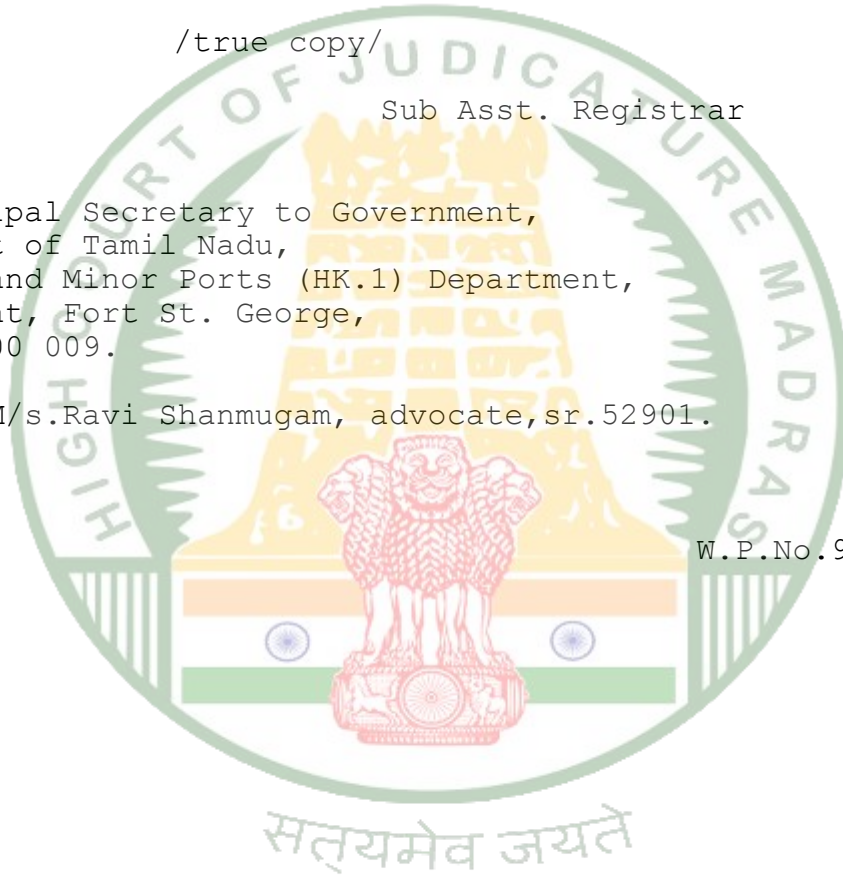
To,

The Principal Secretary to Government,
Government of Tamil Nadu,
Highways and Minor Ports (HK.1) Department,
Secretariat, Fort St. George,
Chennai 600 009.

+1 cc to M/s.Ravi Shanmugam, advocate,sr.52901.

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