

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

W.A. No.492 of 2016

- 1.The Secretary to Government,
Public Works Department,
Fort St. George,
Chennai-600 009.
- 2.The Engineer in Chief (Buildings),
The Chief Engineer (General) &
The Chief Engineer,
Chennai Region (Buildings),
Public Works Department,
Chepauk, Chennai-600 005. ... Appellants

Vs.

J.Jayapaul Mohan ... Respondent

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 09.01.2014 passed in W.P.No.11078 of 2012.

W.P.No.11078 of 2012:- Writ petition filed under Article 226 of the constitution of India praying to issue a writ of certiorarified mandamus to calling for all the connected records in the impugned orders in G.O.(D) No.135 PWD (E1) dated 27.3.2012 and to quash the same consequently to direct the respondents herein more particularly the first respondent to retain the petitioners name in the appropriate place in the panel for promotion of Asst. Exe. Engineer to be released soon-without any overlooking.

For Appellants : Mrs.A.Srijayanthi, Spl.G.P.

For Respondent : Mr.A.L.Namasivayam

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

With the consent of learned counsels for parties, the writ appeal is taken up for final hearing at the admission stage itself.

2 Questioning the legality and validity of G.O.(D) No.135, Public Works (E1) Department, dated 27th March 2012, whereunder the punishment of withholding of increment for a period of two years with cumulative effect on the respondent herein / writ petitioner was imposed, the respondent filed the writ petition, seeking to quash the same and further for a direction to the first appellant to retain his name in the appropriate place in the panel for promotion of Assistant Executive Engineer.

3 The learned Single Judge, noting the subsequent development, wherein the aforestated punishment of withholding of increment for a period of two years with cumulative effect was modified into that of withholding of increment for one year with cumulative effect on review petition filed by the respondent, vide G.O.(D)No.389, Public Works (F2) Department dated 25th September, 2013, which was not under assail in the writ petition, came to the conclusion that the currency of punishment in respect of the respondent expired on 26th March, 2013 and directed the first appellant consider the name of the respondent (subject to suitability and eligibility) for promotion to the post of Assistant Executive Engineer for 2012-13, 2013-14, within a period of eight weeks. The said order dated 9th January, 2014 is assailed in the present appeal.

4 The order dated 27th March, 2012 stood modified by the subsequent G.O dated 25th September, 2013, which was not assailed and as such, the learned Single Judge has come to the right conclusion that the punishment was imposed on the basis of the enquiry, wherein the charges levelled against the respondent were found proved. However, considering the expiry of currency of punishment, which came to an end on 26th March, 2013, the learned Single Judge directed the first appellant to consider the name of the respondent for promotion, as aforestated.

5 The sole contention of the learned Special Government Pleader appearing for the appellants is that the currency of punishment would come to an end on 11th April, 2013 as the original punishment order dated 27th March, 2012 was communicated to the respondent only on 12th April, 2012. This contention is fallacious as no reason has been pointed out why the order of punishment was not communicated forthwith. If the order of punishment is not communicated and kept with the officers, that may not be a reason to defer the date of expiry of the period of punishment. Thus, the learned Single Judge has rightly come to the conclusion that computing from the date of passing of the order, i.e., 27th March, 2012, the currency of punishment came to an end on 26th March, 2013. Accordingly, the respondent became eligible for consideration thereafter from the crucial date, i.e., 1st April, 2013.

6 The issue as to the expiry of punishment came up for consideration earlier also in W.P.No.31627 of 2013 filed by the respondent herein, wherein it was held, as under :

"5.It is an admitted fact that the original punishment order was passed on 27.03.2012 and the

punishment of stoppage of increment imposed for two years with cumulative effect by the said order, would have normally ended on 26.03.2014. If the said order had not been modified, then the petitioner would not have been eligible. However, the original order was modified on revision on 25.09.2013 reducing the punishment to stoppage of increment for one year with cumulative effect. By this order, the punishment ended on 26.03.2013. Therefore, it is clear that as on 01.04.2013, which is the crucial date, there was no currency of punishment enabling the petitioner to be included in the panel for promotion to the post of Assistant Executive Engineer for the year 2012-2013, 2013-2014."

7 The said observation of the court remained unassailed and attained finality. In that view of the matter also, the same cannot be re-agitated in the instant appeal filed by the appellants for different purposes.

8 For the reasons mentioned herein-above, we do not find any infirmity, illegality or irregularity in the order rendered by the learned Single Judge, which is sought to be impugned in this appeal. Accordingly, the writ appeal stands dismissed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

vvk

To

1.The Secretary to Government,
Public Works Department,
Fort St. George,
Chennai-600 009.

2.The Engineer in Chief (Buildings),
The Chief Engineer (General) &
The Chief Engineer,
Chennai Region (Buildings),
Public Works Department,
Chepauk, Chennai-600 005.

1 cc to Government Pleader, Sr. 25460

1 cc to Mr.A.L. Namasivayam, Advocate, Sr. 24511

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PPA (CO)
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