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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal (MD) No.23 of 2016

and

C.M.P (MD) No.95 of 2016

Y.Sam Daniel

... Appellant/Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration & Water Supply
Department,
Government of Tamil Nadu,
Fort St., George,
Chennai 600 009.

2.The Managing Director,
Tamil Nadu Water Supply & Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005.

... Respondents/Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 02.09.2015 made in W.P.(MD)No.15846 of
2015.

Prayer in WP(MD). 15846/ 2015 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying for issue of a Writ of
Certiorarified Mandamus calling for the records relating to the
impugned of the 2nd respondent in Lr.No.24832/Estt(Per)/A5/2014
dated 7.7.2015 quash the same and consequently direct the 2nd
respondent herein to notionally promote the petitioner as
Superintending Engineer in the 2001 panel as per the proceedings
in B.P.Ms. No.164 dated 26.7.2001 on par with his juniors and
disburse the terminal benefits, full pension, all monetary
benefits, arrears of revised salary, periodical increment and
pension together with nominal rate of interest within a reasonable
time.

For Appellant : Mr.R.Russel Raj

For Respondents : Mr.C.Selvaraj,

Special Government Pleader.

**JUDGMENT**

(Judgment of the Court was delivered by **V. RAMASUBRAMANIAN, J**)

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The writ appeal arises out of an order of the learned Judge dismissing the writ petition of the appellant, challenging the denial of the promotion on notional basis.

2. Heard Mr. R. Russel Raj, learned counsel for the appellant.

3. The appellant joined services in the TWAD Board in 1970 as Assistant Engineer. On 30.04.1994 he was placed under suspension on the allegation of acquiring assets disproportionate to the known sources of income. A charge sheet was filed in S.C.No.6 of 1994 on the file of the Sub Judge, (DVAC) Tirunelveli. By a judgment dated 12.07.1999, the appellant was convicted for the offence under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for one year. He was also slapped with a fine.

4. Based upon his conviction, he was dismissed from service by the proceedings dated 27.03.2000.

5. Challenging the order of dismissal he filed an appeal. In the meantime, he also filed a Criminal Appeal in CrI.A.No.585 of 1999 on the file of the Principal Bench of this Court challenging the conviction.

6. The appeal was allowed by this Court by a judgment dated 09.12.2009. The Special Leave Petition filed by the Government was dismissed on 03.01.2011.

7. Thereafter, the Government passed an order in G.O.(D). 462 dated 17.11.2011, cancelling the dismissal order and directing reinstatement with further direction to take disciplinary proceedings. Accordingly, the appellant was reinstated by the proceedings dated 23.11.2011. He was also given one notional promotion as Executive Engineer with effect from 07.07.1993.

8. Subsequently, in the disciplinary proceedings, he was imposed with a cut in the pension and he was permitted to retire on reaching the superannuation.

9. Thereafter, the appellant sought further higher promotion in the post of Superintending Engineer. It was rejected by the respondents forcing him to come up with a writ petition in W.P.(MD)No.15846 of 2015. The same was dismissed by the learned



Judge by an order dated 02.09.2015. It is against the said order, that the appellant has come up with the above appeal .

10.The above narration of events would show that the appellant was originally dismissed from service way back on 27.03.2000. He was reinstated only after 11 years by the proceedings dated 23.11.2011. The Government fairly considered his case and granted him one notional promotion. The next higher promotion is not automatic. He had not completed two years of service in the feeder category. The contention that he was not responsible for the same cannot be accepted.

11.The post of Superintending Engineer is of a superior cadre and promotion to it is not automatic. It depends upon various parameters. Therefore, the rejection of the request cannot be held to be unfair. The dismissal of the writ petition was justified. Hence, the writ appeal is dismissed. No costs. Consequently, C.M.P(MD)No.95 of 2016 is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St., George,
Chennai 600 009.

2.The Managing Director,
Tamil Nadu Water Supply & Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005.

+1cc to Spl.Government Pleader Sr.No.2118
+1cc to Mr.R.Russel Raj,Advocate Sr.No.2064
sms
AA/PM-MP/02.02.2016/3p-5c

Writ Appeal(MD) No.23 of 2016 and
C.M.P(MD)No.95 of 2016
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