

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Writ Appeal No.160 of 2017
and
C.M.P.Nos. 2730 and 2731 of 2017

G.Rani ...Appellant/Petitioner

Versus

Government of Tamil Nadu rep.by
The Additional Chief Secretary to
Government, Highways Department,
Secretariat, Chennai-600 009. ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent, against
the order dated 6.1.2017 passed in W.P.No.21819 of 2016 by the
learned single Judge dismissing the writ petition.

W.P.No.21819 of 2016

Writ petition filed under article 226 of Constitution of
India seeking Writ of Mandamus Directing the respondent
authority to grant promotion to the petitioner to the post of
Chief Engineer in Highways Department with effect from 31.5.2016
and grant her all benefits consequential thereto within a time
to be fixed by this Court.

For Appellant .. Mr.S.Thankasivan
For Respondent .. Mr.K.Venkataramani,
Additional Advocate General
assisted by Mrs.A.Srijayanthi,
Spl.G.P.

JUDGMENT

(Judgment of the Court was delivered by Huluvadi G Ramesh, J)

Heard Mr.S.Thankasivan, learned counsel appearing for the
appellant Mr.K.Venkataramani, Additional Advocate General,
appearing for the respondent.

2.The appellant joined the Highways Department as Assistant Engineer on 03.10.1989 and after getting promotion from time to time, she is presently working as Superintending Engineer, Institutional Capacity Enhancement and Road Safety. According to the appellant there are nine wings in Highways Department and each wing is headed by a Chief Engineer. The feeder category for the post of Chief Engineer is Superintending Engineer only. The post of Chief Engineer is filled up by way of promotion from the post of Superintending Engineer. The service of all Engineers working in the Tamil Nadu Highways Department is governed by the Tamil Nadu Highways Engineering Service. According to the appellant, presently three vacancies arose for the post of Chief Engineer in the Highways Department as on 31.05.2016.

3.As per G.O.Ms.No.1237, Personal and Administrative Reforms Department dated 05.11.1979, the crucial date for preparation of the annual list of approved candidates for promotion to the post of Chief Engineer, Superintending Engineer and Divisional Engineer has been fixed as 1st January every year. As per G.O.Ms.No.440, Personnel and Administrative Reforms (Per.5) Department, dated 26.10.1990, the State Government has stipulated a condition that promotion/appointment as Head of the Department requires a minimum period of one year left over service for the candidate as a qualification to be eligible for promotion as Head of Department, the officer should have not less than one year period of left over service prior to the retirement. If a person is found short of one year left over service before retirement, he/she shall be compensated by appointing him as Officer on special duty with the same scale of pay as that of Head of Department.

4.Subsequently also the Government issued an order in G.O.Ms.No.368 (Personnel & Administrative Reforms Department), dated 18.10.1993, which makes it clear that preparation for filling up the post of Heads of Department should be initiated by the Secretaries themselves three months in advance to the prospective date of retirement of existing incumbent. This was made mandatory in order to ensure that the persons having minimum service of one year from the date of retirement of the existing incumbent are not omitted from grant of promotion because of administrative delay.

5.So far as the case of the appellant is concerned, she had become Superintending Engineer on 31.01.2016. Three vacancies to the post of Chief Engineers in the Highways Department arose on 31.05.2016. Therefore, as on 31.05.2016, three vacancies arose in the post of Chief Engineer. As per G.O.Ms.No.368, dated 18.10.1993, the respondent ought to have prepared the proposal

for filling up the vacancies of Head of Department three months in advance to the date of retirement of the existing incumbent. As on date, the appellant is the senior most person having required the minimum one year of left over service and the respondent ought to have promoted and appointed the appellant as Chief Engineer from 31.05.2016 onwards. Since the respondent has failed to do so the statutory duty cast on him, the appellant has approached the respondent with a request to give promotion to her; but she did not get any favourable reply. Hence, the appellant has filed the above writ petition.

6.The said writ petition was dismissed on the ground that the Government Orders in G.O.Ms.No.440 dated 26.10.1990 and G.O.Ms.No.368, dated 18.10.1993, relied on by the appellant herein are only in the nature of guidelines and when there is a specific Rule prescribing the conditions for preparing the panel for promotion, such post has to be filled up only in accordance with the Statutory Rules. Aggrieved by the order passed by the learned single Judge, the present appeal came to be filed.

7.The learned counsel appearing for the appellant would contend that the appellant is governed by the Tamil Nadu Engineering Service Rules and two Government Orders viz., G.O.Ms.No.440 dated 26.10.1990 and G.O.Ms.No.368 dated 18.10.1993. Clause 7 and 2 of the G.O.Ms.No.368 dated 18.10.1993 makes it clear that preparation for filling up the post of Heads of Department should be initiated by the Secretaries themselves three months in advance to the prospective date of retirement of existing incumbent which makes it clear that preparation for filling up the post of Heads of Department should be initiated by the Secretaries themselves three months in advance to the prospective date of retirement of existing incumbent and this was made mandatory in order to ensure that the persons having minimum service of one year from the date of retirement of the existing incumbent are not omitted from grant of promotion because of administrative delay. Three vacancies for the post of Chief Engineer arose on 31.5.2016 and therefore, the respondent authority ought to have promoted the appellant on 31.05.2016. According to the learned counsel for the appellant similarly placed persons have been promoted to the post of Chief Engineer without any reference to the crucial date. Knowing pretty well the appellant is due to retire on 30.6.2017 itself, the respondent authority did not grant promotion to the appellant as Chief Engineer. According to the learned counsel for the appellant, the respondent authority was delaying the grant of promotion to the appellant obviously with the view to deprive her from getting promotion.

8.On the other hand, it is the contention of the learned

Additional Advocate General appearing for the respondent that the crucial date for preparation of panel for promotion to the post of Chief Engineer is 15th July every year and officers seeking promotion should have one year left over service from the crucial date for preparation of panel for promotion. The learned Additional Advocate General has also relied upon G.O.(D) No.3 dated 9.1.2008 wherein the Tamil Nadu Highways Engineering Service Rules was amended to the effect of fixing the crucial date for preparation of panel for appointment of candidates to the post of Chief Engineer as 15th July every year and accordingly, the appellant is not eligible for being promoted to the post of Chief Engineer as she was not having one year left over service from the crucial date for preparation of panel for promotion viz., 15.7.2016.

9.We have considered the rival submissions. It appears that two principles to be followed in the matter of promotion especially for the Head of Department of Highways Department namely the Chief Engineer. The first one is with respect to the empanelment of persons who are eligible to be appointed as Chief Engineer, having minimum one year left over service from the crucial date for preparation of panel for promotion. The other principle is as per Clause 7 and 2 of the G.O.Ms.No.368 dated 18.10.1993 the preparation for filling up the post of Heads of Department should be initiated by the Secretaries themselves three months in advance to the prospective date of retirement of existing incumbent which makes it clear that preparation for filling up the post of Heads of Department should be initiated by the Secretaries themselves three months in advance to the prospective date of retirement of existing incumbent and this was made mandatory in order to ensure that the persons having minimum service of one year from the date of retirement of the existing incumbent are not omitted from grant of promotion because of administrative delay and all the relevant particulars would be available in the Secretariat.

10.It appears that there is one another Government Order in G.O.(D) No.3, Highways Department dated 09.01.2008 fixing the crucial date for preparation of panel for promotion to the post of Chief Engineer as 15th July every year and seeks to amend Tamil Nadu Highways Engineer Service Rules (Section 17 of Part 3-A in Volume-II of Tamil Nadu Service Manual Service 1969). That Government Order does not speak about any requirement of minimum left over service of one year from the crucial date for preparation of panel for promotion.

11.In the instant case, the appellant was promoted as Superintending Engineer only on 31.01.2016, she was eligible for inclusion in the Chief Engineer panel only for the year

2016-2017. The appellant is due to retire on 30.06.2017 and according to her, three persons who are also less than one year left over service from the crucial date for preparation of panel for promotion, have been promoted as Chief Engineers. So far as the appellant is concerned, she has not been given promotion to the post of Chief Engineer on the ground that as per G.O.(D) No.3, dated 09.01.2008, the crucial date for preparation of panel for appointment of candidates to the post of Chief Engineer as 15th July every year. Whereas, G.O.Ms.No.150 Highways Department dated 31.05.2008 was issued promoting one Mr.T.S.Kuthalanathan and Mr.R.Gopal, as Chief Engineers under Rule 39-A(1) of Tamil Nadu State and Subordinate Service Rules without reference to G.O.(D) No.3, dated 9.1.2008. The said persons were not holding the post of Superintending Engineer in the crucial date for the year 2007-2008 i.e. 15.07.2007 and there is no promotion panel prepared while promoting them. That apart, G.O.(D) No.2, dated 19.01.2015 was issued granting promotion to one Mrs.Mytheri, without reference to G.O.(D) No.3, dated 9.1.2008 or the crucial date. Since the appellant had become Superintending Engineer on 31.01.2016 and three vacancies to the post of Chief Engineers in the Highways Department arose on 31.05.2016, the respondent authority ought to have promoted the appellant on 31.05.2016 as done in the case of similarly placed persons viz., T.S.Kuthalanathan and R.Gopal and Mrs.Mytheri, those who have left over less than one year service as on the crucial date. Representations dated 06.05.2016 and 25.05.2016 were submitted by the Association of Highways Engineers seeking to promote the appellant to the post of Chief Engineer. Interim order was also passed by the learned single Judge holding that the one year left over service should not be made as a bar for promoting the petitioner. Ignoring the interim order dated 30.06.2016 which was in force and also ignoring the seniority of the appellant, the juniors of the appellant viz., Mr.A.K.Rajaduraiavelpandiyar and Mr.R.Gothandaraman were promoted as Chief Engineers vide G.O.(D) No.34, Highways and Minor Ports (HKI) Department dated 25.11.2016.

12.It appears that the two Government Orders in G.O.Ms.No.440, dated 26.10.1990 and G.O.Ms.No.368, dated 18.10.1993, envisages that one must have one year left over service in the post of Superintending Engineer, to occupy the post of Chief Engineer. G.O.Ms.No.368, dated 18.10.1993, makes it clear that preparation for filling up the post of Heads of Department should be initiated by the Secretaries themselves three months in advance to the prospective date of retirement of existing incumbent and this was made mandatory in order to ensure that the persons having minimum service of one year from the date of retirement of the existing incumbent are not omitted

from grant of promotion because of administrative delay. Whereas G.O.(D) No.3, Highways Department, dated 09.01.2008 was issued amending the special rule for the Tamil Nadu Highways Engineering Service Rules, the Tamil Nadu Highways Engineering Service Rules was to the effect of fixing the crucial date for preparation of panel for appointment of candidates to the post of Chief Engineer as 15th July every year. Such being the practice adopted by the Government, the Government without reckoning the Rule prescribed in G.O.(D) No.3, dated 09.01.2008, fixing the crucial date as 15th July every year, promoted four other persons in the cadre of Executive Engineers, they were not even completed one year left over service in the post of Superintending Engineer on the date of empanelment for the post of Chief Engineer. However, the respondent herein has rejected the request of the appellant for promotion to the post of Chief Engineer, relying upon the said G.O.(D) No.3, dated 09.01.2008, fixing the crucial date as 15th July, every year, for preparation of panel for promotion to the post of Chief Engineer, appears to be contrary and arbitrary to the G.O.Ms.No.440, dated 26.10.1990 and G.O.Ms.No.368, dated 18.10.1993.

13. According to the learned counsel for the appellant, the appellant was promoted as Superintending Engineer on 31.01.2016, she was eligible for inclusion in the Chief Engineer panel only for the year 2016-2017 and she is due to retire on 30.06.2017. Though three vacancies arose as on 31.05.2016 and from such time the appellant was having more than one year left over service, she was not given promotion to the post of Chief Engineer. Even as on crucial date of vacancy i.e. 31.05.2016, G.O.(D) No.3, dated 09.01.2008 cannot be interpreted, which runs contrary to the previous two previous Government Orders in G.O.Ms.No.440, dated 26.10.1990 and G.O.Ms.No.368, dated 18.10.1993. Such being the case, the other persons similarly placed that of the appellant were promoted ignoring the Rule prescribed in G.O.(D) No.3, dated 09.01.2008, and also ignoring the interim orders passed by the learned single Judge in the writ petition filed by her.

14. In such circumstances, we do not agree with the argument advanced by the learned Additional Advocate General that since the appellant was promoted as Superintending Engineer only on 31.01.2016, she was eligible for inclusion in the Chief Engineer panel only for the year 2016-2017. It appears that the appellant was deprived of her promotion to the post of Chief Engineer, whereas, the juniors of the appellant viz., Mr.A.K.Rajadurai velpandiyan and Mr.R.Gothandaraman were promoted as Chief Engineers vide G.O.(D) No.34, Highways and Minor Ports (HKI) Department dated 25.11.2016. That being the case, the appellant should have given promotion to the post of Chief

Engineer from 01.06.2017 itself, as she was holding the post of Superintending Engineer from 31.01.2016 and left over the service of more than one year, she was eligible for promotion to the post of Chief Engineer.

15. Since G.O.(D) No.3, dated 09.01.2008, fixing the crucial date as 15th July, every year, for preparation of panel for promotion to the post of Chief Engineer, appears to be contrary and arbitrary to the earlier principles stipulating one year left over service before retirement will be the eligibility for promotion to the post of Heads of Department as enunciated in G.O.Ms.No.440, dated 26.10.1990 and for initiation of proposal 3 months in advance of the prospective date of retirement of the existing incumbent as enunciated in G.O.Ms.No.368, dated 18.10.1993. We are of the considered view that in the interest of justice, it is just and necessary to struck down the said G.O.(D) No.3, Highways Department dated 09.01.2008 and is hereby struck down accordingly.

16. In the case of other four persons fixing the crucial date as 15th July every year for preparation of panel for the post of Chief Engineer cannot be made applicable since they were promoted to the post of Superintending Engineer along with the appellant on 31.01.2016, but they have retired from service in March 2016, April 2016 and May 2016 i.e. in three months, four months and five months respectively in the post of Superintending Engineer. Whereas the appellant is due to retire on 30.06.2017 and she was having left over service of more than one year in the post of Superintending Engineer when three vacancies for the post of Chief Engineer arose on 31.05.2016.

17. In the result, the writ appeal is allowed. The order of the learned single Judge is set aside. The respondent is hereby directed grant promotion to the petitioner to the post of regular Chief Engineer in Highways Department forthwith and to grant her all consequential benefits thereto. Since already she availed monetary benefit in the pay scale of Special Chief Engineer from 24.06.2017, she is treated as regular Chief Engineer till retirement. Post her to regular Chief Engineer forthwith. No costs. Consequently, connected C.M.P.Nos. 2730 and 2731 of 2017 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gr.

To

The Additional Chief Secretary,
to Government of Tamilnadu,
Highways Department,
Secretariat, Chennai-600 009.

+lcc to MrS.Thankasivan*, Advocate, S.R.No.44349
+lcc to Government Pleader, SR.No.44861(28/06/2017)

W.A.No.160 of 2017

GJ(CO)
RS(28/06/2017)



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