

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.8771 of 2013

R.Manohar

.. Petitioner

Vs.

The Principal Secretary to Government,
Highways and Minor Ports (HK.1)
Department, Secretariat,
Chennai - 9.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the order of the respondent herein passed in Letter No.5823/HK.1/2012-5 dated 24.12.2012 rejecting the petitioner's representation for promotion as Divisional Engineer and quash the same and consequently direct the respondent herein to consider the petitioner for promotion as 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.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

"to call for the records pertaining to the order of the respondent herein passed in Letter No.5823/HK.1/2012-5 dated 24.12.2012 rejecting the petitioner's representation for promotion as Divisional Engineer and quash the same and consequently direct the respondent herein to consider the petitioner for promotion as Divisional Engineer under Rule 39(d) of Tamil Nadu State and Subordinate Service Rules with all

consequential benefits."

2.The case of the petitioner is as follows:

(i)The petitioner was appointed as Junior Engineer on 08.04.1987 under the Tamil Nadu Engineering Subordinate Service. He was posted as Junior Engineer, Highways Section in Shoolagiri. While he was working so, a criminal complaint was registered by the Vigilance and Anti-corruption under Sections 120(b), 409, 467 I.P.C. and Section 13 of Prevention of Corruption Act. On 27.04.2001, the petitioner was also promoted as Assistant Divisional Engineer. Thereafter, charge sheet was filed in the criminal case on 16.12.2002. According to the petitioner, he was due for promotion in 2009-2010 as Divisional Engineer since his juniors came to be promoted during the said period. The petitioner was denied promotion obviously because of the pendency of the criminal case against him. According to the petitioner, though the charge sheet was filed as early as 16.12.2002, till date, the criminal case has not attained any finality and the same is pending trial before the competent Criminal Court.

(ii)In the above circumstances, the petitioner was communicated by the respondent that his promotion as Divisional Engineer would be deferred in view of the pendency of the criminal case vide communication dated 11.03.2001.

(iii)While matter stood thus, the petitioner was communicated on 24.12.2012, stating that some similarly placed Engineers like the petitioner were promoted, though similar charges were pending against them and the criminal cases were also pending against those Engineers. However, their promotion came to be ordered in view of the direction obtained by those Engineers from this Court in writ proceedings.

3.Mr.Ravi Shanmugam, learned counsel appearing for the petitioner would submit that one Saravanan, Assistant Engineer, who is the 7th accused along with the petitioner, filed W.P.No.9529 of 2013 and this Court vide order dated 19.09.2016 has given a specific direction to promote the petitioner therein as Assistant Divisional Engineer under the Tamil Nadu State and Subordinate Service Rules. According to the learned counsel for the petitioner, the said direction passed by this Court has also been complied with. The learned counsel would further draw the Court's attention to paragraphs 9 and 10 of the counter affidavit filed on behalf of the respondent, in which it is clearly admitted that similar persons who are also chargesheeted under the same provisions of law viz., R.Ramesh and G.Muthu were also promoted temporarily on the basis of the orders passed by this Court in writ proceedings. According to the learned counsel for the petitioner, such promotions were ordered on the basis of

specific direction issued by this Court and as far as the petitioner is concerned, no such direction has been issued and therefore, he is being deprived of his due promotion as Divisional Engineer as early as 2009-2010.

4. Upon notice, Mr. T. M. Pappiah, learned Special Government Pleader entered appearance on behalf of the respondent and filed counter. The learned Special Government Pleader would vehemently oppose the grant of any relief to the petitioner on the ground that the criminal case is pending finalisation before the competent Criminal Court and therefore, any promotion at this stage to the petitioner would be prejudicial to the interest of public.

5. Upon consideration of the rival submissions made by the learned counsels for the parties and after perusing the relevant materials, this Court is of the view that this case, cannot be treated differently in the matter of promotion, since similarly placed Engineers who had the benefit of directions obtained from this Court in writ proceedings had been granted promotion to the next higher cadre, pending finalisation of the criminal case. It is needless to point out that the criminal case, which was initiated in 2001-2002, unduly prolonged for nearly 14 years and the same is yet to attain finality. That being the case, the petitioner cannot be denied promotion for indefinite period waiting for finalisation of the criminal case. In fact, there are catena of decisions which held that undue delay in finalisation of disciplinary action/criminal case cannot be a bar for consideration of promotion of the employees concerned, in case they are otherwise qualified, as mere pendency of the disciplinary action/criminal case cannot be held against them, prejudicing their rights for earning the promotion.

6. In such view of the matter, this Court has no hesitation in setting aside the impugned order dated 24.12.2012, rejecting the claim of the petitioner for promotion to the post of Divisional Engineer. Therefore, the writ petition is allowed with a direction to the respondent to consider and grant promotion to the petitioner as Divisional Engineer with effect from the date of his juniors were promoted with all consequential and attendant benefits. It is also made clear that the said promotion is subject to the final outcome in the criminal proceedings which is pending against the petitioner. The said direction shall be complied with within a period of one

month from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mmi

To

The Principal Secretary to Government,
Highways and Minor Ports (HK.1)
Department, Secretariat,
Chennai - 9.

+1 cc to Mr.Ravi Shanmugam Advocate sr 49314

+1 cc to the Government Pleader sr 49690

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