

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.05.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

W.P.No.40987/2015 & MP.No.1/2015

M.Gunasekaran

..Petitioner

..Vs..

The Commissioner of Municipal Administration
O/o.Commissionerate of Municipal Administration,
Chepauk, Chennai-600 005.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent herein to promote the petitioner as an Assistant Executive Engineer for the year 2008-09 at the appropriate place in the Tamil Nadu Engineering Service with effect from the date of promotion given to the immediate junior of the petitioner and pay all consequential monetary benefits to the petitioner, as claimed by the petitioner vide his representation dated 28.10.2015 within a period stipulated by this Court.

For Petitioner : Mr.R.Murali

For Respondent : Mr.P.Sanjai Gandhi, AGP

ORDER

Heard Mr.R.Murali, learned counsel appearing for the petitioner. Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the sole respondent.

2.The petitioner seeks for a Writ of Mandamus directing the respondent to promote him to the post of Assistant Executive Engineer by including his name in the Panel for the year 2008-2009 and to promote him on par with his juniors with all consequential benefits.

3.The genesis of the dispute is that certain charges were framed against the petitioner and unduly, the petitioner was imposed with punishment of recovery as well as stoppage of increment for a period of three years with cumulative effect. As against the said order, petitioner has preferred an appeal before the Appellate Authority. The Appellate Authority by an order dated 27.01.2015 has modified the punishment into one of recovery alone. The other punishment namely; stoppage of increment for a period of three years with cumulative effect has been set aside by the Appellate Authority. The grievance of the petitioner is that despite the order of the Appellate Authority modifying the punishment into one of recovery alone, the respondent did not consider his claim for promotion on par with his juniors. That is, despite the Appellate Authority's order, the petitioner has not been considered for promotion as per the rules. Hence, the petitioner seeks a Writ of Mandamus as stated above.

4.Mr.R.Murali, learned counsel appearing for the petitioner would invite the attention of this Court to G.O.Ms.No.22, Personal and Administrative Reforms (S) Department dated 24.02.2014 wherein Clause (1-JJ) was introduced with effect from 19.05.2009 to the effect that in cases where punishment of recovery alone has been imposed, the delinquent officials name shall not be considered for inclusion in the approval list for promotion during the period of such recovery, subject to a maximum period of 24 months from the date of issuance of the order irrespective of the fact that whether it is recovered in full or not.

5.In this case, punishment was imposed on the petitioner on 20.09.2007, and the period of 24 months came to an end on 20.09.2009. Therefore, the authorities should have considered the claim of petitioner for promotion immediately after 20.09.2009, the date on which the 24 months period had expired or at least after 19.05.2009 i.e., the date on which the amendment introduced Clause (1-JJ) is deemed to have come into force.

6.A counter affidavit has been filed wherein reference was made to the above said G.O.Ms.No22 dated 24.02.2014, however it is claimed that since recovery was completed only in 2011, the petitioner will not be entitled to get promotion by including him in the panel list after 20.09.2009.

7.The amendment incorporated in clause (1-JJ) in G.O.Ms.No.22 dated 24.02.2014 clearly bars promotion of the delinquent who suffered an order of recovery only for 24 months.

In view of the said amendment introduced vide G.O.Ms.No.22 dated 24.02.2014 which takes effect from 19.05.2009 the petitioner is entitled to be considered for promotion after 20.09.2009. It is therefore clear that the petitioner's name should have been included in the panel for promotion drawn on 15.03.2010 and he would be entitled to all monetary benefits as if he had been promoted along with the others in the panel dated 15.03.2010.

8.This writ petition is allowed. No order as to costs. Consequently, the connection miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Municipal Administration
O/o. Commissionerate of Municipal Administration,
Chepauk, Chennai-600 005.

+1 CC to Mr.R. Murali, Advocate sr 37582
+1 CC to Govt. Pleader sr 37691

W.P.No.40987/2015

GJ (CO)
sp/22/5

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