

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

CORAM

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

W.P.Nos.27376 and 27377 of 2016
and
W.M.P.Nos.23578, 23579, 23580 and 23581 of 2016

K.K.Mohan Petitioner in W.P.No.27376 of 2016

S.K.Venkataraman Petitioner in W.P.No.27377 of 2016

Vs.

Government of Tamil Nadu
represented by Addl. Chief
Secretary to Government,
Highways Department,
Secretariat, Chennai-600 009. Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondent authority to grant promotion to the petitioners to the post of Chief Engineer in Highways Department with effect from 31.5.2016 and grant them all benefits consequential thereto, within a time to be fixed by this Court.

For Petitioners : Mr.R.Thiyagarajan, Sr.Counsel for
M/s. M.Muthappan.

For respondents : Mr.K.Venkataramani, AAG-VII
assisted by Mrs.A.Srijayanthi, Spl GP.

COMMON ORDER

Both the writ petitions have been filed by the petitioners for a mandamus to direct the respondent to grant promotion to the petitioners to the post of Chief Engineer in Highways Department with effect from 31.05.2016 and to grant them all benefits consequential thereto, within a time frame.

2.The petitioners joined the Highways Department as Assistant Engineers on 23.09.1981 and 19.09.1981 respectively and after getting promotion from time to time, the petitioners were promoted as Superintending Engineers on 27.08.2015 and they are presently working respectively as Superintending Engineer, (Highways) Projects, Coimbatore and Joint Director (Planning), in the Office of the Director General, Highways Department, Chennai.

3.It is stated by the petitioners that 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 petitioner, presently there are four posts of Chief Engineer vacant. Three vacancies arose for the post of Chief Engineer in the Highways Department on 31.05.2016 and another vacancy arose as on 30.06.2016.

4.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.

5.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.

6. According to the petitioners, as on 31.05.2016, four vacancies arose in the post of Chief Engineers in the Highways Department and following this, a panel of Superintending Engineers fit for promotion as Chief Engineers approved in G.O. (D) No.42, Highways and Minor Ports (HK1) Department, dated 23.02.2016. As per G.O.Ms.No.368, dated 18.10.1993, the respondent ought to have prepared panel for filling up the arising vacancies of Head of Department three months in advance to the date of retirement of the existing incumbent. As on date, the petitioners having required the minimum one year of left over service the respondent ought to have promoted and appointed the petitioners as Chief Engineers from 27.8.2015 onwards. Since the respondent has failed to do so the statutory duty cast on him, the petitioners have approached the respondent with a request to give promotion to them; but they did not get any favourable reply. The delay being caused by the respondent authority in promoting and appointing the petitioners as Chief Engineers is causing great injustice to them and their career, the petitioners have come up with the present writ petitions.

7. The learned counsel appearing for the petitioners would contend that the petitioners are 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 petitioners on 31.05.2016. According to the learned counsel for the petitioners similarly placed persons have been promoted to the post of Chief Engineers without any reference to the crucial date. Knowing pretty well the petitioners are due to retire on 31.05.2017 itself, the respondent authority did not grant promotion to the petitioners as Chief Engineer. According to the learned counsel for the petitioners, the respondent authority was delaying the grant of promotion to the petitioners obviously with the view to deprive them 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 petitioners not eligible for being promoted to the post of Chief Engineer as they were not having one year left over service from the crucial date for preparation of panel for promotion viz., 15.7.2016. The learned Additional Advocate General has also bring to our notice that the petitioners have already been appointed as Special Chief Engineers which is equivalent to the pay scale of regular Chief Engineer and they have retired from service on attaining superannuation on 31.05.2017 and as such promotion of petitioners to the post of Chief Engineers does not arise at all.

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. Subsequently one another Government Order in G.O.(D) No.3, Highways Department dated 09.01.2008 was issued, 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.

10. In the instant case, the petitioners were promoted as Superintending Engineer only on 27.08.2015, they were eligible for inclusion in the Chief Engineer panel only for the year 2015-2016. The petitioners are due to retire on 30.06.2017 and according to them, 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 petitioners is concerned, they have 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. Since the petitioners had become Superintending Engineer on 27.08.2015 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 them on 31.05.2016 as done in the case of similarly placed persons viz., Mr.A.K.Rajaduraiavelpandiyan and Mr.R.Gothandaraman who have juniors of the petitioners, promoted as Chief Engineers vide G.O.(D) No.34, Highways and Minor Ports (HKI) Department dated 25.11.2016 ignoring the seniority of the petitioners.

11. According to the learned counsel for the petitioners, the petitioners were promoted as Superintending Engineer on 27.08.2015, they were eligible for inclusion in the Chief Engineer panel only for the year 2015-2016. Though three vacancies arose as on 31.05.2016 and from such time the petitioners were having more than one year left over service, they were 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 petitioners were promoted ignoring the Rule prescribed in G.O.(D) No.3, dated 09.01.2008.

12. 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 have already struck down the said G.O.(D) No.3, Highways Department dated 09.01.2008.

13.In such circumstances, we do not agree with the argument advanced by the learned Additional Advocate General that since the petitioners were promoted as Superintending Engineer only on 27.08.2015, they were eligible for inclusion in the Chief Engineer panel only for the year 2016-2017. However, the learned Additional Advocate General has brought to our notice that the petitioners were appointed as Special Chief Engineers and they have been granted monetary benefit equal to the post of Chief Engineer. It appears that the petitioners were deprived of promotion to the post of Chief Engineer, whereas, the juniors of the petitioners 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. That being the case, the petitioners should have been given promotion to the post of Chief Engineer from 31.05.2016 itself, as they were holding the post of Superintending Engineer from 27.08.2015 and left over the service of more than one year, they were eligible for promotion to the post of Chief Engineer.

14.In view of the submission made by the learned Additional Advocate General that the petitioners were already appointed as Special Chief Engineers and they have been granted monetary benefit equal to the scale of pay drawn by the regular Chief Engineers, and since the petitioners have retired from service on attaining superannuation on 31.05.2017, recording the said submission, both the writ petitions are disposed of. No costs. Consequently, W.M.P.Nos.23578, 23579, 23580 and 23581 of 2016 are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

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Sub Asst. Registrar

gr.

+2cc to M/S.M.Muthappan, Advocate Sr. 44402 and 44401

W.P.Nos.27376 and 27377 of 2016

AR(IV)
VR(21/07/2017)