



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P. (MD) No.551 of 2015
and
W.M.P. (MD) .No.1, 2 & 3 of 2015

K.Elango

... Petitioner

-vs-

1. The State of Tamil Nadu
Rep.by its Secretary to Government
Personnel & Administrative Reforms (S) Department
Fort St.George, Chennai - 600 009

2. The Principal Secretary to Government
Government of Tamil Nadu
Highways & Minor Ports (HK-1) Department
Fort St.George, Chennai - 600 009

3. The Director General
Highways Department
Chennai - 600 005

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of declaration declaring that the order issued by the 1st respondent in G.O Ms No.22 P & AR Department, dated 24.02.2014 is unconstitutional, ultra vires, void, illegal and also the consequential impugned order of the 2nd respondent issued in Lr.No.3878/HK1/2010-30 dated 30.05.2014 and consequently directing the respondents to promote the petitioner as Superintending Engineer without referring to the penalty imposed by the 2nd respondent in G.O (D) No.9, Highways & Minor Ports (HL-2), dated 21.07.2009 with all monetary and attendant benefits on par with his juniors.

For Petitioner : Mr.S.Veera Kathiravan,
Senior Counsel

For Respondents : Mr.V.Muruganantham

Additional Government Pleader

**O R D E R****(Order of the Court by T.S.SIVAGNANAM, J.,)**

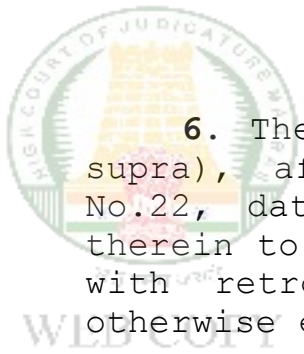
Heard Mr.S.Veera Kathiravan, learned senior counsel appearing for the petitioner and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the respondents and carefully perused the materials placed on record.

2. The petitioner seeks for the issuance of a writ of declaration to declare the Government Order, in G.O Ms No.22, P & AR Department, dated 24.02.2014, as unconstitutional and ultra vires and consequently to quash the order, dated 30.05.2014, passed by the second respondent denying promotion to him and for a direction to the respondents to promote him as Superintending Engineer, without reference to the penalty imposed on him by the second respondent, vide G.O (D) No.9, Highways & Minor Ports (HL-2), dated 21.07.2009, with all monetary and attendant benefits on par with his juniors.

3. The impugned Government Order, in G.O.(Ms) No.22, P & AR Department, dated 24.02.2014, is an order introducing a new rule by way of amendment to Rule 4(a) of the General Rules for the Tamil Nadu State and Subordinate Services. The said Rule / Government Order was challenged before the Principle Bench in several writ petitions and some of which were dismissed and appeals were preferred before the Division Bench. The Division Bench in the case of ***K.Rajalakshmi and others vs. The Principal Secretary to Government, School Education Department and others, in W.A.No.983 of 2015 etc.***, dated 14.09.2016, has allowed the appeals and set aside the said Government Order, in G.O.(Ms) No.22, P & AR Department, dated 24.02.2014, and directed promotion to be given to those appellants / petitioners. It is not in dispute that the judgment of the Division Bench holds the field as on date.

4. In the light of the above referred decision, the said amended Rule can not be put against the petitioner as the said Government Order has already been set aside and consequently amendment to the said Rule has also been set aside.

5. The second part of the relief sought for by the petitioner is to promote him as Superintending Engineer. It is a settled legal position of law that the Court cannot issue positive direction to promote the employee and the Court can only direct the employer to consider the case of the employee for promotion, if otherwise found eligible.



6. The Division Bench in the case of **K.Rajalakshmi** (referred supra), after setting aside the Government Order in G.O.(Ms) No.22, dated 24.02.2014, issued a direction to the respondents therein to consider the case of the writ petitioner for promotion with retrospective effect from the date when they become otherwise eligible, within the specified time.

7. Thus, following the above referred decision, there will be a direction to the respondents herein to consider the case of the petitioner for promotion to the post of Superintending Engineer without reference to the minor penalty imposed on him, vide order dated 21.07.2009, within a period of three months from the date of receipt of copy of this order.

8. The writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary to Government,
Personnel & Administrative Reforms (S) Department,
Fort St.George, Chennai - 600 009.
2. The Principal Secretary to Government,
Government of Tamil Nadu,
Highways & Minor Ports (HK-1) Department ,
Fort St.George, Chennai - 600 009.
3. The Director General,
Highways Department,
Chennai - 600 005.

+1cc to M/s Veera Associates Advocate Sr.No.52199
+1cc to Spl.Government Pleader Sr.No.52500

skm/krk

vb/kp/sar2/26.04.2017/3p/6c

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and
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