

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:19.03.2018
CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.594 of 2018
and
CMP.No.5783 of 2018

Commissioner,
Corporation of Chennai
Rippon Building,
Chennai-600 003.

... Appellant

-Vs-

1. Muthuirulappan
2. Government of Tamil Nadu
Rep. By its Secretary,
Municipal Administration and Water Supply Department,
Fort St., George, Chennai-9.

... Respondents

Writ Appeal filed under Clause 15 of Letters of Patent Appeal, against the order dated 23.03.2017 passed in WP.No.28058 of 2013, Petition presented under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring G.O.(2Pa).No.54, dated 10.06.2011, Municipal Administration and Water Supply (Ma.Na.3) Department as illegal, arbitrary and contrary to law in so far as not promoting the petitioner to the post of Superintending Engineer with effect from 1.2.2010 in the available vacant position consequently direct the respondents to promote the petitioner to the post of Superintending Engineer with effect from 01.02.2010, fix the pay scale and revise the terminal benefits payable to the petitioner on the basis he retired in the post of Superintending Engineer.

For Appellant : Mr.P.H.Aravinda Pandian, AAG
for Mr.G.Anantharangan

For Respondents: Mr.Balan Haridas
For R1
JUDGMENT

[Judgment of the Court delivered by C.T.SELVAM, J.]

First respondent/petitioner has moved WP.No.28058 of 2013 seeking to declare G.O.(2Pa).No.54, dated 10.06.2011, Municipal Administration and Water Supply (Ma.Na.3) Department illegal, arbitrary and contrary to law, insofar as not promoting the petitioner to the post of Superintending

Engineer and to consequently direct the respondents to promote the petitioner to the post of Superintending Engineer with effect from 01.02.2010, fix the pay scale and revise the terminal benefits payable to petitioner in the post of Superintending Engineer.

2. The first respondent, who had served as an Executive Engineer had been recommended for appointment as Superintending Engineer under Resolution of Appellant-Corporation, dated 24.05.2010 when, two posts of Superintending Engineer lay vacant and two more vacancies were to arise within the year 2010-2011. Towards filling up all four posts of Superintending Engineer, a Panel of names including the name of petitioner, had been approved by Appellant-Corporation. The Panel prepared by the appellant was forwarded to Government, which was unable to make appointments owing to intervening the General Elections. Eventually, an order of appointment came to be passed by Government in G.O(2 Pa) No.54 dated 10.06.2011, whereunder three persons were appointed as Superintending Engineer of Appellant-Corporation. Of the five recommended by the Appellant-Corporation, one had withdrawn and the first respondent's name had not been considered since he had superannuated on 30.04.2011. Hence, respondent moved WP.No.28058 of 2013 seeking the following relief:-

"declaring G.O.(2 Pa) NO.54 dated 10.6.2011, Municipal Administration and Water Supply (Ma.Na.3) Department as illegal, arbitrary and contrary to law in so far as not promoting the petitioner to the post of Superintending Engineer with effect from 1.2.2010 in the available vacant position and consequently direct the respondents to promote the petitioner to the post of Superintending Engineer with effect from 1.2.2010, fix the pay scale and revise the terminal benefits payable to the petitioner on the basis his retired in the post of Superintending Engineer".

3. Under orders dated 23.03.2017, this Court had found as follows:-

"18. In the result, the following orders are passed in this writ petition :

- (1) The impugned order, in so far as the non-inclusion of the name of the petitioner for promotion to the post of Superintending Engineer, is declared unlawful and consequently, it is declared that the petitioner shall be entitled to get notional promotion either from 01.02.2010 or 24.05.2010, as Superintending Engineer, and accordingly he shall be entitled to get all the service benefits.

(2) The respondents herein are directed to give such notional promotion and service benefits to the petitioner, and in that respect, necessary orders shall be passed and the benefits shall be disbursed to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

19. With these directions, the writ petition is allowed. However, there shall be no order as to costs."

There against, Appellant-Corporation has moved the present appeal.

4. Heard learned Additional Advocate General for appellant.

5. Learned Additional Advocate General submitted that Appointing Authority was Government and Appellant-Corporation was only a Recommendatory Authority. Appellant-Corporation had recommended the name of the petitioner along with others. However, Government's Order of appointment eventually was passed on 10.06.2011 by when first respondent had superannuated. Stressing that first respondent had lost opportunity to promotion to the post of Superintending Engineer not owing to any fault on the part of appellant-Corporation. Learned Additional Advocate General sought to explain the decision relied upon by the learned Single Judge in finding in favour of the respondent. Learned Single Judge has relied on the following to be found in decision of the Hon'ble Apex Court in Major General H.M.Singh, VSM Vs. Union of India and another [2014 (3) SCC 670] in paragraphs 28 and 33:-

"28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition, that the respondents were desirous of filling the vacancy of Lieutenant General, when it became available on 1.1.2007. The factual position depicted in the counter affidavit reveals, that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws,

extended by Article 14 of the Constitution of India. We are of the view, that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential order dated 29.2.2008, and thereafter, by a further Presidential order dated 30.5.2008. The above orders clearly depict, that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant General, (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet), stands affirmed. The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant General, would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.

.....

33. Insofar as the present controversy is concerned, there is no doubt whatsoever, that a clear vacancy against the rank of Lieutenant General became available with effect from 1.1.2007. At that juncture, the appellant had 14 months of service remaining. It is not as if the vacancy came into existence after the appellant had reached the age of retirement on superannuation. The present case is therefore, not covered by the technical plea canvassed at the hands of the learned senior counsel for the respondents. The denial of promotion to the appellant mainly for the reason, that the appellant was on extension in service, to our mind, is unsustainable besides being arbitrary, specially in the light of the fact, that the vacancy for which the appellant was clamouring consideration, became available, well before the date of his retirement on superannuation. We have, therefore, no hesitation in rejecting the basis on which the claim of the appellant for onward promotion to the rank of Lieutenant General was declined, by the Appointments Committee of the Cabinet."

6. Learned Additional Advocate General submitted that in the case relied by learned Single Judge, party had the benefit of extensions and thus was in service when the question of drawing up the panel for promotion came up for consideration. Though learned Additional Advocate General seeks to make such distinction, we find that the decision of

Apex Court in Major General H.M.Singh, VSM Vs. Union of India and another [2014 (3) SCC 670] informs that when a person was found eligible for promotion on the day when consideration of the vacancies in the post arose, then Article 14 and 16 of the Constitution of India would require his being appointed unless he suffered any disqualification. When so understood it will be seen that there is no error in the order under challenge.

7. This Writ Appeal shall stand dismissed. In Keeping with the request of learned Additional Advocate General, Appellant-Corporation shall act in keeping with the order of learned Single Judge in WP.No.28058 of 2013 dated 23.03.2017, within a period of eight weeks from today. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmi

To:

1.The Secretary
Government of Tamil Nadu
Municipal Administration and
Water Supply Department,
Fort St., George, Chennai-9.

+1cc to M/s.Balan Haridas, Advocate SR.No.20328

+2cc to Mr.Anantharangan, Advocate Sr.No.20336

Copy to:The Commissioner
Corporation of Chennai
Rippon Building,
Chennai 600 003

MG(CO)
sm:17.4.2018

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