

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/11/2018

C O R A M

The Honourable Mr.Justice S.Manikumar
a n d
The Honourable Mr.Justice Subramonium Prasad

Writ Appeal No.2545 of 2018

1. The Secretary to Government
Public Works Department
Secretariat
Fort St. George
Chennai 600 009.
2. The Chief Engineer (General)
Public Works Department
Chepauk
Chennai 600 005. Appellants/Respondent

Vs

P. Gunasekaran Respondent/Petitioners

Appeal filed under Clause 15 of the Letters Patent against the order dated 6/2/2018 passed in W.P.No.28243 of 2011.

WP No.28243/11 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certioraified mandamus to call for the records in G.O.(D) No.113 PW (A1) D dated 09.04.2009 on the file of the 1st respondent deleting the name of the petitioner from the approved panel for promotion and actual promotion given to the petitioner as Assistant Executive Engineer for the year 2004-2005 by relying the provisons contained in Rule 36(c) of the Tamil Nadu State Subordinate Service Rules and quash the same in so far as it operates against the petitioner and consequentially issue directions to the respondents to issue reposting orders to the petitioner in the category of Assistant Executive Engineer from approved regular panel in G.O.(3D).No.28 Public Works (A1) Department dated 22.06.2006 for the year 2004-2006.

For Appellants ... Mr.S.Udayakumar
Additional Government Pleader
For Respondent ... Mr.N.Krishna Kumar

J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad,J)

Aggrieved by the order, dated 6/2/2018, passed in W.P.No.28243 of 2011, the State has preferred the instant writ appeal.

2. The respondent/petitioner had filed Writ Petition No.28243 of 2011, praying for the issuance of a writ of certiorarified mandamus, to quash G.O.(D) No.113, PW (A1) D, dated 9/4/2009, on the file of the Secretary to the Government, Public Works Department, Secretariat, Chennai, deleting the name of the writ petitioner, from the approved panel for promotion and actual promotion, be given to the writ petitioner, as Assistant Executive Engineer, for the year 2004 - 2005, by relying on the provisions contained, in Rule 36 (c) of the Tamil Nadu State Subordinate Service Rules.

3. The writ petitioner is a directly recruited, Assistant Engineer, by the Tamil Nadu Public Service Commission, in the year 1986. He went on foreign service, on 26/4/2005. He has to return, on 25/4/2007, i.e, after a period of two years. When he was away on foreign duty, the first respondent, prepared a panel of names of Assistant Engineers, fit for promotion to the post of Assistant Executive Engineer, for the year 2004 - 2005. The petitioner's name figured in the list. The petitioner returned on 1/9/2009. Before he could return, a charge memo, dated 12/12/2008, was served on him, for over stay in foreign service. First respondent, by order, dated 9/4/2009, passed an order, deleting the name of the writ petitioner, from the panel of promotion, to the post of Assistant Executive Engineer, for the year 2004 - 2005.

4. Material on record further disclose that an order, dated 12/2/2011, issued by the office of the Engineer-in-Chief, WRO & Chief Engineer (General), PWD, Chennai, directing the punishment of stoppage of increment, for a period of one year, without cumulative effect, on the charge of over staying, in foreign country, after the lapse of the prescribed period. Order, dated 9/4/2009, deleting the name of the petitioner, from the approved panel, for promotion, as Assistant Executive Engineer, was challenged, in W.P.No.28243 of 2011. The learned Single Judge by the impugned order allowed the writ petition.

5. Heard Mr.S.Udaya Kumar, learned Additional Government

Pleader for the appellants and Mr.N.Krishnakumar for the respondent.

6. Mr.S.Udayakumar, learned Additional Government Pleader, for the State vehemently contend that the order of deletion of the name of the writ petitioner, from the panel has been passed because of his over stay in the foreign country. This submission cannot be accepted. When the order for promotion was passed, the writ petitioner was working in foreign service as permitted by the Government. Inclusion of the name of the petitioner in the panel for promotion has been made, on the basis of his performance, upto 2004 - 2005, on which there was no blemish. The fact that he has over stayed, after the preparation of the panel, cannot become a ground, for deleting the name of the petitioner, from the panel. Reliance on Rule 36 (c) of the Tamil Nadu State and Subordinate Service Rules is completely unfounded.

7. Rule 36 (c) of the Tamil Nadu State and Subordinate Service Rules reads as under:-

"A member of service who had been on leave for a period of three years continuously for any reason except higher studies or for a period of four years continuously for higher studies, shall not be considered for appointment to a higher category either by promotion or by recruitment by transfer unless he has completed service for a period of one year from the date on which he joins duty on return from leave."

8. A perusal of Rule 36 (C) of the Tamil Nadu State Subordinate Service Rules would show that this rule applies only for a person, who has been on leave, for a period of three years continuously, except higher studies. This rule has no application to the facts of this case. The petitioner's name was included in the panel, for the year 2004 - 2005 and the petitioner was granted promotion, by order, dated 22/6/2006, in G.O.Ms.No.253, Public Works (A1) Department. After having been granted promotion, his name should not have been deleted because of his over stay which was unauthorised subsequent to the date of promotion. The writ petitioner has been awarded with a penalty for stoppage of increment, for a period of two years, without cumulative effect for the change of over staying outside the country without permission.

9. In view of the above, Writ Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

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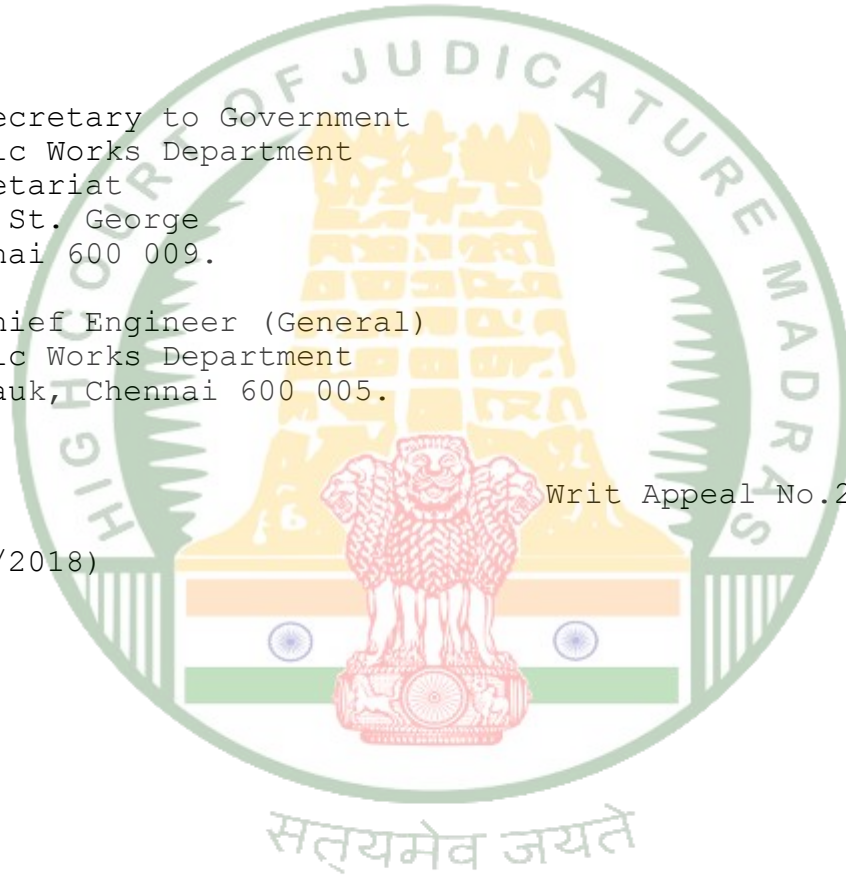
Sub Assistant Registrar

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GMV (20/12/2018)



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