

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.12.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Writ Petition No.30324 of 2018
& WMP Nos.35385, 35390 & 35394 of 2018

G.Manuneethi

.. Petitioner

- Vs -

1 The Additional Chief Secretary to Government
and the Secretary to Government
Highways Minor Port Department (HK1)
Fort St.George Chennai-9

2 The Director General Highways
Department Chennai-25

.. Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to the impugned Proceedings of the first respondent in Govt. Lr. No.6938/HL2/2017-3 dated 14-6-2017, quash the same and consequently to direct the respondents herein include the name of the petitioner in GO(D) NO 140 High ways and Minor ports (HK1) Department dated 15-6-2017 and to promote the petitioner Superintending Engineer in the respondent department from the date of promotion of the juniors of the petitioner and pay consequential monetary and attendant benefits.

For Petitioner : M/s.S.T.P.Kuilmozhi

For Respondents : Mr. A.N.Thambidurai, Spl.G.P.,
- - -

O R D E R

The petitioner joined in the services of the respondents / Department, as Assistant Engineer on 11.09.1991 and finally as Divisional Engineer in the year 2012.

2. During February 2013 one Contractor, by name, Gowpatt Associates, represented by its Proprietor, P.Arunkumar, gave a request of claim on 10.10.2013 for variation charges in furtherance to the contract said to have been performed by him. It was sent to Superintending Engineer, Salem, about his claim and subsequently a letter was forwarded to the petitioner as a Divisional Engineer, which also reached the office on 22.10.2013. The Chief Engineer returned it to the Divisional Engineer, Coimbatore, with an endorsement for taking decision as per the rules.

3. The report as well as the office remark was forwarded to the Accounts Officer, attached to the Divisional Engineer, Coimbatore, for clarification. The Accounts Officer rejected the claim of the contractor and concluded that the claim bill was already settled in favour of the contractor. Thereafter, the claim of the contractor was rejected and an order was passed on 25.05.2015.

4. The contractor filed a writ petition No.16140 of 2015 before this Court and ultimately, by the order, dated 03.08.2015, this Court directed the respondents to consider the proposal of the claim of the contractor within a period of four weeks. Aggrieved over the same, W.A.No.1602 of 2015 and it was rejected on 08.02.2015 holding that there is no infirmity or irregularity in the order. Thereafter, the Government rejected the request of the contractor and the same was challenged by the contractor in W.P.No.18564 of 2016 and the same is pending.

5. The crucial date for promotion to the post of Superintending Engineer is 15th June of every year. For the administrative year 2016-17, the first respondent prepared the panel and the name of the petitioner was included in Sl.No.24 in the approved panel in G.O.Ms.No.124, dated 26.12.2016 and on 26.12.2016, few of the empanelled Divisional Engineers were promoted by G.O.(D) No.249. But the name of the petitioner was omitted in two subsequent panels denying the petitioner's promotion. Thus, the petitioner sent a representation on 19.06.2017 to include the name of the petitioner in the panel for the year 2016-17.

6. While the facts stood thus, the first respondent served the impugned charge memo dated 14.06.2017, as if the petitioner recommended the claim of the contractor for variation. In fact, the petitioner only sent a note and remark for orders to be passed by the Government. But it was treated as a misconduct. In fact, the petitioner rejected the claim of the contractor, which was relied upon by the Government in the counter to the writ petition filed by the Contractor. Hence, the charge memo issued was with a malafide intention to justify the denial of

the promotion to the petitioner. Hence, this writ petition.

7. Heard both sides and perused the materials available on record.

8. The learned counsel for the petitioner submitted that considering the emergency, it is enough if the representation is ordered to be considered.

9. Under the said circumstances, the respondents are directed to consider the representation of the petitioner, dated 13.03.2018, in the light of the fact that the petitioner has already rejected the claim of the contractor and to pass appropriate orders, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected WMPs are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk

To

- 1 The Additional Chief Secretary to Government
and the Secretary to Government
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Fort St.George chennai-9
- 2 The Director General Highways
Department Chennai-25

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SSV(CO)
CS/11/02/2019