

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.02.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.10402 of 2011

M.Balamohana Murugan

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
rep.by its Secretary to Government,
Public Works Department,
Fort St.George,
Chennai-600 009

2.The Engineer-in-Chief,
WRO & Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai-600 005

..... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents, especially the first respondent, to include the petitioner's name in the panel of Assistant Engineers'/Junior Engineers' for the year 2007-08, fit for promotion as 'Assistant Executive Engineers' and consequently promote him as 'Assistant Executive Engineer', and give placement at the appropriate place on par with his immediate juniors with all monetary and service benefits, considering the fact that on the crucial date there were no framed charges.

For Petitioner

.. Mr.S.Marcus Jayakumar

For Respondents

.. Mr.K.K.Ramesh

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ORDER

The petitioner herein has entered the services of the second respondent as 'Assistant Engineer' in 1999, having been appointed through the Tamil Nadu Public Service Commission. According to the petitioner, he had been working as 'Assistant Engineer' without any blemish and was discharging his duties very diligently. In 2009, it appears that on the basis of some

complaint, a vigilance enquiry has been initiated against the petitioner and because of which, his further promotion to the post of 'Assistant Executive Engineer', which was due for the panel year 2007-08, had been deferred.

2. According to the petitioner, ultimately, the Government had passed G.O.(D) No.327, Public Works (E1) Department, dated 18.8.2009, dropping the charges against him, as the same have not been substantiated.

3. According to the Department, due to certain administrative reasons, the panel for the year 2007-08 could not be drawn on the same year and it was eventually prepared in October 2009. According to the petitioner herein, even in October 2009, there was no charge memo or any other disciplinary action pending against him and therefore, there was no bar for inclusion of his name for the panel year 2007-08, for the purpose of promotion to 'Assistant Executive Engineer'.

4. While so, subsequently, it appears that a charge memo was issued for the same incident, on 02.12.2009 and in pursuance of the same, punishment of 'stoppage of increment for one year without cumulative effect' was imposed on the petitioner, on 10.01.2011. Subsequently it appears that the petitioner has been promoted as 'Assistant Executive Engineer' on 25.10.2012. The grievance of the petitioner herein is that despite his eligibility and qualification for inclusion of his name for the panel year 2007-08, he has been denied promotion for the said panel year and his promotion had been delayed for a period of five years.

5. The above facts have not been disputed by the respondents. The only point of resistance put forth by the respondents is that there was a vigilance enquiry pending against the petitioner during the relevant period and therefore, his name was not considered for inclusion.

6. The contention which is put forth on behalf of the respondents is unacceptable for the simple reason that admittedly there was no disciplinary action pending against the petitioner when the panel was prepared in October 2009 for the year 2007-08. Even the vigilance enquiry, which was initiated during the relevant period, was withdrawn and the Government itself had passed orders dropping further proceedings against the petitioner. When that being the position, this Court is unable to appreciate as to how the petitioner's name was omitted to be included for the panel year 2007-08.

7. It also appears that for the same incident, a charge memo was issued only on 02.12.2009, much after the panel was prepared in October 2009. It means the petitioner was unjustly and illegally over looked in the matter of promotion to the post of

'Assistant Executive Engineer' for the panel year 2007-08. As already stated, the facts as narrated by the petitioner have not been disputed and no other explanation has been given on behalf of the respondents as to how the petitioner's name was not included for the panel year 2007-08.

8. In view of the above admitted position, this Court finds that the non-inclusion of the name of the petitioner for the panel year 2007-08, for the purpose of promotion to the post of 'Assistant Executive Engineer', is legally unsustainable and the same is liable to be interfered with.

9. In the light of the above conclusion, the writ petition is allowed and the respondents are directed to include the petitioner's name for the panel year 2007-08 for promotion to the post of 'Assistant Executive Engineer' and thereafter promote him notionally with effect from the date when other similarly placed Assistant Executive Engineers were promoted from the said panel year to the said post by giving all attendant and consequential benefits on such promotion, as made applicable to the Juniors of the petitioner. However, it is made clear that the petitioner is not entitled to the arrears of the higher salary as applicable to the post of 'Assistant Executive Engineer' for the period in question, since he had not shouldered the higher responsibility. The respondents are directed to implement the direction within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

msh

To

1. The Secretary to Government,
Public Works Department,
Fort St. George, Chennai-600 009

2. The Engineer-in-Chief,
WRO & Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-600 005

+1cc to Mr. A. Amal Raj, Advocate, S.R.No. 14200

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KJ(CO)
GN(18/03/2019)