

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.10912 of 2015

D.Arumugam
S/o. A.Dhanapal
Junior Engineer (Highways) (Retd)
Plot No.105, 1st street,
3rd Avenue, Pallava Garden,
Old Pallavaram,
Chennai - 600117. ...Petitioner

Vs.

1. The Secretary to Government,
Highways & Minor Ports Department,
Fort St George, Chennai-9.
2. The Director General,
Highways Department,
Chepauk, Chennai-5. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to promote the petitioner notionally as Assistant Divisional Engineer w.e.f. 8.1.2015 i.e. from the date of issue of GO (3D) No.1/Highways & Small Ports (HK1) Department dated 8.1.2015, in which, orders were issued promoting the petitioner as Assistant Divisional Engineer with all consequential service and monetary benefits including retirement benefits within a reasonable time.

For Petitioner : Mr.Elanchezhiyan

For Respondents: Mr.R.Govindasamy

Special Government Pleader

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O R D E R

The petitioner entered the service of the respondent-Department as Assistant Draughtsman on 01.10.1980 and subsequently promoted as Junior/Draughting officer on 01.07.1981. After passing B.E Degree (Civil) examination on 01.04.1991, the petitioner was promoted as Junior Engineer on 18.02.2004.

2. The first respondent prepared a panel of Junior Engineers/Assistant Engineers fit for promotion to the post of Assistant Executive Engineer for the panel year 2014-2015 in GO (D) No.166 dated 29.12.2014. In the panel, the

petitioner's name was included in Serial No.12. Consequently, the second respondent sent a proposal of the eligible persons for promotion as Assistant Divisional Engineer through a communication dated 31.12.2014 and sought for necessary orders for promoting them as Assistant Divisional Engineer.

3. Following the above said proposal dated 31.12.2014, the first respondent issued an order of promotion in G.O(3D) No.1 dated 08.01.2015 and requested the second respondent to give posting orders to the promotees in the available vacancies. But even before the posting order was issued, the petitioner attained the age of superannuation and retired from service on 31.03.2015. Therefore, the petitioner made a request for granting the monetary benefit to be provided to the petitioner out of such promotion, which includes the relevant pension. As the said request has not been considered, the present writ petition is filed.

4. The learned counsel appearing for the petitioner after inviting this Court's attention to the order of promotion issued on 08.01.2015, submitted that as the petitioner was already promoted on 08.01.2015 itself before his retirement, not posting the petitioner at the promoted post cannot be stated as the reason to deny the monetary benefit.

5. On the other hand, the learned Special Government Pleader submitted that though a promotional order was issued as stated supra, the facts remains that no posting order was issued to the petitioner before he retired and therefore, he is not entitled to any monetary benefit, out of such promotional post.

6. Heard both sides.

7. There is no dispute to the fact that the panel for promotion to the post of Assistant Executive Engineer was drawn for the panel year 2014-2015, wherein the petitioner's name was included at Serial No.12. It is also not in dispute that consequent upon such drawal of panel, an order promoting the petitioner was also issued in G.O.(3D) No.1 dated 08.01.2015 by the first respondent.

8. Admittedly, the petitioner retired from service only on a subsequent date namely 31.03.2015. Therefore, it is evident that on the date of issuing the promotional order, the petitioner was in the service. Merely because there was a delay in issuing the posting order, that cannot be put against the petitioner to deny the benefit of such service benefit arriving out of such promotion, especially under circumstances when the petitioner retired from the service on 31.03.2015, within two months from the date of issuance of such promotional order.

9. No doubt, the petitioner did not work in the promotional post, but at the same time, the other monetary benefits namely the commutation of pension and other service benefits should be made available to the petitioner, taking note of the fact that a promotional order was issued to the petitioner as early as on 08.01.2015. Therefore, this writ petition is disposed of, by directing the respondents to consider the claim of the petitioner by granting the permissible monetary and retirement benefits derived out of such promotional post. Such exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Highways & Minor Ports Department,
Fort St George, Chennai-9.
2. The Director General,
Highways Department,
Chepauk, Chennai-5.

+1cc to Mr. Elanchezhiyan, Advocate SR.No. 39263
+1 cc to Government Pleader Sr.No.39884

W.P.No.10912 of 2015

A.SK(20/05/2019)

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