

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.925 of 2012

M.Nallathambi

.. Petitioner

Vs.

1.The Managing Director,
TWAD Board,
31, Kamarajar Salai,
Chennai.

2.TWAD Engineers Association,
rep. By its Secretary,
31, Kamarajar Salai,
Chennai.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to Proc.No.28070/ESTT (PER)/A5/2011 dated 05.01.2012, quash the same so far as S.No.3 to 75 concerned and direct the 1st respondent to prepare a fresh panel including the petitioner's name as serial No.3, as per his seniority No.1043.

For Petitioner : Mr.T.Sezhian

For R1 : Mr.A.Manogaran,
for M/s.S.Thamizharasi

For R2 : No appearance

ORDER

The present Writ Petition is filed, calling for the records of the 1st respondent relating to Proc.No.28070/ESTT (PER)/A5/2011 dated 05.01.2012, quash the same so far as S.No.3 to 75 concerned and direct the 1st respondent to prepare a fresh panel including the petitioner's name as Serial No.3, as per his seniority No.1043.

2.The petitioner is challenging the promotion panel. The grievances of the petitioner is that even though the minor punishment of stoppage of increment without cumulative effect was over on 31.12.2011, his name was not included in the impugned panel published on 05.01.2012 for the promotion to the post of Executive Engineer for the year 2010-2011. According to the petitioner, his name ought to have been included in Serial No.3 in the impugned panel of 75 persons published on 05.01.2012.

3.According to the learned counsel appearing for the petitioner, non-inclusion of the petitioner in the impugned panel amounts to non-application of mind as the 1st respondent failed to note that period of punishment was over as on 31.12.2011 and relied on the judgment of the Full Bench of this Court reported in 2011 (3) CTC 129 [The Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani] wherein this Court has held that after currency of punishment was over, the name of the Government servant should be immediately considered for promotion.

4.The 1st respondent has filed counter affidavit. The learned counsel appearing for the 1st respondent submitted that two separate punishments were imposed on the petitioner. The 1st punishment of stoppage of increment for two years without cumulative effect ordered in Proceedings No.66641/E(DP)/A5/07 dated 01.11.2007 was over on 31.12.2011. The said punishment was effective from 01.01.2010 and over on 31.12.2011. The petitioner was imposed another punishment of stoppage of increment for two years without cumulative effect by the 1st respondent in Proceedings No.28177/E(DP)/A5/07 dated 23.07.2008. The said punishment was confirmed by the Board on 03.04.2009 in B.P.Ms.No.40 and the Review Application filed by the petitioner was rejected on 01.12.2009 in B.P.Ms.No.156. The second punishment became effective from 01.01.2012 and it will conclude on 31.12.2014. The crucial date for preparation of panel for the year 2011-2012 was 01.07.2011 and therefore, the petitioner's name was not included in the impugned panel. The learned counsel appearing for the 1st respondent referred to the impugned panel for promotion dated 05.01.2012 and submitted that in Paragraph No.3 of the said impugned panel, 17 Assistant Executive Engineers were overlooked/deferred for promotion for the reasons stated therein. The petitioner's name is in Serial No.5 and both the punishment imposed on him were mentioned in the impugned panel and the name of the petitioner is overlooked in the panel for promotion due to currency of punishment. The petitioner's name was not rightly considered for promotion in the impugned panel published on 05.01.2012 and prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner as well as the 1st respondent and perused the materials available on record.

6. The contention of the learned counsel appearing for the petitioner is that the punishment of stoppage of increment for two years without cumulative effect was over on 31.12.2011 and the petitioner's name ought to have been included in the impugned panel for promotion to the post of Executive Engineer for the year 2010-11. The said contention is not acceptable. The 1st respondent in the counter statement has stated that the petitioner was imposed two punishments by the proceedings dated 01.11.2007 and 23.07.2008. The 1st punishment imposed was effective from 01.01.2010 to 31.12.2011 and the 2nd punishment was effective from 01.01.2012 to 31.12.2014. The 1st respondent has furnished the details of appeal and revision filed by the petitioner challenging both the punishments and the dates on which the appeal and revision were dismissed. After the dismissal of the appeal and revision in respect of both the punishments imposed, the punishments imposed on the petitioner were given effect to. As per the details furnished by the 1st respondent, the 2nd punishment was given effect to from 01.01.2012, after the 1st punishment was concluded on 31.12.2011 and it will be concluded only on 31.12.2014. The petitioner has not denied the said contentions of the 1st respondent made in the counter affidavit and averments of the petitioner that punishment got over on 31.12.2011 relates to only 1st punishment and the petitioner has not stated anything about currency of 2nd punishment which was effected from 01.01.2012. In view of the currency of punishment of stoppage of increment for two years without cumulative effect from 01.01.2012, the petitioner's name was not rightly included in the impugned panel.

7. In view of the above, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Managing Director,
TWAD Board,
31, Kamarajar Salai,
Chennai.

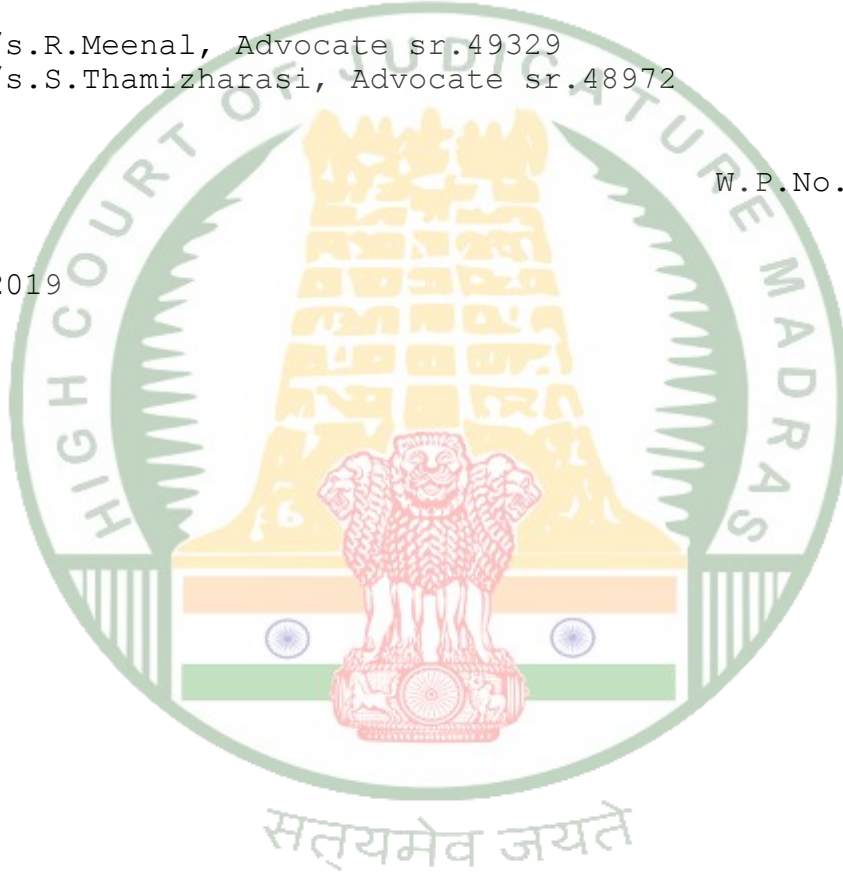
2.The Secretary,
TWAD Engineers Association,
31, Kamarajar Salai,
Chennai.

+1cc to M/s.R.Meenal, Advocate sr.49329

+1cc to M/s.S.Thamizharasi, Advocate sr.48972

W.P.No.925 of 2012

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