

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.04.2019

CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.7584 of 2019

Mr.N.Sivakumar

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
Represented by the Additional Chief Secretary,
Highways and Minor Ports (HK1) Department,
Secretariat,
Chennai - 600 009.
2. The Director General,
Office of the Director General,
Highways, Guindy,
Chennai - 600 025.
3. The Divisional Engineer,
Highways Investigation Division,
Coimbatore.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to directing the 1st respondent herein to promote the petitioner to the post of Divisional Engineer by restoring his seniority and service benefits with retrospective effect.

For petitioner : Mr.L.Mouli

For Respondents: Mr.A.N.Thambidurai, Special
Government Pleader

ORDER

The relief sought for in the present writ petition is for a direction to direct the first respondent to promote the petitioner to the post of Divisional Engineer by restoring to his seniority and service benefits with retrospective effect.

2. Peculiarly, the writ petition itself is filed by the father of the writ petitioner, who was appointed as a legal guardian under the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act'). The father of the writ petitioner Mr.K.Natarajan filed the writ petition by stating

that his son was employed as Assistant Engineer in the respondent's Department at Kadampatty Panchayat Union. Thereafter, he was promoted to the post of Assistant Divisional Engineer. The grievance of the writ petitioner is that the writ petitioner was not promoted to the post of Divisional Engineer in accordance with the seniority and as per the Rules in force. The case of the writ petitioner is to be considered with reference to Section 20(3) of the Disabilities Act, which states that 'no promotion shall be denied to a person merely on the ground of disability. The respondents herein, in violation of 20 (3) of the Act, denied the right of promotion to the post of Divisional Engineer. The writ petitioner submitted a detailed representation on 09.11.2018, requesting the first respondent to promote him to the post of Divisional Engineer by including his name in the panel for the year 2017-2018 by restoring to his seniority with retrospective effect. However, the respondents have not replied in respect of the claim set out in the representation by the writ petitioner. Hence, the writ petitioner is constrained to move the present writ petition.

3. The learned Special Government Pleader appearing on behalf of the respondents opposed the contentions of the writ petitioner by stating that the writ petitioner Mr.N.Sivakumar is now working in the post of Assistant Divisional Engineer and the annual confidential report of Group A & B officers for the period from 01.06.2016 to 10.07.2016 signed by the competent authority states that as he was mentally disordered from 50 to 60% and he can't do anything.

4. Even, the earlier annual confidential reports state in respect of a column stating that whether self assessment furnished by the officer - "No, he has no ability to give it". The physical capacity has been stated as "He does not possess any physical capacity due to mental retardation." In the assessment Work Output column, it is stated as "Assessment cannot be done. He is not able to understand or do anything about Civil Engineering Work". In the Assessment of Personal Attributes column, it is stated as "Assessment cannot be done. He is not able to understand or do anything about Civil Engineering Works." In the column regards Assessment of "Functional Competency" it is noted as "He has no ability to do anything under functional competency. This is due to his mental retardation." Pen picture by reporting Authority clearly states that "He is mentally retarded. He cannot be a head to any Civil Engineering Office. He is trying to do serious offences in handling Government Accounts." In the column Overall grading, it is stated that "No assessment". Even in the confidential report for the year 2016-2017, the reporting authority has noted against the Physical capacity that "Not fit due to mental retardation and he cannot be assessed." It is further reported that "He is trying to do serious offences in Government Accounts

due to mental retardation." Consistently, the annual confidential reports by the reporting officers state that the writ petitioner is not capable of performing his official duties and incapable of functioning as a public servant.

5. The learned counsel for the writ petitioner states that as per Section 20(3) of the Act, "No promotion shall be denied to a person merely on the ground of disability".

6. The very object of the Act is to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. The United Nations Convention lays down the following principles for empowerment of persons with disabilities:

"(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) non-discrimination;

(c) full and effective participation and inclusion in society;

(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) equality of opportunity;

(f) accessibility;

(g) equality between men and women;

(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;"

7. India is a signatory to the said convention, in order to implement the Convention, the Government enacted the statute to protect the interests of the persons with disabilities. Undoubtedly, such a welfare legislation are to be interpreted pragmatically so as to ensure the protection of the persons with disabilities. The very statement of Objects and Reasons for the enactment provides that to give effect to the proclamation on the full par and equality of the people with disabilities in the Asian and Pacific Region. The Act defines persons with disabilities as those having not less than forty per cent disability and identified seven categories of disabilities viz., blindness, low vision, hearing impairment, locomotor disability, mental retardation, mental illness and leprosy-cured. The object of the enactment, no doubt, is to be implemented in its letter and spirit. However, equally the constitutional requirements in the matter of maintaining efficiency in public administration are also to be implemented scrupulously. All the statutes, Rules, Enactments are to be read cogently and in consonance with the constitutional principles. Thus, it is not as if by referring one provision of the statute, the

constitutional principles can be diluted by the Court of law.

8. The effective and efficient public administration is the constitutional mandate. The constitution mandates that the statute should maintain an effective and efficient public administration in order to provide services to the citizen of the great nation. For example, Article 335 of the Constitution of India enumerates that Claims of Scheduled Castes and Scheduled Tribes to service and posts. The said Article reads that "The Claims of the Member of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration in the making of appointment to services and posts in connection with affairs of the Union or of a State."

9. Even in the matter of reservation of Scheduled Castes and Scheduled Tribes, the constitution mandates that the benefits to be provided without compromising the efficiency of administration in making of appointments to services and posts in connection with the affairs of Union or of a State. This being the constitutional perspective the efficiency in administration can never be compromised or diluted by bluntly citing the provisions of a welfare legislation. All such welfare legislation and General Laws are to be interpreted and implemented in consonance with the constitutional principles. This being the principles to be followed, blunt interpretation of the statute could not serve the purpose and if the statutes are implemented in such a manner, the efficiency of public administration can never be maintained.

10. The purpose of maintaining the confidential report, service records and personal assessment are of paramount important in ascertaining the capacity and capability of the public servant so as to provide better service to the public at large. Thus, the cogent consideration of all these factors are highly warranted in order to arrive at a conclusion, whether an employee is entitled to the benefit of the provisions of the Act in the given circumstances.

11. In the present case on hand, the annual confidential report now placed before this Court by the respondent department categorically enumerates that the writ petitioner is a mentally retarded person. As of now he is continuing in the post of Assistant Divisional Engineer. The post of Divisional Engineer is an important post, wherein the discharge of public functions are more responsible and accountable. The writ petitioner is working in the Highways Department and he has to respond to the Higher authorities to Government as well as to the Courts and other authorities.

12. The writ petition itself is filed by the father of the writ petitioner, who was appointed as a guardian under the Act. When the writ petitioner is unable to file an affidavit and sign the same, how this Court can expect that he will perform duties and responsibility attached to the post of the Divisional Engineer in Highways Department, who is a competent authority to take many administrative decisions.

13. The respondent department, under these circumstances, is bound to refer the writ petitioner to the competent Government Medical Board to assess his medical condition and take a decision in accordance with the service Rules in force. The interests of the public department is of paramount importance and such a decision is to be taken based on the medical reports and by referring the writ petitioner to the competent Medical Board. Service rules provides many remedies for such persons who are suffering from mental illness. For instance, an employee can voluntarily retire and if the Medical Board submits a report regarding the mental capability, the competent authorities are bound to initiate action for medical invalidation. These all are the actions to be initiated by the competent authorities considering the facts and circumstances and the nature of the illness, behaviour, capacity etc., of the employee concerned.

14. As far as the relief sought for in the present writ petition is concerned, the writ petitioner seeks promotion to the post of Divisional Engineer. The post of Divisional Engineer is to be filled up only from amongst the qualifying and eligible persons and by following the rules in force. Promotion per se cannot be claimed as a matter of right. The competent authorities are bound to assess the eligibility, qualification etc., of the employees with reference to the Rules in force. The job profile and the nature of the duties and responsibilities are also to be considered for the purpose of granting promotion to the employees. These are all the principles to be considered while granting promotion and the respondents are bound to take note of the facts and circumstances and act in accordance with Rules in force.

15. The relief sought for in the present writ petition is to direct the first respondent to promote the writ petitioner to the post of Divisional Engineer by restoring his seniority, deserves no merit consideration. In view of the fact that the original files produced by the respondent department shows that the writ petitioner is a mentally retarded person, the reference made by the learned counsel for writ petitioner regarding Section 20(3) of the Act, is to be read in consonance with the constitutional principles and with reference to service Rules in force.

16. In short, whenever such protections are given under the general law and if the special law viz., service rules in the present case provides such eligibility criteria, the said special rules alone prevail over the general law. For instance, if the service rules provides certain eligibility criteria conditions for the purpose of promotion, the same will prevail over the general law. Thus, the service rules in force in the matter of grant of promotion are to be followed for the purpose of granting promotion to the higher post. Under these circumstances, the respondents are bound to look into the issues and decide the same in accordance with service Rules in force. In respect of the contentions raised by the writ petitioner, the same deserves no merit consideration and accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Government of Tamil Nadu,
Represented by the Additional Chief Secretary,
Highways and Minor Ports (HK1) Department,
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Chennai - 600 009.
2. The Director General,
Office of the Director General,
Highways, Guindy,
Chennai - 600 025.
3. The Divisional Engineer,
Highways Investigation Division,
Coimbatore.

+lcc to Mr.L.Mouli, Advocate, S.R.No.39482

+lcc to the Government Pleader, S.R.No.39878

SPD(CO)

RRS (20/06/2019)

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