

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 14.11.2018	Order Pronounced on : 09.01.2019
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CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.11927 of 2018
and W.M.P.Nos.13915, 26869 and 30432 of 2018
& WMP.NO.13915 OF 2018

G.Vaidyanathan ... Petitioner
Vs.

1. The Secretary,
Chennai Port Trust
Administrative Office,
Rajaji Salai, Chennai - 600 001.
2. The Secretary to the Government of India,
Ministry of Shipping,
Transport Bhavan
1, Parliament Street,
New Delhi - 110 001.
3. Mr.A.Venuprasad,
Deputy Chief Engineer,
Vishakapatnam Port Trust,
Vishakapatnam. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the Office Order No.26/2018 dated 18.04.2018 No.A-12023/4/2018/PE-1 and to quash the impugned order and consequently, direct the 1st and 2nd respondents to consider the application of the petitioner for the post of Chief Engineer at Chennai Port Trust.

For Petitioner : Mr.L.Chandrakumar
for M/s.Kaushik N.Sharma

For Respondents: Mr.Haja Mohideen Gisthi for R1
Mr.G.Rajagopal, ASG
assisted by Mr.B.Rabu Manohar for R2 & R3

ORDER

Exercising powers under Section 24(1)(a) of the Major Port Trust Act, 1963, the Central Government appointed the 3rd respondent herein as Chief Engineer in Chennai Port Trust, by the order dated 18.04.2018. This order is under challenge by the petitioner.

2. The post of Chief Engineer of Chennai Port Trust (known as Port Par-Excellence) fell vacant with effect from 01.06.2018. As per the directions of the Central Government, the post has to be filled up under the composite method of Recruitment.

3. As per the revised guidelines, the mode of promotion prescribed reads as under:

"In case of selection (merit) promotion, the hitherto existing distinction in the nomenclature (selection by merit and selection-cum-seniority) is dispensed with and the mode of promotion in all such cases is rechristened as selection only. The element of selectivity (higher or lower) shall be determined with reference to the relevant bench mark (very good or good) prescribed for promotion."

3.1. This revised guidelines would clearly indicate that seniority alone cannot be the criteria for selection and the selectivity is linked with the bench mark of "very good" or "good", etc.

4. The learned counsel for the petitioner would submit that the petitioner herein was employed as a Chief Engineer in the feeder category itself and he being senior ought to have been considered for the post of the Chief Engineer and the orders passed appointing the 3rd respondent as the Chief Engineer cannot be sustained. It is claimed that seniority is a civil right and it has an important and vital role to play to one's service carrier.

5. The learned counsel for the petitioner would submit that in respect of the petitioner, for the year 2013-2014, overall grading was not mentioned and that was not on account of the fault committed by the petitioner and therefore, the petitioner alone should have been considered for appointment (by selection).

5.1. No doubt, this grading is not mentioned for the year 2013-2014, but in all fairness, this non-grading was not left

out to be considered by the Committee and in fact, seven marks have been awarded by the Committee. Therefore, the omission to put grade for the year 2013-2014 did not affect the promotion chance of the petitioner.

5.2. The learned counsel for the petitioner would also submit that seniority was a criteria that had been in consideration for many years and that is why the Committee while recommending the panel of name for appointment to the post of Chief Engineer for Deendayal port trust included the name of the petitioner in serial No.2, that is after S.S.P.Patil, Chief Engineer. This contention cannot be accepted as the recommendation was based not on seniority alone, but on the basis of service particulars, experience, ACR grading and vigilance clearance.

6. The learned counsel for the respondent would rely upon the decision of the Supreme Court reported in 1971 (1) SCC page 30 (Jai Naran Misra vs. State of Bihar and others), where under, it has been held that when the post is a selection post, question of seniority was not relevant in making selection. The relevant observation reads as under:

"5. The post of Director of Agriculture is admittedly an ex-cadre post. The selection to that post is made solely on the basis of merit. Merely because the Government in its letter to the Commission used the word "promotion", the High Court should not have treated the case as one of "promotion". The word "promotion" used in the Government's letter was an inappropriate word. What the Government really meant was selection of a person to be posted as the Director. The nature of the post cannot be changed by the Government's using the word "promotion". The post remains to be a selection post."

6.1. The next decision relied upon by the learned counsel for the respondent is the one reported in 1988 2 SCC 242 (Union Public Service Commission vs. Hirayalal Dev and others) and it is contended that powers to make selection is vested with the Committee and the role which the selection committee has to play cannot be taken away by the court more especially, when there is no allegation of mala fide.

"7. The Selection Committee was making a selection and when someone was selected in preference to the other, it could not be said that it amounted to supersession of a junior by a senior. The concept of supersession is relevant in the context of promotion and not in the context of selection."

6.2. The Third decision is one reported in 2008 2 SCC119 (M.V.Thimmaiah and others vs. Union Public Service Commission) and it is contended that the Court while considering the proceedings of the Selection Committee does not sit as a Court of appeal and that Courts have only limited scope to interfere either selection is actuated with mala fide or statutory provisions have not been followed. The relevant observation with regard to consideration of candidature based on confidential report is highlighted, which is extracted hereunder:

"29. It is also contended that the marking given by the Selection Committee was arbitrary. The grievance was that confidential report of Shri S.Daya Shankar for the year 2000-2001 was not available and in case of Shri R.Ramapriya, the confidential report for the year 1997-1998 was not available. Yet the reports of Shri S.Daya Shankar was assessed to the outstanding and Shri R.Ramapriya was assessed to be very good without there being any basis for it. This was found by the Tribunal to be patently arbitrary. It is the selection process and what prevailed with the Committee after review of the annual confidential reports of all these officers cannot be dilated in writing. When the Selection Committee sits and considers the candidature of both the officers and in case of both the officers, looking at the 5 years' annual confidential reports, one is found to be overall outstanding and the other is found to be overall very good, this marking of the Selection Committee cannot be interfered with in extraordinary jurisdiction or even by the Tribunal."

7. In the light of the facts and circumstances available here, the Selection Committee has considered the confidential report of both the candidates for the period of five years and has found that the candidate with outstanding has to be preferred than the one which was only with the remark of "very good". In fact, the omission with regard to "no remark" has also been interpreted as very good having regard to the remarks made for earlier and subsequent years. Therefore, the selection made by the committee cannot be faulted with.

8. The consideration that was operating in the mind of Committee has been put out in the paper and the Assessment sheet in respect of both of them need to be made explicit.

Sl .N o.	Name	Total Service in the feeder grade	Marks	Assessment Years					Marks	Total Marks
				2012-13	2013-14	2014-15	2015-16	2016-17		
1	Shri G.Vaidyanathan , Chief Engineer, CoPT	6 years 8 months	3.32	VG	Overall grading not mentioned	VG	VG	11.05.2016 – 08.08.2016: 1.20 (OS) 09.08.2016 – 31.03.2017 1.16 (OS)	37.0	40.32
				7.0	7.0	7.0	7.0	9.0		
2	Shri A.Venu Prasad, Dy. Chief Engineer	6 years 11 months	1.92	OS	OS	OS	OS	OS	45.0	46.92
				9.0	9.0	9.0	9.0	9.0		

9. In the feeder grade, both of them have been serving for nearly six years, though in different capacity. The petitioner has served for a period of 6 years 8 months and the 3rd respondent had served for six years seven months. The grading has been throughout in the category of outstanding in respect of the 3rd respondent from the year 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017. But in the case of the petitioner, the remark was in the category of very good in respect of four years and in respect of 2016-2017, the remark was outstanding. In respect of outstanding, 9 marks have been allotted and in respect of very good, 7 marks have been allotted. On the overall rating, total marks obtained by the petitioner was 40.32, whereas the marks obtained by the 3rd respondent was 46.92. Under the circumstances, giving objective assessment of the performance, the 3rd respondent has been selected. Therefore, the selection is perfectly in accordance with the guidelines and the selection cannot be faulted with.

10. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Secretary,
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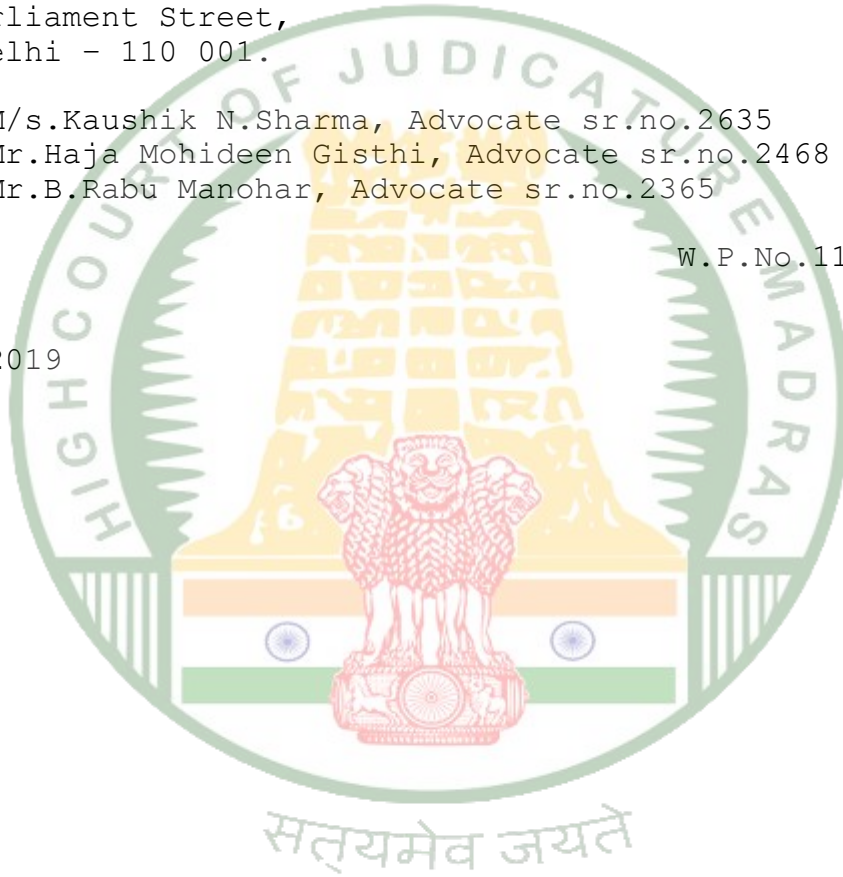
+lcc to M/s.Kaushik N.Sharma, Advocate sr.no.2635

+lcc to Mr.Haja Mohideen Gisthi, Advocate sr.no.2468

+lcc to Mr.B.Rabu Manohar, Advocate sr.no.2365

W.P.No.11927 of 2018

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