

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :12.02.2019

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28781 of 2018

D.G.Ravichandran

...Petitioner

Vs

1.Government of Tamil Nadu
Rep.by its Chief Secretary,
Rural Administration & Water Distribution Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner,
Erode Corporation, Erode.Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to pass orders on the petitioner representation dated 07.02.2018 sent by the petitioner to the post of Corporation Engineer based on the recommendation made by the 2nd respondent in Na.Ka.No.C1/4533/17 dated 05.09.2017 within a stipulated period.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.D.Suriya Narayanan
Additional Government Pleader for R1

Mr.M.Raja Mathivanan for R2

O R D E R

The relief sought for in the present writ petition is for a direction to direct the 1st respondent to pass orders on the petitioner's representation dated 07.02.2018, for promotion to the post of Corporation Engineer based on the recommendation made by the 2nd respondent in proceedings dated 05.09.2017.

2. The learned counsel appearing for the petitioner states that the petitioner was appointed as Assistant Executive in the 2nd respondent Corporation and subsequently, promoted to the post of Assistant Executive Engineer & Assistant Commissioner (in-charge) at division-3. The writ petitioner is fully qualified

for promotion to the post of Corporation Engineers. However, the case of the writ petitioner was not considered. Thus, the petitioner is constrained to move the present writ petition.

3. The learned counsel appearing for the petitioner states that inspite of recommendation made by the 2nd respondent to promote the writ petitioner as Corporation Engineer in proceedings dated 05.09.2017, no action has been taken by the respondents even to consider the recommendation and to pass orders on the representation.

4. The legal principles in the case of promotions is that promotions can never be claimed as a matter of right. In the present case on hand, the name of the writ petitioner is included in the panel, then also, he cannot claim any promotion, based on the inclusion of his name in the panel. Promotion, if any, granted contrary to the rules in force and if any panel is already been prepared, violating the rules of seniority, then alone, the petitioner would get right to adjudicate this matter before this Court even to issue an order of direction to consider the representation. Thus, the petitioner should establish his legal right and in the absence of establishing any such legal right, no directions can be issued under Article 226 of the Constitution of India.

5. In the present case on hand, admittedly, the writ petitioner is aspiring to secure promotion. The learned counsel appearing for the petitioner states that the case of the writ petitioner as recommended by the 2nd respondent through the panel must be granted promotion to the post of Corporation Engineer.

6. Mere submission of recommendation by the authority would not confer any right on him to seek promotion by filing the writ petition. Secondly, the writ petitioner is unable to establish that the panel already prepared was in violation of the rule of seniority. Thirdly, on perusal of the representation submitted by the writ petitioner on 07.02.2018, which is enclosed in Page no.9 of the typed set of papers filed along with this writ petition, it is clearly stated that the writ petitioner is facing a criminal case before the Judicial Magistrate No.3 at Erode.

7. Pendency of criminal case is also a bar for promotion. The learned counsel appearing for the petitioner clarified that the case is not in relation with the official functions and it is a private case. Though, it is a private case, this Court is of an opinion that facing criminal trial by a public servant is certainly a bar for promotion and all these aspects are to be considered by the competent authority while undertaking the process of promotion. This Court is of a considered opinion that the authorities competent shall consider all the merits and

demerits at the time of undertaking the process of promotion to the higher post of Corporation Engineer. As far as the relief sought for in the present writ petition is concerned, the same cannot be considered, in view of the fact that the writ petitioner has miserably failed to establish even a semblance of legal right so as to establish his claim.

8. Accordingly the writ petition is devoid of merits and stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Secretary,
Rural Administration & Water Distribution Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner,
Erode Corporation, Erode.

+1cc to Mr.Rajamathivanan, Advocate, S.R.No.12730

W.P.No.28781 of 2018

MG (CO)

rrs 22/03/2019

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