

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 27111 OF 2013

AND

M.P. NOS. 1 & 2 OF 2013 & 1 OF 2015

P.Murahari

.. Petitioner

- Vs -

1. The Commissioner & Secretary
Local Administration Department
Secretariat, Fort St. George
Chennai 600 001.

2. The Commissioner
Corporation of Chennai
Ripon Building, Periamet
Chennai 600 003.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus, quash the impugned order dated 1.4.2011 passed by the 2nd respondent in G.D.C. No.E1/11373/2011 and to fix a notional pension to the petitioner to the post of Chief Engineer retrospectively from the date of retirement 31.12.2011.

For Petitioner : Mr. David Thyagaraj

For Respondents : Mr. A.N.Thambidurai,
Spl. GP for R-1
Ms.Dhanisha Manoharan for R-2

ORDER

It is the case of the petitioner that he was initially appointed in the 2nd respondent Corporation on 26.7.1962 as Overseer and, thereafter, promoted as Assistant Engineer, which post was later redesignated as Assistant Executive Engineer. Thereafter, by way of promotions, the petitioner was occupying the post of Executive Engineer. It is the case of the petitioner that due to not passing the Account Test (Departmental Test), the petitioner was not promoted, though to the post of Executive Engineer early, though many persons junior

to him were promoted. It is the case of the petitioner that the promotions were given by calculating the seniority from the date of passing of Account Test which is not in consonance with the rules.

2. It is the further case of the petitioner that a person, similarly situated like the petitioner, filed W.P. No.4668/1983 challenging the seniority fixed by the 2nd respondent and this Court directed the authorities to fix the seniority of the petitioner therein taking note of the tenure of his service in the post including the service in the officiating or temporary capacity and accord all service benefits. The appeal in W.A. No.858/1988 filed against the said order was dismissed. It is the further averment of the petitioner that he made representations on 12.8.10 and 29.10.2010 to award notional pension deeming that the petitioner has been promoted and retired from the post of Chief Engineer and to pay the pension from the date of retirement, i.e. 31.12.2001 along with interest. Since no order was passed, the petitioner filed W.P. No.29336/10 and this Court disposed of the writ petition to consider the representation dated 12.8.10. The 2nd respondent rejected the representation of the petitioner in complying with the order of this Court for notional promotion on the ground that none of the persons, junior to the petitioner was promoted to the post of Chief Engineer and that the persons, who were promoted as Superintending Engineer and Executive Engineer were senior to the petitioner and, hence, the petitioner cannot claim promotion for the post of Chief Engineer. Aggrieved by the said order, the present writ petition has been preferred.

3. Learned counsel appearing for the petitioner, while reiterating the grounds raised in the writ petition contended that the petitioner had put in more than 23 years in the post of Asst. Executive Engineer and no promotion was granted to him, though juniors to the petitioner, who had completed Account Test were promoted. It is the contention of the learned counsel that mere non-passing of Account Test cannot be put in detriment to the petitioner in seeking promotion, as the said test cannot be criteria for fixing seniority. It is the submission of the learned counsel that had the petitioner been promoted periodically, he would have superannuated from the post of Chief Engineer. Therefore, the fault lies with the respondent and in the above circumstances, it is the submission of the learned counsel for the petitioner that atleast the petitioner should be considered for promotion to the next higher post of Superintending Engineer so as to enable him to receive notional promotion and consequential service and retirement benefits.

4. On the above contentions, this Court heard the learned counsel appearing for the 2nd respondent and perused the materials available on record.

5. It is not in dispute that the petitioner retired as Executive Engineer on 31.12.2001. It is also not in dispute that representation was made by the petitioner in the year 2010 to consider his case for notional promotion and based on the directions of this Court in W.P. No.29336/10, the present impugned order has come to be passed, rejecting the representation of the petitioner. It is fairly conceded by the learned counsel for the petitioner that for the post of Chief Engineer, the feeder category is Superintending Engineer. Even according to the petitioner, he retired from service as Executive Engineer, which clearly reveals that the said post is not feeder category to the post of Chief Engineer. It is trite that persons, who are in the feeder category alone could be considered for promotion to the next higher category. The petitioner not being in the feeder category, cannot claim promotion to the post of Chief Engineer.

6. It is true that Executive Engineer is the feeder category to the next higher post of Superintending Engineer. The petitioner had retired from the post of Executive Engineer on 31.12.2001. Even according to the petitioner, he was promoted to the post of Executive Engineer on 5.5.2000 and, thereafter, retired from service on 31.12.2001. Therefore, if at all, the petitioner can seek for promotion only to the next higher post of Superintending Engineer, that too, provided that he falls within the zone of consideration. However, merely pleading that juniors and persons, who have completed account test have been promoted, no other details have been placed before this Court by the petitioner to substantiate his claim. Mere assertions will not partake the place of proof and in the absence of any material, this Court is of the opinion, that the prayer as sought for cannot be conceded.

7. Further, it is to be pointed out that the petitioner retired way back on 31.12.2001. However, the representation has been submitted by the petitioner only on 12.8.2010 for the first time followed by another representation and the same not having been disposed, W.P. No.29336/10 in which direction was issued by this Court to pass orders on the said representation leading to the present impugned order. It is to be pointed out that almost a decade had passed since the superannuation of the petitioner before the representation was filed by the petitioner. The whole of the affidavit of the petitioner is silent on this aspect as to why the petitioner had kept silent for such a long period without staking his claim for promotion, had he been rightly entitled to. The inaction on the part of the petitioner

for over a decade to make his claim definitely has to be put against the petitioner and the delay is fatal to his claim. Therefore, at this distant point of time, it would not be appropriate for this Court issue any direction, let alone a positive direction, as the facts and circumstances of the case does not call for such an order being passed.

8. For the reasons aforesaid, this Court is of the considered view that the writ petition miserably falls short of merits and, accordingly, the same deserves to be dismissed. Accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Commissioner & Secretary
Local Administration Department
Secretariat, Fort St. George
Chennai 600 001.
2. The Commissioner
Corporation of Chennai
Ripon Building, Periamet
Chennai 600 003.

+2cc to Mr.David Tyagaraj, Advocate in SR.25607

+1cc to the Government Pleader, in SR.25516

W.P. NO. 27111 OF 2013

NMI (CO)
RV (14/09/2020)

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