

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.33006 OF 2013

T.S.Ramalingam

.. Petitioner

- Vs -

1. The Government of Tamil Nadu
rep. By its Secretary
Public Works Department
Fort St. George, Chennai 600 009.

2. The Engineer-in-Chief (Buildings)
and Chief Engineer (GI)
Public Works Department
PWD Campus, Chepauk, Chennai - 5.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the issue of the impugned panels of Executive Engineers fit for promotion as Superintending Engineers approved by the 1st respondent in G.O. (D) No.428, Public Works (A1) Department dated 14.12.2011 and G.O. (D) No.77, Public Works (A1) Department dated 8.3.2013 and quash the same and consequently direct the respondents to revise the said panels as stipulated under the relevant rules and to consider the name of the petitioner for inclusion in the panel for promotion to the category of Superintending Engineer for the year 2012-2013 and to promote him as Superintending Engineer notionally on 1.10.2012 or on the date as may be determined by this Hon'ble Court and to revise his pay and pension accordingly and pay him all the consequential arrears therefor within a time frame as may be fixed by this Court.

For Petitioner : Mr. N.Subramanian

For Respondents: Mr. A.N.Thambidurai, Spl. GP

ORDER

It is the case of the petitioner that he joined the respondent as Assistant Engineer on 23.7.1979 and after putting about 34 years of service and receiving various promotions and with an unblemished service, the petitioner retired from the post of Executive Engineer on 28.2.2013. It is the main

grievance of the petitioner that though he was fully qualified to be promoted as Superintending Engineer during the year 2012, or for that matter even before his superannuation, however, he was not promoted inspite of there being vacancies due to the delay caused by the respondents in finalising the panel for the year 2012-2013 and, therefore, the present petition has been filed by the petitioner for the relief supra.

2. Learned counsel appearing for the petitioner submitted that according to Rule 4 (a) of the General Rules, the respondents are bound to prepare a panel annually containing the list of eligible candidates for promotion to the next higher category. The crucial date for preparation of the panel is 1.4.2012 for the panel pertaining to the year 2012-2013 and for the panel pertaining to the year 2011-2012, the crucial date is 1.4.2011. In the panel drawn for the year 2011-2012, names of many of the persons, who were senior to the petitioner, though found included, who were to retire on or before October, 2012, thereby, the petitioner would be within the zone of consideration even during the year 2011-2012, when the panel was drawn, however, the vacancies estimated were only 33 without taking into consideration the persons who will be retiring during the year 2012. Therefore, the petitioner's name was not included in the panel for the year 2011-2012. However, though the petitioner was senior and was to have been included in the panel prepared for the period 2012-2013, the crucial date for preparation of panel was 1.4.2012, however, the said panel was prepared belatedly on 6.3.13 and approved only after the superannuation of the petitioner, thereby denying him the promotion. It is the further submission of the learned counsel for the petitioner that instructions for preparation of panel has been issued by the Personnel & Administrative Department giving explicit instructions as to how the panel has to be prepared and what are the parameters that needs to be taken into consideration while arriving at the vacancies and the persons to be considered for inclusion in the panel. However, giving a go-by to the above instructions, the panel has been prepared with much delay for the year 2012-2013 and the name of the petitioner was not also included in the panel, which has deprived the petitioner of his promotion. Further it is submitted that the petitioner is ready and willing to forego the arrears of salary in case promotion is granted and the promotion may be even granted notionally for the period 2012-2013 for the purpose of enabling the petitioner to get his terminal benefits and pensionary benefits fixed as per the notional promotion.

3. Per contra, learned Special Government Pleader appearing for the respondents submitted that there has been delay in preparing the panel for the period 2012-2013, but which was unavoidable due to the circumstances beyond the control of the

respondents and the said delay was neither wilful or wanton. It is the further submission of the learned Special Government Pleader that the name of the petitioner was not considered for the drawal of panel for the year 2011-2012, as his turn did not come up and seniors to the petitioners were available. It is the submission of the learned Special Government Pleader that the estimate of vacancy, panel and promotion are all made in accordance with the rules governing the service conditions and the contention of the petitioner preparation of panel was not in accordance with the instructions issued for preparation of panel is not correct. It is therefore submitted that no interference is warranted with the order impugned herein.

4. This Court gave its anxious consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record.

5. The facts in issue are not in dispute. The crucial date for drawal of panel for the year 2011-2012 is 1.4.2011 and the crucial date for drawal of panel for the year 2012-2013 is 1.4.2012. It is the admitted case of the petitioner that for the panel pertaining to the year 2011-2012, the petitioner was not senior in rank and, therefore, his name did not figure on the top of the list for the estimated vacancies. However, the contention of the petitioner relating to panel for the year 2011-2012 is that the names of many persons, who were included in the panel were due to retire before October, 2012 and if such of those anticipated vacancies were taken into account, the petitioner would have been promoted in October, 2012 itself.

6. Be that as it may. It is the stand of the respondents that the name of the petitioner was not considered during the preparation of panel for the year 2012-2013 for the reason that the petitioner was due to retire on 28.2.2013 and, therefore, his name was not considered. Though such a stand is taken by the respondents, however, the same runs contrary to the panel prepared for the period 2011-2012. In the said panel prepared for the year 2011-2012, the names of those persons, who were senior to the petitioner and who were due to retire in the course of the year, viz., 2012 had figured and they were granted promotion and retired subsequently. However, curiously, for the drawal of panel for the year 2012-2013, the name of the petitioner was not included, though persons, junior to the petitioner, their names were included.

7. In this regard, attention of this Court was drawn to the instructions issued by the Personnel & Administrative Department, Government of Tamil Nadu relating to the preparation of panel for promotion wherein in sub-clause (iii) of clause (i) of Annexure-I sub-clause (ii) clause (1) dealing with

preparation of estimate of vacancies prescribes that the estimate of number of candidates required should cover a period of 12 months from the date following the date on which the list of selected candidates is due to be communicated to the appointing authorities by the Commissioner.

8. It is to be noted here that the above instruction is very clear, in that the total estimate of vacancies that would fall vacant over a period of 12 months from the date following the date on which the list of selected candidates is due to be communicated to the appointing authorities should be prepared. It clearly means that for the year 2011-2012, when the panel was drawn the estimate of vacancies should have covered a full 12 months period, which in effect means that the anticipated vacancies should also be taken into consideration over the 12 months period.

9. Further, for the drawal of panel covering the 12 months period, the panel ought to be drawn. Further to the above guideline, in the same Annexure-I, it has been further prescribed that to overcome the difficulty of filling the vacancies caused by the retirement of personnel included in the panel in the same year, i.e., immediately after inclusion in the panel but before promotion, the size of the panel be enlarged to the extent of including equal number of eligible persons against the likelihood of vacancies of senior eligible persons included in the panel prior to the promotion whose date of their retirement shall be indicated in bracket against their names in the panel. The above guidelines effectively mean that the panel should be enlarged taking into account the anticipated vacancies that would arise in the event of retirement of personnel.

10. From the above guidelines, it is categorically clear that all the safeguards have been put in place while drawing the panel and all contingent situations have been taken into account in preparing the panel. But the more curious aspect in the whole gamut of facts is that while the panel was drawn for the period 2011-2012, the persons, who were due to retire during the year 2012 and who were seniors were included in the panel for promotion and, in fact, promotion was granted to them. However, this Court is not inclined to disturb in any way the panel drawn for the period 2011-2012.

11. However, a careful perusal of the materials reveal that not only the panel for the year 2012-2013 was prepared with an inordinate and unexplained delay, but the name of the petitioner, who was seniormost at the particular period, his name did not figure in the panel drawn, the reason cited being that by the time the panel was drawn and approved, the petitioner had superannuated from service. Steps ought to have

been taken by the respondents to draw the panel two months in advance of the crucial date, however, for reasons best known, such an activity is not being undertaken by the respondents.

12. Had the panel been prepared on time and promotion granted, the petitioner would not only have come within the zone of consideration, being the senior most, but would also have been promoted and superannuated paving the way for the further promotee aspirants. The grievance of the petitioner is not against his juniors, who were promoted in the panel drawn for the year 2012-2013, but his grievance is against the non-inclusion of his name in the panel and consequent promotion, which on the discussion above, is not only well founded, but deserves to be accepted.

13. The whole counter of the respondents is silent as to the reason for the inordinate delay, which has been left unexplained. Though an attempt is made by the respondents to explain the delay as attributable to the code of conduct in election, however this Court is at a loss to fathom as to how a routine promotion in a department of the Government would fall within the election code of conduct. There is no other whisper apart from the above to explain the delay. The materials on record reveal that panel was drawn on 6.3.13 instead of 1.4.12. In fact, the panel for the period 2012-2013, which ought to have been drawn on 1.4.12, was drawn only after 11 months, by which time the petitioner had superannuated from service. The delay on the part of the respondents is not explained and even a plausible explanation of the said delay cannot be a ground to deny the petitioner of his rightful promotion. In the case on hand, the delay has deprived not only the petitioner, but persons, who would have been similarly placed like the petitioner of their rightful promotional prospect. The crucial date for drawal of panel being 1.4.12, the panel ought to have been drawn and approved by the said date, in consonance with the instructions issued, but which has not been done for reasons best known to the respondents and has been done well after a long lapse of time thereby, denying the petitioner and persons similarly placed like the petitioners of their rightful promotion.

14. In the above circumstances, this Court is of the considered view that the grievance of the petitioner being only to the limited extent of his name not being considered for promotion, though he was well within the zone of consideration, this Court is of the opinion that it would not be in the interest of justice to disturb the panel at this distant point of time, however, rendering of substantial justice requires that the respondents should be directed to draw a notional panel by including the petitioners and persons, similarly placed like the

petitioner, who were left out of consideration, to be included in the panel and, accordingly, grant them notional promotion for the purpose claiming terminal and pensionary benefits.

15. Accordingly, this writ petition is disposed of directing the respondents to include the name of the petitioner and persons similarly placed like the petitioner, in the panel in the respective position as per their seniority and, accordingly, grant them notional promotion for the purpose of claiming terminal and pensionary benefits. The said exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order and orders as to notional promotion and fixation of terminal and pensionary benefits to the petitioner and persons identically placed like the petitioner shall be issued within a period one month thereafter. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Government of Tamil Nadu
Public Works Department
Fort St. George, Chennai 600 009.
2. The Engineer-in-Chief (Buildings)
and Chief Engineer (GI)
Public Works Department
PWD Campus, Chepauk, Chennai - 5.

+1cc to the Government Pleader, Sr.No.30979

W.P. NO.33006 OF 2013

vsn ii (co)
rr ii (06/10/2020)

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