



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.10999 of 2020

P.Kannan

... Petitioner

Vs.

1.The Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai-9.

2.The Engineer in Chief (WRD) and
Chief Engineer (General)
Public Works Department,
Chepauk, Chennai-5.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents herein to consider the petitioner's representation dated 15.10.2019 and reminder dated 28.08.2020 and to include the petitioner's name in the panel of Assistant Executive Engineer fit for promotion as Executive Engineer for the year 2018-2019 by restoring the petitioner's original seniority between S.No.22 Thiru.M.Nagarathinam and S.No.23 Thiru.V.Vilvanathan in the list as approved in G.O.(2D)/05/P.W(A1) Dept. dated 12.02.2019.

For Petitioner : Mr.K.Mahendran

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Mandamus, directing the respondents herein to consider the petitioner's representation dated 15.10.2019 and reminder dated 28.08.2020 and to include the petitioner's name in the panel of Assistant Executive Engineer fit for promotion as Executive Engineer for the year 2018-2019 by restoring the petitioner's original seniority between S.No.22 Thiru.M.Nagarathinam and S.No.23 Thiru.V.Vilvanathan in the list as approved in G.O.(2D)/05/P.W(A1) Dept. dated 12.02.2019.



2. Heard, Mr. K. Mahendran, learned counsel for the petitioner and Mr. M. Jeyakumar, learned Additional Government Pleader appearing for the respondents.

3. The petitioner has been working as Assistant Executive Engineer. While so, a panel of Assistant Executive Engineers fit for promotion as Executive Engineers for the year 2018-2019 was prepared. However, in that list, though the petitioner was senior or otherwise ought to have been included, has not been included for the reason that, there has been a disciplinary proceedings under 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal Rule) was pending at that time against the petitioner. Subsequently, in the disciplinary proceedings, a charge memo was issued against the petitioner on 27.11.2017. The petitioner, challenging the said charge memo, filed a writ petition in W.P.(MD)No.9981 of 2018, wherein this Court by order dated 22.03.2019 having considered the relevant merits of the issue has ultimately quashed the said charge memo against the petitioner. Therefore, the petitioner made a request on 02.04.2019 to include his name in the list fit for promotion as Executive Engineer for the year 2018-2019.

4. However, in the meanwhile, the respondents prepared intra Court appeal in W.A.(MD)No.669 of 2019 against the order dated 22.03.2019 made in W.P.(MD)No.9981 of 2018. The said Writ Appeal also on merits was dismissed by a decision of the Hon'ble Division Bench of this Court on 24.09.2019. Therefore, the issue has become concluded where the charge memo pursuant to the disciplinary proceedings issued against the petitioner having been quashed by this Court, has been confirmed by the Hon'ble Division Bench of this Court. Further, there can be no impediment to consider the petitioner's name to be included in the panel of Assistant Executive Engineers fit for promotion as Executive Engineer for the year 2018-2019.

5. In this context, after the disposal of the Writ Appeal by the Hon'ble Division Bench of this Court, dismissing the same as stated above, the petitioner on 15.10.2019 and 28.08.2020 has given two representations with the following prayer:

"I thereto submit to request that my name may kindly be included as per original seniority, courteously accepting the final authoritative decision of the Hon'ble Court, in between Sl.No:22. Thiru M. Nagarethinam and Sl.No:23. Thiru. V. Vilventhan, in the list as approved in G.O 2(D)/05/P.W(A1) Department dated 12.02.2019 and orders be issued promoting me as Executive Engineer taking into account the fact that my junior Thiru. V. Vilventhan has already been promoted as Executive Engineer, with effect from 19.02.2019, allowing fixation of pay under ruling 17 of P.R. 27 early."



Since the same has not been considered, the petitioner has filed this writ petition before this Court.

6.I have heard the learned Additional Government Pleader appearing for the respondents who would submit that, the first respondent himself vide his communication dated 12.02.2019 addressed to the petitioner stating that the petitioner's name could not be included because there was a proceedings pending under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Once the proceedings has been ended in favour of the petitioner certainly his name would be considered and would be included in the panel list.

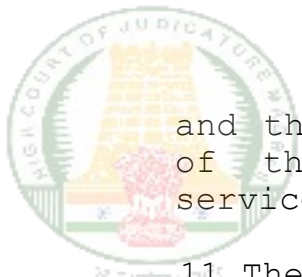
7.Relying upon the said communication dated 12.02.2019, the learned counsel for the petitioner would submit that, the charge memo itself has been quashed by the writ Court which has been confirmed by the Hon'ble Division Bench of this Court, hence there cannot be any impediment for the respondent to include the petitioner's name in the list for the higher cadre of Executive Engineer for the year 2018-2019 in an appropriate place. Since the same has not been considered, the petitioner has filed this Writ Petition, therefore, he seeks indulgence of this Court as prayed herein.

8.I have heard the learned Additional Government Pleader who would submit that, whether any further appeal has been filed against the Division Bench order, has to be ascertained and if no further appeal has been filed and the same has been concluded by the disposal of the Hon'ble Division Bench of this Court, quashing the charge memo issued against the petitioner, certainly the name of the petitioner would be considered for inclusion in the appropriate place.

9.I have considered the submissions on either sides and perused the materials placed before this Court.

10.On 12.02.2019 as has been rightly pointed out by the learned counsel for the petitioner, the first respondent has sent the following communication;

"I am directed to inform you that a temporary list of Assistant Executive Engineer (civil) fit for promotion as Executive Engineer (Civil for the year 2018-2019 has been approved in the Government order cited. As a disciplinary proceedings under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is pending against you. Consideration of your name for inclusion in the temporary list approved in the Government order cite, has been deferred till the relevant proceedings are concluded. After the said proceedings is disposed of, your name will be considered for inclusion in the said temporary list or otherwise, depending on the result of the said proceedings



and the merits of your claim, as specified in Section 7(1) of the Tamil Nadu Government Servants (conditions of service) Act, 2016."

11. Therefore, the stand taken by the respondent is that, only because of the pendency of the the proceedings under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, his name could not be included in the list for promotion to the post of Executive Engineer(civil) for the year 2018-2019 and once the proceedings is disposed of, his name will be considered for inclusion in the said list, depending upon the result of the writ proceedings, thereafter, the charge memo itself having been quashed by order dated 24.09.2019, confirming the order of the writ proceedings. Therefore, for the past nearly a year, the request of the petitioner, though has been made repeatedly, since has not been considered, this Court is inclined to interfere with the said attitude on the part of the respondent and passes the following order;

"the respondents are hereby directed to include the name of the petitioner by considering the representations made by him dated 15.10.2019 and 28.08.2020 in the list of Assistant Executive Engineers (Civil) fit for promotion as Executive Engineers (Civil) for the year 2018-2019 at appropriate place, that is based on the seniority of the petitioner as has been claimed by him through the representations and accordingly pass appropriate order within a period of four weeks from the date of receipt of a copy of this order".

12. With this direction, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai-9.

2.The Engineer in Chief (WRD) and
Chief Engineer (General)
Public Works Department,
Chepauk, Chennai-5.

+1 CC to M/s.Special Govt.Pleader (SR-16331[F] dated 09/09/2020)

W.P. (MD) No.10999 of 2020
07.09.2020

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SDS (29.10.2020) 5P-4C