

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.26930 of 2008

R.Viswanathan

... Petitioner

-Vs-

- 1.The Chairman
Puducherry Engineering College
Cum Secretary, Department of Education
Government of Puducherry.
- 2.The Principal
Pondicherry Engineering College
Pondicherry.
- 3.R.Gajendran, Technical Assistant (Electrical)
Pondicherry Engineering College, Pondicherry.
(R3 impleaded as per order dated 10.06.2010
in M.P.No.1/09) ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to issue orders promoting the petitioner to the regular post of Junior Engineer Grade-I (Electrical) as recommended by the Departmental Promotional Committee's Selection Proceedings dated 18.10.2007 with all consequential benefits.

For Petitioner : Mr.Y.Jai Bharath
for M/s.P.V.S.Giridhar &
Sai Associates

For Respondents : Mrs.N.Mala, Government Pleader
(Pondicherry)

O R D E R

The prayer sought for herein is to direct the respondents to issue orders promoting the petitioner to the regular post of Junior Engineer Grade-I (Electrical) as recommended by the Departmental Promotional Committee's Selection Proceedings dated 18.10.2007 with all consequential benefits.

2. The petitioner was working as Technical Assistant in Electrical Wing at the respondent Institution. The next avenue of promotion is Junior Engineer (Electrical).

According to the petitioner, he was having the qualification and necessary experience for the said post. Therefore, from the year 2005, he had been requesting for promotion to the said post of Junior Engineer (Electrical).

3. However, his case along with another person was considered only in the year 2007 during the Departmental Promotion Committee (hereinafter referred to as DPC) held on 18.10.2007, where it was recommended by the DPC that the petitioner as well as the another person can be given promotion as Junior Engineer (Electrical) Grade I in the pay scale of Rs.5500-175-9000.

4. Pursuant to the said recommendation made by the DPC, the respondent college issued a proceedings dated 09.04.2008, whereby the petitioner and the other person has been given promotion as Junior Engineer (Electrical) In-charge without any financial benefits. It seems that, from the date of the said promotion, of course without financial benefits, the petitioner had been working as Junior Engineer (Electrical) In-charge.

5. However, in this regard the grievance of the petitioner is that, he had not been given functional promotion with financial benefits. Therefore, in order to get a regular functional promotion with financial benefits with effect from 09.04.2008, the petitioner though approached the respondent by making representation and the since the same was not considered or disposed of in favour of the petitioner, he has filed this writ petition with the aforesaid prayer.

6. Heard Mr.Jai Bharath, learned counsel for the petitioner, who would submit that, the petitioner was eligible or entitled to get the promotion to the post of Junior Engineer (Electrical), as that position was admitted by the respondents before this Court when earlier round of litigation was filed by the petitioner, seeking mandamus similar to the one now asked for in W.P.No.26160 of 2006 that, since the petitioner was having qualification and is the senior most in the panel, therefore he would be considered to the said post of Junior Engineer (Electrical).

7. Only recording the said stand taken by the respondents, the said writ petition was disposed of by a learned Judge of this Court by an order dated 22.08.2006 and subsequently the DPC has also recommended the petitioner's name, pursuant to which an order was passed on 09.04.2008. Though promotion was given as Junior Engineer (Electrical) In-charge without financial benefits, no regular promotion with financial benefits was given to the petitioner. Therefore, felt aggrieved over the said action or inaction on the part of the respondents, though the petitioner made a request to give him regular promotion with financial benefits, since the same was not considered, he approached this Court, he contended.

Hence, the learned counsel for the petitioner seeks the indulgence of this Court.

8. Heard Mrs.N.Mala, learned Government Pleader (Puducherry) appearing for the respondents. On getting written constructions, learned Government Pleader (Puducherry) would submit that, the petitioner had been given regular promotion pursuant to the DPC recommendation, which was subsequently conducted in the year 2013 ie., on 30.01.2013 and only pursuant to which, promotion was given in the year 2013. In this regard, it is the contention of the learned Government Pleader for the respondents that, at the time the petitioner sought for promotion in the year 2005, even though there was a DPC, where his name was not considered for want of experience of five years. Therefore, due to various administrative reasons, no further action has been taken to give promotion till the year 2013 and therefore, only in the year 2013 the DPC again recommended on 30.01.2013 and accordingly promotion on regular basis was given to the petitioner. Therefore, as of now the petitioner may not have any grievance against the respondents for not giving regular promotion and hence the learned Government Pleader seeks dismissal of this writ petition.

9. I have considered the rival submissions made by the learned counsel on either side and have perused the materials placed on record.

10. It is the case of the respondents that, in the year 2005 the petitioner was not having the required experience of five years.

11. Be that as it may. Subsequently, when the earlier writ petition was filed in W.P.No.26160 of 2006, on behalf of the respondents it was stated before this Court that, the petitioner has become eligible by that time and he is also in Sl.No.1 in the seniority list in the feeder category and therefore he would be considered for promotion next undertaken in this regard and recording the said statement made on behalf of the respondents, the learned Judge disposed of the writ petition on 22.08.2006.

12. The relevant portion of the order in the said writ petition reads thus,

" 4.Mr.T.Murugesan, learned Government Pleader appearing for the first and second respondents on instructions would submit that in fact the petitioner's name finds place in the list of candidates to be considered for the Department Promotion Committee's Meeting and in fact the learned counsel would submit that the petitioner is the next senior person among the candidates to be considered and absorbed for the post of Junior

Engineer Grade I (Electrical). In view of the stand taken on behalf of the first and second respondents, no further order is necessary."

13. Subsequently, on 18.10.2007, the DPC had a meeting and after deliberating the issue in detail, the DPC had made the following recommendation.

" VI. The Committee noted the above facts and recommended the promotion of Technical Assistant in the following order based on the seniority to the post of Junior Engineer (Electrical) Grade-I, in the pay scale of Rs.5500-175-9000."

14. Therefore, it has become clear that at least on 18.10.2007, the petitioner was fully eligible to be considered for promotion to the post of Junior Engineer (Electrical) in the pay scale of Rs.5500-175-9000. Subsequently, the respondents, without giving regular promotion to the petitioner, had passed an office order dated 09.04.2008, where the petitioner and another person who is junior to him, were promoted as Junior Engineer (Electrical) In-charge without any financial benefits. Thereafter, as admitted by the respondents, again the case of the petitioner was considered in the further DPC, which was held on 30.01.2013, where again the name of the petitioner was recommended. Only pursuant to the same, promotion was given to the petitioner in the year 2013.

15. Though it has been stated by the respondents that due to administrative reasons, between 2007-2013 action could not be taken to give promotion to the petitioner even though he has become eligible, the said reason cited by the respondents cannot be accepted by this Court in view of the clear recommendation made by the DPC as early as on 18.10.2007.

16. It is also to be noted that, in the year 2008, the post of Junior Engineer (Electrical) was vacant. That is the reason why the petitioner and another junior have been given the promotion to the post of Junior Engineer (Electrical) In-charge and in that capacity they have been kept for some years ie., till 2013 for which absolutely no plausible reason has been projected by the respondents.

17. Therefore, this Court feels that the petitioner, no doubt, is eligible to get promotion at least from 09.04.2008, the date on which he has been placed Junior Engineer (Electrical) In-charge without any financial benefits.

18. For denying such regular promotion with financial benefits to the petitioner at least from 09.04.2008, absolutely there is no reason cited on the part of the respondents. Such denial of promotion on regular basis with financial benefits to the petitioner from 09.04.2008 is unjust

and arbitrary. Therefore, this Court feels that, the prayer sought for herein can be considered and granted.

19. In the result, this writ petition is disposed of with the following orders.

That the respondents are hereby directed to give promotion to the petitioner for the post of Junior Engineer (Electrical) on regular basis with all financial and service benefits with effect from 09.04.2008. Consequently, whatever be the service and financial benefits, which should have been paid to the petitioner had he been promoted to the post of Junior Engineer (Electrical) with effect from 09.04.2008, shall be calculated and be paid to the petitioner and correspondingly, if the petitioner has already retired from service on attaining superannuation, the pensionary benefits shall be calculated and be paid to the petitioner.

20. The needful as indicated above shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order. With these directions, this writ petition is disposed of. No costs.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

KST

To

1. The Chairman
Puducherry Engineering College
Cum Secretary, Department of Education
Government of Puducherry.

2. The Principal
Pondicherry Engineering College
Pondicherry.

W.P.No.26930 of 2008

SSN(CO)
EU 7.5.2021