

IN The HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM:

The HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8166 of 2021

P.Gunasekaran

... Petitioner

-vs-

1.Secretary to Government,
Public Works Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-600 005.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to consider petitioner's representation dated 23.02.2021 and pass orders promoting the petitioner notionally as Superintending Engineer with effect from 28.06.2019.

For Petitioner : Mr.N.Krishnakumar

For Respondents: Mr.M.Loganathan for PWD

ORDER

This Writ petition is filed, seeking a direction to the respondents to consider the petitioner's representation dated 23.02.2021 and pass orders promoting the petitioner notionally as Superintending Engineer with effect from 28.06.2019.

2.Mr.M.Loganathan, learned Standing Counsel takes notice for the respondents. By consent, the Writ Petition is taken up for final disposal at the admission stage.

3. The brief facts of the case are that earlier the petitioner has filed a writ petition in W.P. No.28243 of 2011 before this Court to call for the records in G.O. (D) No.113 PW (A1) D dated 09.04.2009, deleting the name of the petitioner from the approved panel for promotion and to issue directions to the respondents to issue reposting orders to the petitioner in the category of Assistant Executive Engineer from approved regular panel for the year 2004-05. During the pendency of the above writ petition, the petitioner was promoted as Assistant Executive Engineer and this Court by order dated 06.02.2018 allowed the writ petition and directed the respondents to issue posting order to the petitioner in the category of Assistant

Executive Engineer from approved regular panel with all attendant benefits. However, the respondents did not comply with the order within the time frame fixed by this Court. Thereafter, the respondents have filed a Writ Appeal in W.A. No.2545 of 2018. After the dismissal of the above writ appeal, the petitioner made a representation dated 26.12.2018 to the respondents requesting them to comply with the directions as stated in W.P. No.28243 of 2011. Thereafter, the petitioner attained the age of superannuation and retired from service on 30.06.2019 only as Assistant Executive Engineer, even though he was eligible to be promoted as Superintending Engineer. In this connection, the petitioner made a representation dated 23.02.2021. As there was no response from the respondents, the petitioner is before this Court by filing the present Writ Petition, with the aforesaid relief.

4. Considering the facts and circumstances of the case and taking into account the fact that the petitioner's representation is already pending with the 1st respondent, the Writ Petition is disposed of with the following directions:

i) A direction is issued to the respondents herein to consider the representation preferred by the petitioner dated 23.02.2021, if not already disposed of, and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioner and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order;

ii) In case the petitioner is unable to appear for personal hearing, the petitioner is entitled to send a written submission within a period of one month from the date of receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioner fails to appear or file a written submission in time, the respondents shall pass orders based on the available records and the petitioner, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioner;

iv) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the representation dated 23.02.2021 and this order, to the respondents forthwith;

v) The respondents are directed to communicate the decision taken on the representation, to the petitioner within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no

need for the petitioner to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioner, they will have to face the civil imprisonment in case of contempt proceedings. If they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioner, later on, will not take a plea that the petitioner is not aware of the order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum
To

1.Secretary to Government,
Public Works Department,
Secretariat,
Fort St. George,
Chennai-600 009.

2.Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai-600 005.

+1 cc to Mr.N.S.Nandakumar, Advocate, SR.No.21398
+1 cc to Government Pleader, SR.No.21059

W.P.No.8166 of 2021

SKY(CO)
NS(10/05/2021)