



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.1100 of 2021 and C.M.P. No.6948 of 2021

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 (General)
Public Works Department
PWD Campus, Chepauk
Chennai - 5

...Appellants/Respondents

Vs.

T.S.Ramalingam

...Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.09.2020 passed in W.P. No.33006 of 2013.

PRAYER IN W.P. No.33006 of 2013 : 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 first 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 06.03.2013 and quash the same consequently to direct the respondents to revise the said panels as stipulated under the relevant rules and to consider the name of the petitioner for inclusion of the panel for promotion to the category of superintending Engineer for the year 2012-2013 and to promote him as Superintending Engineer notionally on 01.10.2013 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 Appellants : Mr.R.Neelakandan
State Govt. Counsel

JUDGMENT

PUSHPA SATHYANARAYANA, J.

As no adverse order is going to be passed against the respondent, notice to the respondent is dispensed with.

2. The writ appeal is preferred by the State against the direction given by this court to include the name of the respondent, who is the writ petitioner, in the panel of promotion, notionally for the purpose of terminal and pensionary benefits.

2. The parties are not in contradiction with the facts of the case. The writ petitioner was an Assistant Engineer with the appellants from 23.07.1979 and retired from service on 28.02.2013. Before his retirement he was fully qualified to be promoted as Superintending Engineer during the year 2012. As he was not included in the panel of promotion list despite the existing vacancies, the writ petition was filed.

3. Admittedly as per Rule 4(a) of the General Rules for the Tamil Nadu State and Subordinate Services, the appellants prepare a panel annually of the eligible candidates for promotion to the next higher category. The crucial date for preparation of the panel for the year 2012-2013 was 01.04.2012 and for the year 2011-2012 was 01.04.2011.

4. The case of the petitioner is that, for the year 2011-2012, names of many persons, who were seniors to the writ petitioner and who were to retire on or before October 2012, were added and given promotion, subject to the estimated vacancies. The writ petitioner should have been added in the panel for the year 2012-2013 for which the crucial date was 01.04.2012. Admittedly, the panel itself was drawn belatedly on 06.03.2013 only, which was after the superannuation of the petitioner. Due to the extraordinary delay on the part of the appellants, the petitioner was deprived of his promotion.

5. Learned Government Pleader contended that the delay was due to unavoidable reasons beyond their control and the same was neither willful nor wanton. Secondly, the name of the respondent/writ petitioner was not considered, as his turn did not come up and the seniors to the petitioner were available. Further, the petitioner has retired on 28.02.2013. Hence for the above stated reasons, the respondent could not be added in the panel for promotion for the year 2012-2013.



6. The learned single Judge had gone through the facts of the case elaborately and found that the inordinate delay caused by the appellants in preparing the panel, which had the cut-off date of 01.04.2012, only on 06.03.2013. When the cut-off date is already known and the exercise is being repeated every year, the reasons given by the appellants for the delay is unacceptable, especially when the same deprives the much awaited prospects of the candidates. The learned single Judge also found that there is no plausible explanation for the said delay, which could take away the rightful promotion of the writ petitioner.

7. It is argued by the learned Government Pleader that the Panel of Executive Engineers for promotion as Superintending Engineer for the year 2011-12 and 2012-13 were approved strictly in accordance with the seniority list and no junior to the respondent was included in the panel for the year 2012-2013, overlooking the seniority. However, it is not stated whether the petitioner was eligible to be included in the panel or the reason for not including him in the promotion list. The only reason assigned was that he had attained the age of superannuation on 28.02.2013, whereas the panel was approved on 06.03.2013. Hence the learned single Judge also had found that there is absolutely no fault on the part of the writ petitioner whose legitimate right was taken away.

8. It is also submitted by the learned Government Pleader that in G.O. Ms. No.36 Public Works Department Dated 21.01.2013, the Government had approved the estimated vacancies for the post of Superintending Engineer during the year 2012-2013 as 38. In the said panel, the writ petitioner's name was also included. However, as the said petitioner attained the age of superannuation on 28.02.2013, he was not given promotion. If the panel was drawn on the cut-off date, which was 1.4.2012, without any delay, the writ petitioner would have become Superintending Engineer on the date of his retirement. Excepting the above said contentions, there is no other reason assigned for not including the name of the writ petitioner, at least for the purpose of terminal and pensionary benefits.

9. The writ court, therefore, rightly allowed the writ petition directing the appellants herein to include the name of the writ petitioner in the respective position as per the seniority and grant him the notional promotion for the purpose of claiming terminal and pensionary benefits, within a period of three months from the date of receipt of a copy of this order. We see no reason to interfere in the same and accordingly, the order of the learned single Judge is confirmed and the time is extended by three months from the date of receipt of a copy of this judgment.



10. With the above extension of three months time to comply with the order of the writ court, the writ appeal is dismissed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Asr

To

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

+1cc to the Government Pleader, S.R.No.38792

W.A.No.1100 of 2021 and
C.M.P. No.6948 of 2021

MG(CO)
RGA(25/08/2021)