



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM

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

W.A. No.2772 of 2018 and
C.M.P. No.22851 of 2018

The Principal Secretary to Government
Government of Tamil Nadu
Highways and Minor Ports (HK1) Department
Secretariat, Fort St. George
Chennai - 9.

... Appellant

vs

S.Saravanan
Assistant Engineer (Highways)
B-4, Jayam Residency Next to SKS Hospital
Fairlands, Salem - 636 004

... Respondent

Prayer: Writ Appeal filed under clause 15 of the Letters Patent
against the order dated 19.09.2016 made in W.P. No.9529 of 2013.

Prayer in W.P. No.9529/2013

Writ petition has been filed under Article 226 of the
Constitution of India praying for the issuance of a Writ of
Mandamus directing the respondent herein to consider the
petitioner for promotion as Assistant Divisional Engineer under
rule 39(d) of Tamilnadu state and Subordinate Service Rules with
all consequential benefits.

For Petitioner : Mr.C.Jayaprakash
Govt. Advocate

For Respondent : Mr.Ravi Shanmugam



JUDGMENT
(delivered by PUSHPA SATHYANARAYANA, J.)

Challenge in this writ appeal is to the order of the writ court dated 19.09.2016 made in W.P. No.9529 of 2013.

2. When the matter was taken up today for hearing, the learned counsel appearing for the respondent, produced a copy of the judgment of a Division Bench of this court in W.A. No.588 of 2018 dated 13.06.2018. The petitioner in that case, is also the co-delinquent along with the writ petitioner in the case on hand. The appeal is preferred by the Government against the direction extending promotion to the writ petitioner.

3. In the above referred writ appeal, it has been recorded that the criminal case filed against the respondent/writ petitioner is pending since 2003 for more than 15 years affecting the chance of the respondent/writ petitioner getting his promotion. Upon verification, it is stated that the criminal case is pending and no quietus has been given as of now. In view of the above, the Division Bench had directed the respondent to approach the criminal court and avail whatever remedy that may be applicable to him and get the charge-sheet quashed. Even in this case, the respondent who is the writ petitioner, has sought for a direction to the Government to consider his name for the promotion as Assistant Divisional Engineer. The said direction was issued by the writ court in the impugned order.

4. The criminal case against this respondent also is still pending. Therefore, the remedy to the writ petitioner is only before the appropriate criminal court and without exhausting that remedy to get the criminal case disposed of, the writ petitioner should not have approached this court. Further, there cannot be a different order favouring the respondent when the co delinquent was directed to approach the criminal court.

5. Accordingly, the writ appeal is allowed and the order of the writ court dated 19.09.2016 made in W.P. No.9529 of 2013, is set aside. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



Asr

To

The Principal Secretary to Government,
Government of Tamil Nadu,
Highways and Minor Ports (HK1) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

+lcc to Government Pleader (SR No.30388)

W.A. No.2772 of 2018 and
C.M.P. No.22851 of 2018

LN (CO)
PR (27/07/2021)