



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9382 of 2014

I.Subramanian

...Petitioner

Vs.

The Secretary to Government
Public Works Department
Secretariat, Chennai - 600 009.

...Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying for an issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the respondent herein passed in Letter No.24571/A1/2012-10 dated 10.01.2014 rejecting the petitioner's request for notional promotion as Superintending Engineer and Chief Engineer for the year 2003-2004 and Quash the same and consequently, direct the respondent herein to promote the petitioner notionally as Superintending Engineer and Chief Engineer from 04.02.2003 with all consequential service benefits including revision of pension and retirement benefits.

For Petitioner : Mr.Ravi Shanmugam

For Respondent : Mr.M.Bindran
Additional Government Pleader

O R D E R

The order impugned dated 10.01.2014 states that the petitioner was eligible for inclusion in the approved list of Superintending Engineer for the year 2003 - 2004. However, the panel in the year 2003-2004 was approved on 25.06.2003 and the writ petitioner retired from service on 30.04.2003, before the publication of the approved panel. Though the petitioner was found eligible for promotion, his case could not be considered by the competent authorities in view of the fact that as on the date of publication of panel for promotion to the post of Superintending Engineer, the petitioner attained the age of superannuation and retired from service.



2.The learned counsel appearing on behalf of the petitioner mainly contended that the petitioner was imposed with an order of punishment. However, the Hon'ble Division Bench of this Court in W.P.Nos.40119 and 40120 of 2002 filed by the writ petitioner held that the petitioner is not responsible for any financial loss and lapses are relating to certain technical aspects. While holding so, the Division Bench held that the petitioner would be eligible for notional promotion. The case of the writ petitioner was reported in (2008) 5 MLJ 350 (Subramanian Vs. Government of Tamil Nadu, rep.by its Secretary, Chennai and others). The said case was taken up by the Hon'ble Full Bench of this Court along with other cases as the issues were referred. The Hon'ble Full Bench also clarified that the case of the writ petitioner decided by the Division Bench was based on the particular facts and circumstances. More so, the Division Bench held that the factual findings of the case of the writ petitioner is a technical lapse committed by the delinquent and there is no actual financial loss caused.

3.No doubt, the Courts have found that the petitioner is eligible to promotion for the post of Superintending Engineer. However, the actual promotion is to be granted only if the panel is prepared and the promotion is granted by the authorities competent.

4.The principles regarding the promotions are that, promotion per se cannot be claimed as a matter of an absolute right. The said proposition is even recently reiterated by the Hon'ble Supreme Court in Union of India and another vs. Manpreet Singh Poonam reported in CDJ 2022 SC 291. The Courts have repeatedly held that promotions cannot be claimed as a right. However, consideration for promotion is a fundamental right of an employee. The said proposition is also laid down by the Constitutional Bench of the Hon'ble Supreme Court of India. Therefore, consideration for promotion, which is a fundamental right of an employee, at no circumstances can be denied. The question of consideration would arise only if an administrative decision is taken to prepare a panel of persons fit for promotion to the higher post. If at all an administrative decision is taken by the competent authority to fill up the promotional posts, then, names of all the eligible persons in accordance with the rules and in the order of seniority is to be followed.

5.In the present case, the writ petitioner no doubt was fully qualified for promotion to the post of Superintending Engineer. He was found eligible even by the respondent. Unfortunately, the department has not published any panel for promotion to the post of Superintending Engineer when the writ petitioner was in service. The panel was published after the retirement of the writ petitioner and therefore, the writ



petitioner has lost his opportunity on account of his superannuation, but not at the instance of the department. Further, none of the juniors to the writ petitioner was promoted before his date of retirement and therefore, the writ petitioner is not eligible for any retrospective promotion or otherwise. Thus, the writ petitioner has not established any right and accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sli/sms

To

The Secretary to Government
Public Works Department
Secretariat, Chennai - 600 009.

+1cc to Government Pleader SR. No. 34529

W.P.No.9382 of 2014

GPL (CO)
PR (22/06/2022)