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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.27864 OF 2018

A.Subramani

... Petitioner

-Vs-

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

... Respondent

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent herein in his Letter No.5045/A2/2014-2 dated 12.07.2018 rejecting the petitioner's request for promotion as Assistant Executive Engineer and Executive Engineer, quash the same and consequently direct the respondent herein to promote the petitioner as Assistant Executive Engineer and Executive Engineer on par with immediate juniors with all consequential service and monetary benefits.

For Petitioner : Mr.Ravi Shanmugam

For Respondent : Mr.C.Selvaraj
Additional Government Pleader

ORDER

The petitioner's request to be promoted to the post of Assistant Executive Engineer and Executive Engineer came to be rejected through the impugned order dated 12.07.2018, by stating that a criminal case in S.C.No.5 of 2003 before the Chief Judicial Magistrate cum Special Judge, Tirunelveli, is pending and further charges have been framed under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which were also pending. Pursuant to the impugned order, the



departmental proceedings initiated under the charge memo dated 13.03.2014 came to be quashed by this Court in an order dated 08.01.2020 passed in W.P.No.44625 of 2016. As such, the reason assigned by the respondent has become redundant.

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2. Insofar as the pendency of the criminal case is concerned, when the petitioner herein had earlier approached this Court, seeking for promotion to the post of Assistant Executive Engineer, this Court, in its order dated 23.03.2018 passed in W.P.No.5437 of 2014, had directed the respondent to grant temporary promotion in the following manner:-

"13. Hence, this Writ Petition is disposed of with a direction to the respondent, more particularly the 1st respondent to consider the case of the petitioner for promotion temporarily, if he is otherwise found to be suitable for the same, notwithstanding the pendency of the aforesaid Criminal Prosecution, within a period of two months from the date of receipt of a copy of this order, if there is no other legal impediments. However, such promotion if any accorded shall be subject to the result of the criminal prosecution. But in these circumstances, there shall be no order as to costs."

3. It is stated that this order dated 23.03.2018 has become final. Since this Court had already directed the respondent to grant temporary promotion, if he is otherwise suitable, there is a duty cast on the respondent to have granted such a promotion even at that point of time. As a matter of fact, rejecting the petitioner's request for promotion, without reference to the order of this Court and citing the pendency of the criminal case as a reason, would amount to disobedience of the earlier order of this Court dated 23.03.2018. Nevertheless, now that both the reasons assigned by the respondent are found to be unsustainable, the order itself is liable to be set aside.

4. Accordingly, the impugned order dated 12.07.2018 passed by the respondent herein is quashed. Consequently, there shall be a direction to the respondent to promote the petitioner temporarily as Assistant Executive Engineer and Executive Engineer, on par with his immediate juniors, with all service and monetary benefits. The respondent shall endeavour to pass such orders, within a period of four (4) weeks from the date of receipt of a copy of this order.



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5. The Writ Petition stands allowed, accordingly. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

hvk

To

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

+1cc to the Government Pleader, S.R.No.5647

W.P.NO.27864 OF 2018

MT(CO)
PBS/21/02/2022