



W.P.No.30844 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30844 of 2018

G.Debora

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
Rep by its Principal Secretary,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai-09.

2. Tamil Nadu Water Supply and Drainage Board,
Rep by its Managing Director,
Chepauk, Chennai-600 005.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records of the Respondents herein ending with the order of the 2nd respondent in Lr.No.10034/ Estt (Per)/ A5/ 2017 dated 19.07.2017 and quash the same and directing the Respondents to forthwith grant regular promotion notionally to the petitioner as Chief Engineer and consequently revise the pay and allowances and terminal benefits to the petitioner herein.



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For Petitioner : Mr.Kandhan Duraisami
For Respondents :
For R1 : Mrs.R.L.Karthika, GA
For R2 : Mr.N.Ganesh Kumar, for TWAD

ORDER

The order dated 19.07.2017, rejecting the claim of the writ petitioner for grant of promotion to the post of Chief Engineer, in the panel of the year 2016-17 is under challenge in the present writ petition.

2. The petitioner states that she was appointed as an Assistant Engineer, in Tamil Nadu Water Supply And Drainage Board, on 27.01.1981, and was promoted to the post of Assistant Executive Engineer, with effect from 10.02.2003. The petitioner was further promoted to the post of Executive Engineer and thereafter to the post of Superintending Engineer, after which she retired from service on 31.08.2016, on attaining the age of superannuation.

3. The learned counsel for the petitioner mainly contended that the respondent Board was preparing the panel in a manner to deprive the senior officials for promotion to the post of Chief Engineer and more so,



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in the present case, the petitioner's name was not included in the panel of the year 2016-17, published by the respondents for grant of promotion to the post of Chief Engineer. The petitioner was posted as an In-charge Chief Engineer for about three and a half months and was allowed to retire as such. Regular promotion was not granted to the writ petitioner without any valid reason.

4. On perusal, the panel of the year 2016-17 would reveal that the senior officials, who were due to retire shortly in the year 2016, were also included in the panel, knowing the fact that they were retiring. Thus, the respondents had not applied their minds while preparing the panel for promotion to the post of Chief Engineer. In this context, the learned counsel for the petitioner relied on the Government Letter dated 07.10.2005, wherein the Government issued instructions to the authorities for preparation of estimate and preparation of panel which reads as under:

(ii) In order to overcome the difficulty of filling the vacancies caused by the retirement of Personnel included in the panel in the same year i.e. immediately after inclusion in the panel but before promotion, the size of the panel be enlarged to the extent of including equal number of eligible



persons against the likelihood vacancies of senior eligible persons included in the panel prior to promotion whose date of retirement shall be indicated in bracket against their names in the panel. To this extent, additional names of eligible persons shall be included in the panel. This will help to promote equal number of candidates in the panel period and in such cases, care should be taken that the number of promotees is restricted to the size of the panel fixed. In other words, the panel though appear to be enlarged, number of candidates actually promoted shall be matched to the estimated vacancy. This would certainly avoid non-utilisation of estimated vacancies and equally solve administrative problems for want of suitable hands at the higher levels.

5. The learned counsel for the petitioner relied on the Government Order issued in G.O.Ms.No.103, dated 09.10.2014, wherein the Government prescribed provisions for unexpected contingencies, as certain percentage of total vacancy is to be followed. However, the respondents had not followed any of these guidelines, which deprived the petitioner from getting a promotion to the post of Chief Engineer.

6. The respondents have objected to the contentions raised on behalf of the petitioner by stating that none of the juniors to the petitioner



were promoted in the panel of the year 2016-17. Persons included in the panel of the year 2016-17 were senior to the writ petitioner. Twelve (12) officials, in the rank of Superintending Engineer, were included in the panel of promotion of the year 2016-17 and all those twelve (12) officials were seniors of the petitioner and therefore, the case of the writ petitioner was not considered and the representation in this regard by the petitioner was rejected by the competent authority.

7. Considering the arguments, the principles to be followed in the matter of promotion are as under:

- (i) promotion per se cannot be claimed as an absolute right,
- (ii) consideration for promotion is not a fundamental right of an employee,
- (iii) filling up of the prior promotional posts is the administrative prerogative of the department/board and the employees cannot claim any right over filling up of the vacancies,
- (iv) mere availability of vacancy is not a ground to claim promotion or inclusion of the name of the employee in the panel,
- (v) if at all an administrative decision is taken to fill up the promotional posts, then it is the duty of the competent authority to ensure that all the



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eligible officials are considered for inclusion of their names in the panel, in accordance with the rules and in the order of seniority.

8. In respect of the preparation of the panel, the employees have no right to claim. Whenever a decision is taken and a panel is prepared, then only the right of consideration of an employee would come into the picture but not otherwise. Even in case, the panel is finalised, no employee can claim promotion as a right.

9. Only in the event of a violation of any of the rules in force or if any senior is overlooked without any valid reason or contrary to the regulations, then alone the aggrieved senior can approach the authority or the Court of law as the case may be, claiming retrospective promotion or otherwise from the date on which the juniors were considered. Thus, for seeking the relief of promotion or retrospective promotion, a person has to establish that the respondents have violated the rules for promotion or not considered the name of the person without any valid reason or his/her name was overlooked and his/her juniors were promoted. Only in such circumstances, the High Court would be in a position to entertain the writ petition and grant appropriate relief.



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10. In the present case, the panel of the year 2016-17 was prepared considering the names of the eligible persons fit for promotion to the post of Chief Engineer. Twelve (12) officials were considered and the panel was published. However, the name of the petitioner was in Serial No.13 in the seniority list but the panel was stopped in Serial No.12 and therefore, the petitioner was not considered for inclusion of her name in the panel for promotion of the year 2016-17. However, the petitioner was posted as a Chief Engineer In-charge for few months and allowed to retire from service on 31.08.2016. Thus, none of the junior to the petitioner was promoted to the post of Chief Engineer overlooking the name of the petitioner.

11. Regarding the Government letter relied on by the petitioner, such Government letters are instructions given to the authorities competent for the purpose of preparation of panel and such instructions are directory in nature and would not confer any right on the employee to claim promotion merely based on such circumstances. When the promotion itself is not a right, the instructions given to the authorities regarding preparation of panel for promotion would never provide a right to claim promotion to the petitioner as the petitioner is otherwise not



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eligible, since none of her junior was promoted in violation of rules or otherwise. Such instructions or guidelines issued by the Government for preparation of panel, if deprives an employee from getting an opportunity in accordance with the rules alone is to be considered. All these guidelines are issued for administrative purposes and those instructions would not confer any right to the employee. These being the principles to be considered, the petitioner has not established that the respondents had violated the seniority or included the name of the juniors to the panel, overlooking the name of the petitioner or any of the juniors to the petitioner was promoted when the petitioner was in service.

12. In the matter of promotion, High Court cannot interfere with the routine administration of public departments. The power of judicial review under Article 226 of the Constitution of India is to ensure the process through which the decision is taken by the competent authorities, is in consonance with the statute and rules in force, but not the decision itself.

13. As on the date of the retirement of the petitioner on 31.08.2006, none of the junior to the petitioner was promoted and



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therefore, this Court has no hesitation in arriving at a conclusion that the petitioner has not established any acceptable reason for the purpose of considering the relief. Thus, the writ petition stands **dismissed**. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.11.2022

Index : Yes
Speaking order
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To

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2. Tamil Nadu Water Supply and Drainage Board,
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S.M.SUBRAMANIAM.J.,

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