



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.21461 of 2016

A.Balasubramanian

... Petitioner

Vs.

1.The Agricultural Production Commissioner
and Principal Secretary to Government,
Agriculture Department,
Secretariat,
Chennai-600 009.

2.The Chief Engineer,
Agricultural Department,
487, Anna Salai,
Nandanam,
Chennai-600 035.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent i.e., the Agricultural Production Commissioner, Chennai relating to the impugned order issued in letter No.30320/AA3/2013-5 Agriculture (AA3) Department, dated, 29.01.2015 and quash the same and consequently direct the first respondent to pass appropriate orders relating to payment of arrears in the promoted posts in the cadre of Executive Engineer from 31.01.2001 to 24.02.2005 and in the cadre of Superintending Engineer for the period from 25.02.2005 to 31.05.2006 in the light of decision taken in W.P.No.48365 of 2006, dated, 20.12.2011 and implemented by the Government in G.O.(D)No.4 Public Works (A1) Department, dated, 07.01.2013 within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingham

For Respondents : Mr.S.Kameswaran

Government Advocate(Civil Side)

ORDER

This present writ petition has been filed to quash the impugned order, dated, 29.01.2015 with the consequential prayer to pass appropriate order relating to payment of arrears in the promoted posts in the cadre of Executive Engineer from 31.01.2001 to 24.02.2005 and in the cadre of Superintending Engineer for the



period from 25.02.2005 to 31.05.2006 in the light of decision taken in W.P.No.48365 of 2006, dated, 20.12.2011 and implemented by the Government in G.O.(D)No.4 Public Works (A1) Department, dated, 07.01.2013.

2. The brief facts of the case are that the petitioner was last by serving as Executive Engineer (Agricultural Engineering) and permitted to retire on 31.05.2006. While the petitioner was serving as Assistant Executive Engineer, he was placed under suspension on 08.03.2000 and charges were framed against the petitioner on 16.08.2000 under Rule 17(b) Tamil Nadu Civil Services (Discipline and Appeal) Rules by the Chief Engineer, Chennai. The charge against the petitioner is that the petitioner has entrusted fabrication works to AGROFED at exorbitant rate while he was serving as Assistant Executive Engineer (CADP1) Madurai during 1994-95. The above said Charge Memo, dated, 16.08.2000 was dropped by Government in G.O. (2D) No. 211 Agriculture Department, dated, 16.12.2004 on the ground that the charges framed against the petitioner were not proved. After dropping of the charges, the petitioner submitted representations for promoting the petitioner as Executive Engineer, since the petitioner's juniors were officiating as Executive Engineers from January 2001. Further promotion panel in respect of petitioner's juniors for the post of Superintending Engineer was also under preparation in the year 2004. But the petitioner was promoted as Executive Engineer in the vacant place as per G.O.RT.No.378 Agriculture Department, dated, 26.12.2005 and retired as Executive Engineer on 31.05.2006.

3. The contention of the petitioner is that since the Charge Memo, dated, 16.08.2000 was dropped, the petitioner ought to be considered for promotion from the panel 1998-99 and ought to have been promoted in the year 2001 as his juniors were promoted in the year 2001. The further contention of the petitioner is that the panel for promotion of Superintending Engineer as approved in G.O.Ms.No.32 Agriculture Department, dated, 22.02.2005, was sent to Government in letter, dated, 26.05.2003 by the Chief Engineer and at that time, the charges against the petitioner was pending. Therefore, the petitioner's name was first considered for inclusion in the panel of promotion to the post of Executive Engineer by restoring his original seniority. But the petitioner was promoted as Executive Engineer on 30.12.2005. The petitioner was not promoted as Executive Engineer from the panel 1998-1999. The contention of the petitioner is that the panel was prepared in the year 1998-99 and the petitioner's name was not considered. Since the respondents were contemplating to take departmental proceedings against the petitioner based on the Charge Memo, dated, 16.08.2000, the respondents have not considered the petitioner's claim at all. Since the Charge Memo was dropped by Government Order, dated, 16.12.2004, as per Fundamental Rules, Rule 17 proviso (1), the petitioner is



entitled to be considered. Therefore the petitioner prayed to allow the writ petition by directing the respondents to grant promotion.

4. Heard Mr.S.Visvalingam, the Learned Counsel appearing for the petitioner and Mr.S.Kameswaran the Learned Government Advocate (Civil Side) and perused the records.

5. The relevant portion of Rule 17 proviso (1) of Fundamental Rules is extracted hereunder:

"Provided that in case of Government servants whose names were deferred for inclusion in the panel for promotion to higher post due to pendency of charges, but subsequently included in the same panel on exoneration of the charges after the date of their retirement on superannuation on appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other monetary terminal benefit;"

6. Based on this proviso, any departmental proceedings if dropped, then delinquent is entitled to promotion that too on the date when the delinquent officer's junior was promoted. In the present case, the petitioner's juniors were promoted in the year 2001 as Executive Engineers and as Superintending Engineers in the year 2005. Therefore, based on Fundamental Rules, the petitioner is entitled to the relief. Therefore, the respondents are directed to fix the petitioner's promotion in the post of Executive Engineer from the year 2001 and in the post of Superintending Engineer from the year 2005, notionally, and the monetary benefits shall be fixed notionally and the effect shall be granted in pension and the arrears of pensionary benefits shall be disbursed. It is made clear, the petitioner is not entitled to any interest for the said monetary benefits. The said exercise shall be completed within a period of four weeks from the date of receipt of the copy of the order.

7. Before parting with the judgment, this Court is of the considered opinion that the provisions of the disciplinary proceedings ought to be revisited. In the present case, the petitioner was in the panel for the year 1998-1999. The petitioner was placed under suspension on 08.03.2000 and the charge memo was issued on 16.08.2000. The petitioner's juniors were promoted in the 2001 and the charge memo was dropped on 16.12.2004. Then the petitioner is losing his valuable right of promotion for the period from 2000 to 2004. More so, when the charges were dropped the loss to the petitioner is an "irreparable loss". The government ought to consider to amend the rules to the effect that the promotion shall not be considered only during the "period of punishment" alone. For the period of "contemplating to initiate disciplinary proceedings", the delinquent ought to be considered for promotion. Since during



that period the delinquent is losing his valuable right of promotion, that too when the disciplinary proceedings are dropped. Moreover, it gives power to the higher authorities to stop promotion by initiating disciplinary proceedings by framing charges and after the promotion is granted to others, the charges would be dropped. This power without any guidelines leads to arbitrariness. It is used in several cases as a tool to grant promotion to juniors in the list and to stop promotion to the seniors on account of proposed action against them. The government shall consider to amend the rules for the reasons as stated supra.

8. With this above said direction, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (As)

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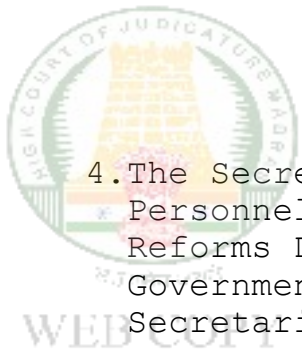
Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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and Principal Secretary to Government,
Agriculture Department,
Secretariat,
Chennai-600 009.
- 2.The Chief Engineer,
Agricultural Department,
487, Anna Salai,
Nandanam,
Chennai-600 035.
- 3.The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Chennai-9.



4.The Secretary to Government,
Personnel and Administration,
Reforms Department,
Government of Tamil Nadu,
Secretariat, Chennai-9.

+1 CC to M/s.SPL.GP (SR-16680[F] dated 05/04/2022)

W.P. (MD) .No.21461 of 2016
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MGJ(27.05.2022) 5P 6C