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W.P.No.20793 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.12.2023

Pronounced on : 19.06.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

W.P.No.20793 of 2015

S.N.Shanar

...Petitioner

Vs

1. Government of Tamil Nadu
Rep. by its Principal Secretary
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai 600 009.
2. Corporation of Chennai,
Rep. by its Principal Secretary/Commissioner
Rippon Building,
Chennai 600 003.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus calling for the concerned records from the second respondent, quash the order of the second respondent dated 13.05.2015 bearing Po.Thu.Na.Ka.No.E1/15565/2015 as illegal, arbitrary and contrary to law and consequently direct the second respondent to forward the name of the petitioner to the first respondent for getting the approval for



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promotion of the petitioner to the post of Superintending Engineer on notional basis and treat the petitioner as retired in the post of Superintending Engineer with effect from 31.05.2011.

For petitioner	:	Mr.Balan Haridas
For R1	:	Mr.R.U.Dinesh Rajkumar
For R2	:	S.Gopinathan

ORDER

This writ petition is been filed to quash the order dated 13.05.2015 in Po.Thu.Na.Ka.No.E1/15565/2015 and consequently direct the second respondent to forward the name of the petitioner to the first respondent for getting the approval for promotion of the petitioner to the post of Superintending Engineer on notional basis and treat the petitioner as retired in the post of Superintending Engineer with effect from 31.05.2011.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner joined the second respondent Corporation as Assistant Engineer in the year 1979. He was promoted as Assistant Executive Engineer in the year 1991 and Executive Engineer on 06.07.2000. He has necessary qualifications for being promoted to the post of Superintending



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Engineer. As on the crucial date for consideration of promotion for the post of Superintending Engineer, there were five vacancies. However, on account of assembly elections, model code of conduct came into operation and subsequently, on account of budget session of the assembly the panel was not prepared for promotion to the said post. After completion of elections, the panel was prepared and the same was placed before the council for approval on 31.05.2011, on which date the petitioner retired from service on attaining the age of superannuation.

2.2. The council has passed resolution No.122 of 2011 approving the panel for the promotion to the post of Superintending Engineer, excluding the name of the petitioner. It is submitted by the learned counsel for the petitioner that if the petitioner's name was included in the panel dated 31.05.2011 he would have got notional promotion as Superintending Engineer. The petitioner has requested the second respondent Corporation to forward his name for approval to the first respondent to the post of Superintending Engineer.

2.3. The petitioner has filed W.P.No.2531 of 2014 to consider



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this representation for inclusion of petitioner's name in the list for approval to the Government for promotion to the post of Superintending Engineer. The said writ petition was disposed of on 23.02.2015 directing the second respondent to consider his representation dated 26.09.2013 on merits. Accordingly, the second respondent passed the impugned order dated 13.05.2015 stating that since the petitioner had retired on 31.05.2011 and his name was not included in the list sent for approval of the first respondent for promotion to the post of Superintending Engineer.

3. Counter affidavit has been filed by the second respondent mentioning that the crucial date for consideration of promotion to the post of Superintending Engineer was 1st February of 2011 for the panel year 2011-2012. It is mentioned that after conclusion of the elections, panel was prepared and placed before the Council and a resolution was passed by giving approval to the panel for promotion to the post of Superintending Engineer *vide* No.122 of 2011 dated 31.05.2011 by including the name of the petitioner. The said resolution was forwarded to the Government for approval on 24.06.2011, as the Government is the authority to approve the panel for promotion to the post of Superintending Engineer. It is mentioned further that since the petitioner retired on 31.05.2011, the Government has excluded petitioner name and



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published the panel list for the remaining 6 employees, the colleagues of the petitioner for the post of Superintending Engineer and the said panel for promotion was approved *vide* G.O.Ms.No.89 Municipal Administration and Water Supply (MC-3) Department dated 08.09.2011. Hence, promotion was not given to the petitioner.

4. Heard both sides and perused the materials available on record.

5. This writ petition has become infructuous as the relief sought for by the petitioner has already been granted by the respondents. On careful perusal of the counter affidavit, it is mentioned at paragraph 4 that the resolution was passed by the respondent by including the petitioner's name in the panel for promotion to the post of Superintending Engineer *vide* No.122 of 2011. Until this stage, there is no dispute. However, the petitioner's name was excluded by the Government and the panel was approved.

6. It is also mentioned in paragraph 5 of the counter affidavit that considering the fact that the petitioner has retired from service on 31.05.2011, the Government has excluded his name from the list and published



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the names of other persons *vide* G.O.Ms.No.89, Municipal Administration and Water Supply (MC-3) dated 08.09.2011. Therefore, contrary to the petitioner's contention the resolution passed by the respondent dated 31.05.2011 was forwarded to the Government by including the name of the petitioner. However, the Government has deleted the name of the petitioner since he has retired from service.

7. The petitioner did not seek for a direction to include his name while approving for promotion. The petitioner's name is pending in the panel until it was approved by the Government. However, as observed above, at the time of passing of the Government orders, the petitioner's name was deleted and rest of the names were approved. Therefore, the proper relief of the petitioner should have sought for a direction to the Government to include his name and approve the panel for promotion to the post of Superintending Engineer for the year 2011-2012.

8. In this case on hand, though, the petitioner's name was included in the panel for promotion to the post of Superintending Engineer on 31.05.2011 by that time the Government has approved the petitioner was no more in service and therefore, the Government has deleted the name of the petitioner. Even otherwise, if the Government Order was issued by including



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the name of the petitioner, it will not serve the purpose. In order to get benefit of the promotion the petitioner must join in the promotional post before retiring on 31.05.2011. However, the petitioner was not in a position to join in the promotional post since he has retired on 31.05.2011, he will not get any benefits.

9. The learned counsel for the petitioner has submitted that on account of elections and other administrative reasons the panel for promotion could not be prepared on time thereby, the petitioner is deprived of his promotion. It is true that on account of administrative delay promotion panel could not be approved by the respondents earlier to May 2011. If the panel was approved earlier, the petitioner would have become Superintendent Engineer. However, it is a settled legal preposition that administrative delay cannot be the base to claim the relief.

Dr.D.NAGARJUN,J

vca

10. In view of the above discussion made above, there are no merits on the contentions of the petitioner counsel and hence, this writ petition is dismissed. No costs.



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To:

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Government of Tamil Nadu
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai 600 009.
2. The Principal Secretary/Commissioner
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

Pre-delivery order made in

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