



W.P.No.28277 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.07.2024

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THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.28277 of 2012

R.K.Selvaraj

...Petitioner

vs.

1.The State of Tamil Nadu,
represented by the Chairman, TWAD Board,
& Additional Chief Secretary to Government,
Municipal Administration & Water Supply Department,
Fort.St.George,
Chennai – 9

2. The Managing Director,
TWAD Board,
Chepauk,
Chennai – 5

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records connected with B.P.Ms.No.58 TWAD Estt. (Per) Wing dated 19.07.2012, to quash the same, so for as the petitioner is concerned and direct the respondents to include the name of the petitioner in the above B.P.Ms.No.58 TWAD Estt. (Per) Wing Dated 19.07.2012 in the appropriate place in accordance with his seniority and promote him to the post of Superintending Engineer on par with his immediate Junior with all service and monetary benefits.



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For Petitioner : Mr.R.Prem Narayan

For Respondents :

For R1 : Mr.S. Rajesh
Government Advocate

For R2 : Mr.S.Silambanan
Senior Counsel
assisted by Ms.S.Shahila Banu
Standing Counsel

ORDER

The panel of Executive Engineers fit for promotion as Superintending Engineers for the year 2012 - 2013, which was signed by the second respondent in B.P.Ms.58 TWAD Estt.(Per) Wing dated 19.07.2012 is under challenge in so far as the petitioner is concerned and further direction is sought for to include the name of the petitioner in the above said B.P. in the appropriate place in accordance with his seniority and promote him to the post of Superintending Engineer.

2. The petitioner R.K.Selvaraj, son of K.R.Karuppusamy submits that he was working as Executive Engineer in TWAD Board, Maintenance Division at Namakkal. When he was working in Urban Division, Erode for four months and nine days, without any basis, a charge memo was issued



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under Regulation 9(a) of TWAD Board Employees Discipline and Appeal Regulations, 1972 framing three charges in the proceedings dated 19.04. 2010. His explanation denying the charges was not considered, and the final order was passed by the second respondent in proceedings dated 18.05.2010, imposing punishment of stoppage of increment for one year without cumulative effect.

3. His annual increment as on 01.10.2010 was withheld, and the punishment was implemented. The currency of punishment was also over on 01.10.2011. On expiry of the currency of punishment, further increment was also sanctioned to him as per proceedings dated 11.10.2011.

4. The petitioner further submits that after expiry of currency of punishment, the regular panel of Executive Engineers fit for promotion as Superintending Engineers for the year 2012 - 2013 was issued by the respondents in B.P.Ms.No.58 TWAD Estt. (Per) Wing dated 19.07.2012. The name was overlooked for the promotion on the ground that, "Punishment of stoppage of increment for one year without cumulative effect awarded vide Managing Director's proceeding No.11468/E.DP/A4/2010-4 dated 19.04.2010 which is within the check



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period of five years. Hence, his name was overlooked in the panel.

Aggrieved of the said proceedings, this writ petition.

5. Heard Mr.R.Prem Narayanan, learned counsel appearing for the petitioner and Mr.S.Silambanan, learned Senior Counsel assisted by Ms.S.Sahila Banu appearing for the respondents.

6. Mr.S.Silambanen, learned Senior Counsel appearing for the respondents submits that the TWAD Board has followed the orders of Tamil Nadu Government regarding the service matters. Therefore, Personnel and Administrative Reforms Department was addressed for this issue in Managing Director's Letter No.51805/Estt. (Per)/A5/2011 dated 15.03.2012 and it was informed by the government that the stage of the SLP is awaited. It was further contended that his name was not included in the panel for promotion on the ground that the punishment of stoppage of increment awarded for one year without cumulative effect is within the check period of five years.

7. How the currency period has to be reckoned is clarified in the letter No.13400/S/2007-6 dated 11.09.2009, Personnel and Administrative Reforms (S) Department. The operative portion of the letter is culled out



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and mentioned below:

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“2. It has been in the Government letter first cited, that an order imposing any punishment including withholding of increment takes effect from the date on which the said order is communicated to Government Servant concerned. In that case, this does not mean that the punishment will be over after expiry of the period...”

8. As per the above said letter, the impugned order dated 18.05.2010 takes effect within a week (from the date of communication of the order). Therefore, the currency of punishment is 25.05.2010 till 25.05.2011.

9. As per the Government Letters, G.O.No.248, Personal and Administrative Department dated 20.10.1997 and Government Letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 07.10.2005, as the petitioner was in currency of punishment, the impugned promotion panel was drawn wherein his name was not included for promotion to the post of Superintending Engineers.

10. It is relevant to note that,

1) The Government Letters, G.O.No.248, Personal and



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Administrative Department dated 20.10.1997 and

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2) *Government Letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 07.10.2005*, these two letters were under challenge in Writ Petition (MD) No.11811 of 2009 dated 18.11.2009 and it was dismissed by this Court. Against which, writ appeal was preferred in W.A.(MD) No.315 of 2010 (*The Deputy Inspector General of Police, Thangavur Range Vs. V.Rani* reported in (2011) 3 CTC 129), wherein the Hon'ble Full Bench of this Court by an Order dated 27.04.2011 held that two letters namely the Government Letter No.248, Personnel and Administrative Reforms Department dated 20.10.1997 and Government Letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 07.10.2005 are not statutory rules framed under the Article 309 of the Constitution of India and cannot be read either under Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

11. In the result, the embargo put on the right of the government servants for being considered for promotion for further period, after the period of minor punishment is over, in the name of the check period namely one year in the case of censure and five years in case of minor



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punishments was held to be illegal and the letters issued by the Government must held to be impermissible under the statutory rules.

12. It is also pertinent to note that, subsequent to the above said order dated 27.04.2011, the state government preferred appeal before the Hon'ble Supreme Court in S.L.P/C.C.No.4126 to 4141 of 2012, wherein the Hon'ble Supreme Court dismissed the S.L.P. by an Order dated 16.03.2012 and confirmed the order of Hon'ble Full Bench of this Court. The petitioner herein has taken much pains to include the petitioner in the promotion panel by giving representations on 07.05.2012 and on 25.05.2012.

13. Even after the order passed by the Hon'ble Full Bench of this Court in Writ Appeal (MD) No.315 of 2010 dated 27.04.2011, his request to consider him for promotion was not considered. The regular panel of Executive Engineers fit for promotion as Superintending Engineers for the year 2012 - 2013 was issued on 19.07.2012 about four months after the date of the order passed by the Hon'ble Supreme Court. His punishment period is over on 25.05.2011. Therefore, non-inclusion of the petitioner's name in the impugned B.P.MS 58 is not in accordance with the law.



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14. Based on the aforesaid discussions and observations, this writ petition stands allowed. Consequently, the respondents are directed to include the name of the petitioner in the impugned B.P.Ms.58 TWAD Estt.(Per) Wing dated 19.07.2012, in the appropriate place in accordance with his seniority and promote him to the post of Superintending Engineer with consequential monetary benefits with effect from the date of retirement. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. There is no order as to costs. Connected miscellaneous petition stands closed.

05.07.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

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represented by the Chairman, TWAD Board,
& Additional Chief Secretary to Government,
Municipal Administration & Water Supply Department,
Fort.St.George,
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2. The Managing Director,
TWAD Board,
Chepauk,
Chennai – 5

R.KALAIMATHI, J.

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