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W.P.No.15317 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.15317 of 2021 and
W.M.P.Nos.16196 & 16197 of 2021

V.S.Pushpanathan

... Petitioner

Vs.

1.The Agriculture Production Commissioner &
Principal Secretary to Government,
Agriculture Department,
Government of Tamil Nadu,
Fort ST. George, Chennai 9.

2.The Chief Engineer,
Agriculture Engineering Department,
Nandanam, Chennai 35.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in connection with the impugned order passed by him in Letter No.GE3/11225/2021 dated 18.06.2021 and quash the same and direct the respondents to consider the claim of the petitioner for promotion as Assistant Executive Engineer (AE) for the panel of the year 2021-22 without reference to the pending criminal case in Crime No.10 of 2021 on the file of the Inspector of police, Special Investigation Cell, V&AC, Chennai and promote



him as Assistant Executive Engineer (AE) and grant him all consequential service and monetary benefits.

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For Petitioner : Ms.T.Yashiga for
Mr.M.Muthappan

For Respondents : Mr.M.Muthusamy, GA

ORDER

This Writ Petition has been filed for quashment of the impugned order passed by the second respondent in Letter No.GE3/11225/2021 dated 18.06.2021 and to direct the respondents to consider the claim of the petitioner for promotion as Assistant Executive Engineer (AE) for the panel of the year 2021-22 without reference to the pending criminal case in Crime No.10 of 2021 on the file of the Inspector of police, Special Investigation Cell, V&AC, Chennai and promote him as Assistant Executive Engineer (AE) and grant him all consequential service and monetary benefits.

2. Heard the learned counsel on either side and also perused the entire materials available on record.

3. The learned counsel for the petitioner submitted that the petitioner was initially appointed as Assistant Engineer on 12.05.1998 and thereafter,



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his service has been regularized on 25.06.2012. After completion of 20 years of service, the petitioner has granted Special Grade in the post of Assistant Engineer (AE). A seniority list of Assistant Executive Engineer was published on 01.11.2005 and thereafter, no list has been published sofar. As on date, there are number of vacancies available for the promotional post of Assistant Executive Engineer. A criminal case registered against the petitioner in Crime No.10 of 2012 on the file of the Inspector of Police, Special Investigation Cell (V&AC), Chennai for misappropriation of funds of Government. Though the criminal case has been registered in the year 2012, the charge sheet has been filed after lapse of 9 years. There is a long delay in the initiation, commencement and conclusion of the criminal case. On 04.03.2019, the petitioner gave a representation for promotion. Since there is no response for his representation, the petitioner has filed a Writ Petition in W.P.No.7315 of 2021 before this Court for appropriate direction for inclusion of his name in the panel for the year 2020-21. This Court had disposed of the said petition and directed the respondents to consider the representation of the petitioner and pass orders within a period of one month after giving an opportunity of being heard by him. In this connection, the petitioner gave a representation on 08.04.2021. The respondents had issued



the impugned order dated 18.06.2021 rejecting the representation of the petitioner on two grounds. The first ground is that the petitioner has not reached the zone for consideration of promotion and the second ground is that the petitioner has facing a criminal case. It is alleged that the charge sheet has been filed on 19.05.2021, but the same has not been taken on file sofar. There has been inordinate and unexplained delay in the initiation of the criminal case against the petitioner, since the alleged occurrence took place in the year 2010. Hence, the petitioner has filed the present petition seeking to quash the impugned order of the second respondent and to promote him as Assistant Executive Engineer.

4. The learned Government Advocate appearing for the respondents submitted that a criminal case is pending against the petitioner and 42 others for the grave allegation in replacement of old motor pumpsets scheme for claiming subsidy portions at the Thirupattur Sub-Division of Vellore District. The Vigilance Department has requested sanction of prosecution vide Letter No.RC.200/2012/VL dated 24.04.2015 and the Agriculture Department has directed the second respondent to accord sanction of prosecution on the petitioner and others in Government Letter No.21202/AA8(2)/2015-14, dated



05.02.2019. In pursuance to the instruction of the Government, the second respondent dated 25.04.2019 has accorded sanction of prosecution to the Vigilance Department for prosecuting the petitioner and others. He further submitted that as per the direction of this Court in W.P.No.7315 of 2021, the representation of the petitioner was considered and rejected by the second respondent vide the impugned order on the grounds that the petitioner was not in the zone of consideration and the name of the petitioner will be considered in accordance to the statutory provisions laid down as and when he reaches his turn for promotion. He further contended that as per the Part A in the Schedule XI of the Section 7(1) of the Tamil Nadu Government Servants (Condition of Service) Act, 2016, when no charges have been framed or charge sheet has been filed before the Court, there is no bar for promotion of that particular individual. For promotion, the individual has to reach his turn first and then only, all the other rule provisions can be invoked. It is not proper to request promotion notwithstanding the pendency of the criminal case.

5. A perusal of the records reveals that the criminal case has been registered in the year 2012 and after a lapse of 9 years, the charge sheet has



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been filed. There is an erroneous delay in the initiation, commencement and conclusion of the criminal case. Now, we are in the year 2024 and the criminal case is still pending. Hence, this Court is of the opinion that the criminal case in Crime No.10 of 2012 on the file of the Inspector of Police, Special Investigation Cell, V&AC, Chennai, should not be taken up for consideration of promotion.

6. Therefore, the impugned order passed by the second respondent in Letter No.GE3/11225/2021 dated 18.06.2021 is hereby set aside and the matter is remitted to the second respondent for fresh consideration and hence, this Court directs the second respondent to consider the claim of the petitioner for promotion as Assistant Executive Engineer (AE) for the panel of the year 2021-22 without reference to the pending criminal case in Crime No.10 of 2012 on the file of the Inspector of Police, Special Investigation Cell, V&AC, Chennai and to pass appropriate order in accordance with the law, preferably within a period of 4 months from the date of receipt of a copy of this order.



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7. Accordingly, this Writ Petition stands allowed. No costs.

Consequently, connected Miscellaneous Petitions are also closed.

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Index : Yes / No

Speaking order / Non-speaking order

To

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