



W.P.No.42109 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 13.08.2024

ORDER PRONOUNCED ON : 12.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

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N.Kumaradoss

... Petitioner

/Vs./

1.The State of Tamil Nadu,
Represented by its Principal Secretary
to Government, PWD Department,
Fort St.George,
Chennai.

2.The State of Tamil Nadu,
Represented by Engineer in Chief, WRO and
Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai – 600 005.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to give notional promotion to the petitioner to the higher posts of Assistant Executive Engineer, Executive Engineer and Superintending Engineer in the PWD Department and fix petitioner's pensionary benefits accordingly on par with petitioner's juniors and pay all terminal benefits based on this to the petitioner.



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For Petitioner : Mr.A.K.Sriram, Senior Counsel
for Mr.A.Kowsik Raghu Rajan

For R1 & R2 : Mr.R.Kumaravel,
Additional Government Pleader

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ORDER

This writ petition is filed to direct the respondents 1 and 2 to give notional promotion to the petitioner to the higher posts of Assistant Executive Engineer, Executive Engineer and Superintending Engineer in the PWD Department and fix petitioner's pensionary benefits accordingly on par with petitioner's juniors and pay all terminal benefits based on this to the petitioner.

2.The petitioner was appointed as Assistant Engineer, in PWD under the Tamil Nadu Government Engineering Service and joined duty under regular capacity on 30.11.1970. The petitioner was posted at Soil Mechanism and Research Division, Chepauk, Madras. The petitioner served at various other places under the control of PWD. The petitioner went on continuous leave from 06.11.1982 onwards citing his ill health and family circumstances. Whileso, on 16.10.1991 a Charge sheet was issued to the petitioner for unauthorised absence from 06.11.1982 onwards. The petitioner was placed under suspension, an enquiry



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was conducted and after due enquiry the removal order dated 02.09.1996 was passed by the 1st respondent removing the petitioner from service. Challenging the said order the petitioner filed appeal in O.A.No.1484 of 1998 before the Tamil Nadu Administrative Tribunal at Chennai. The Hon'ble Tribunal set aside the removal order and remitted the case to the concerned authorities for fresh action vide the order dated 14.02.2002. On 02.09.2003, the first respondent passed an order placing the petitioner on deemed suspension from 02.09.1996 until further orders and directed the payment of subsistence allowance from 02.09.1996. The fourth respondent granted subsistence allowance of Rs.3,250/- i.e. 50% of the petitioner's basic pay with effect from 02.09.1996. In pursuance of the Tribunal's order dated 14.02.2002, a fresh charge memo was issued on 16.09.2003, by the second respondent for the misconduct of unauthorised absence from duty from 06.11.1982 onwards. The second respondent on 29.03.2004, passed an order refusing permission to the petitioner from retiring from service, on attaining the age of superannuation on 31.03.2004. The petitioner was retained in service till the disciplinary proceedings concluded and final orders were passed. The petitioner stated that the third respondent vide his proceedings dated 11.08.2007 revoked the suspension and permitted the petitioner to retire from service on attaining the age of superannuation on 31.03.2004, without prejudice to the disciplinary proceedings.



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Thereafter enquiry concluded and on 04.09.2008, the first respondent passed an order of punishment, withholding pension of Rs.500/- per month, for a period of two years. The Superintending Engineer regularized the pay and annual increments due to the petitioner beyond 01.10.1982, with the last pay at Rs.8550/- with effect from 01.04.1996, and sanctioned the pensionary benefits. The petitioner thereafter on 17.06.2004, sent a representation to the fourth respondent requesting him to increase the subsistence allowance at the rate of 75% with effect from 02.03.1997. As there was no reply, the petitioner sent several other representations for similar relief to the first and second respondents. Thereafter, the second respondent passed the impugned order dated 25.05.2015 rejecting the petitioner's claim for increase in subsistence allowance from 50% to 75% from 02.03.1997 to 31.03.2004. The petitioner further submitted that he was entitled to be promoted to the higher post of Assistant Executive Engineer, Executive Engineer and Superintending Engineer. According to the petitioner he should have retired as Superintending Engineer and therefore he was entitled for notional promotion. According to the petitioner, appointments to the promotional posts in the PWD Department were based on seniority and hence the petitioner was entitled to be promoted to the aforesaid higher posts for the purpose of getting pensionary benefits. The petitioner therefore filed the above writ petition claiming benefits of notional promotion to the higher



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post of Assistant Executive Engineer, Executive Engineer and Superintending Engineer in PWD Department and consequently fixing of pensionary benefits on par with his juniors.

3.The respondent in their counter relying on Clause (b) of Rule 2 of the Special Rules for Tamil Nadu Engineering Services (Section 10 of Tamil Nadu Service Manual - Volume - II) submitted that the promotions as Chief Engineers, Superintending Engineers, Executive Engineers and Assistant Executive Engineers were made on the merit and ability and seniority was considered only where merit and ability were approximately equal. The respondents submitted that the contention of the petitioner that promotion to the respondent's Department were purely on seniority basis was misconceived. The respondents further submitted that the petitioner was found guilty in the disciplinary proceedings initiated against him for unauthorised absence and therefore, there was no justification in the petitioner's claim for further promotion. The respondents submitted that it was settled law that promotion was not automatic and could not be demanded as a matter of right, moreso, when the petitioner was found guilty of misconduct for unauthorised absence. The respondents submitted that the petitioner was not



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entitled to the relief's claimed on the principles of no work, no pay, and no benefits.

The respondents submitted that the petitioner was gainfully employed during the absence period and therefore was estopped from demanding promotion with benefits. The respondents submitted that the petitioner having accepted the order of punishment imposed on him in the disciplinary proceedings could not be allowed to claim promotions. The respondents, therefore, prayed that the writ petition deserved to be dismissed as meritless.

4.The learned counsel for the petitioner submitted that the petitioner was entitled for promotion as Assistant Executive Engineer, Executive Engineer and Superintending Engineer and as the petitioner retired from service he was entitled for notional promotion for the purpose of pensionary benefits. According to the learned counsel for the petitioner, the promotion to the higher post in PWD Department was strictly based on seniority and not on merit cum seniority. The learned counsel therefore submitted that the writ petition may be allowed.

5.The learned Additional Government Pleader for the respondents on the other hand submitted that the contention of the learned counsel for the petitioner that the promotion to the higher posts in PWD Department were based on seniority



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alone was totally misleading statement. The learned counsel relying on Clause (b) of Rule 2 of the Special Rules for Tamil Nadu Engineering Services (Section 10 of the Tamil Nadu Service Manual - Volume - II) submitted that the promotions were based on merit and ability and seniority was considered only where merit and ability were equal. The learned counsel further submitted that disciplinary proceedings were initiated against the petitioner for the misconduct of unauthorised absence of 10 ½ years. The charges were proved and the punishment of withholding of pension at the rate of Rs.500/- per month, for a period of 2 years was imposed. Hence on the principles of no work, no pay and no benefits the petitioner was not entitled to any relief. The learned Additional Government Pleader submitted that the writ petition was meritless and deserved to be dismissed.

6.I have heard both the learned counsel for the petitioner and the learned Additional Government Pleader and I have perused the materials placed on record.

7.Admittedly, the petitioner was proceeded departmentally for misconduct of unauthorised absence from 06.11.1982 onwards for a period of 10 ½ years, and as the disciplinary proceedings continued post retirement he was imposed the punishment of withholding pension at the rate of 500/- per month for a period of



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two years. It is pertinent to note that the petitioner has not challenged the order of punishment. Moreover, as rightly contended by the learned Additional Government Pleader under Clause (b) of Rule 2 of the Special Rules for Tamil Nadu Engineering Services (Section 10 of the Tamil Nadu Service Manual - Volume - II) promotion to the posts of Assistant Executive Engineer, Executive Engineer and Superintending Engineer are based on merit and ability and not merely on seniority. It is only when merit and ability are equal that seniority is considered. Therefore, in my view, the petitioner's contention that promotions in PWD Department are based purely on seniority cannot be countenanced. Hence, the writ petition filed on a misconception of the rules cannot be entertained.

8.I therefore, find no merits in the writ petition and the same is dismissed.

However, there shall be no order as to costs.

12.11.2024

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order

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To

1.The State of Tamil Nadu,



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Represented by its Principal Secretary
to Government, PWD Department,
Fort St.George,
Chennai.

2.The State of Tamil Nadu,
Represented by Engineer in Chief, WRO and
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai – 600 005.

N.MALA, J.

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**PRE-DELIVERY ORDER IN
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