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W.P.No.19498 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.19498 of 2021

P.Gunasekaran

... Petitioner

Vs.

The Secretary to Government of Tamil Nadu,
Public Works Department,
Secretariat, Fort St George, Chennai 9.

... Respondent

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 in the impugned order in Letter No.15163/A1/2012-38 dated 25.08.2021 on the file of the respondent and quash the same and consequently direct the respondent to pass orders promoting the petitioner as Assistant Executive Engineer w.e.f 22.06.2006 and as Executive Engineer w.e.f 23.01.2017 and further as Superintending Engineer w.e.f 28.06.2019 notionally with all attendant benefits.

For Petitioner : Ms.A.Erangilin

For Respondent : Mr.R.U.Dinesh Raj Kumar, AGP



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ORDER

This Writ Petition has been filed for quashment of the impugned order passed by the respondent in Letter No.15163/A1/2012-38 dated 25.08.2021 and consequently, to direct the respondent to pass orders promoting the petitioner as Assistant Executive Engineer w.e.f 22.06.2006 and as Executive Engineer w.e.f 23.01.2017 and further as Superintending Engineer w.e.f 28.06.2019 notionally with all attendant benefits.

2. Heard the learned counsel on both sides and perused the materials available on record.

3. The learned counsel for the petitioner submitted that the petitioner has earlier filed a writ petition in W.P.No.28243 of 2011 before this Court to call for the records in G.O.(D).No.113 PW (A1) D dated 09.04.2009, deleting the name of the petitioner from the approval panel for promotion and to direct the respondent to issue reposting order to the petitioner in the category of Assistant Executive Engineer from approved regular panel for the year 2004-



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05. During the pendency of the said petition, the petitioner was promoted as Assistant Executive Engineer and this Court, by an order dated 06.02.2018, allowed the Writ Petition and directed the respondent to issue posting order to the petitioner in the category of Assistant Executive Engineer from approved regular panel with all attendant benefits. However, the respondent did not comply with the order within the time frame fixed by this Court. Thereafter, the respondent has filed Writ Appeal in W.A.No.2545 of 2018 and the same was dismissed. After the dismissal of the above writ appeal, the petitioner made a representation dated 26.12.2018 to the respondent requesting them to comply with the directions as stated in W.P.No.28243 of 2011. Thereafter, the petitioner attained the age of superannuation and retired from service on 30.06.2019 only as Assistant Executive Engineer, even though he was eligible to be promoted as Superintending Engineer. In this connection, the petitioner again made a representation dated 23.02.2021. As there was no response from the respondent, the petitioner has filed another Writ Petition in W.P.No.8166 of 2021 before this Court seeking to consider the representation dated 23.02.2021 and pass orders promoting the petitioner notionally as Superintending Engineer with effect from 28.06.2019. This Court, by an order dated 30.03.2023, had disposed of the said petition with a



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direction to consider the representation dated 23.02.2021 and pass orders within a period of 3 months from the date of receipt of a copy of the order after affording personal hearing to the petitioner.

4. The learned counsel further submitted that in order to avoid further delay, the petitioner sent a detailed written submissions dated 05.05.2021. In the meantime, Sub Application No.97 of 2021 for dispensing with production of original order came up for hearing before this Court on 19.08.2021 and the respondent took time and the matter was adjourned. At that time, the petitioner received the impugned order in Letter No.15163/A1/2012-38 dated 25.08.2021 issued by the first respondent rejecting the claim of the petitioner for promotion as Executive Engineer and further, as Superintending Engineer on the ground that the name of the petitioner has already been removed from the approval panel of the year 2004-05. The respondent has also filed SLP in Diary No.45759 of 2019 before the Hon'ble Supreme Court against the order of the Hon'ble Division Bench of this Court in W.A.No.2545 of 2018 and the same is pending. Hence, the petitioner has no other option except to approach this Court by way of this petition.



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5. The learned Additional Government Pleader appearing for the respondent submitted that based on the orders of this Court in W.P.No.8166 of 2021, the respondent had passed the impugned order informing the petitioner that SLP Diary No.45759 of 2019 filed against the order dated 20.11.2018 in W.A.No.2545 of 2018 is pending. The Hon'ble Supreme Court of India had dismissed SLP Diary No.45759 of 2019 on 21.10.2021 and consequent to the dismissal of the said SLP, the respondent had issued orders in G.O(D).No.4, WR(A1) Department, dated 04.01.2022, by restoring the name of the petitioner in the approved panel for the post of Assistant Executive Engineer for the year 2004-05 in G.O.(3D) No.28, PW(A1) Department, dated 22.06.2006 at Serial No.28, above Thiru.N.Radhakrishnan and below Thiru.P.Elangovan and deemed to have been promoted as Assistant Executive Engineer with effect from 10.11.2010 FN with all attendant benefits.

6. He further submitted that while examining the suitability of the petitioner to the post of Executive Engineer, it was found that the petitioner was on unauthorized absence from duty for the period from 27.04.2007 to



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08.11.2010 and the irregularity of unauthorized absence from duty was completed on 08.11.2010 AN. The delinquency is within the check period of 5 years and therefore, the petitioner is not eligible for inclusion of his name in the panel of Executive Engineers for the year 2015-16, as per the provisions of Clause 13 under Part A (II) contained in Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. While examining the eligibility of the petitioner to the post of Superintending Engineer, it was found that the immediate junior of the petitioner namely, Thiru.M.Karunakaran, was under suspension and the name of his next immediate junior Thiru.C.Mohan was included in the temporary list of Executive Engineer fit for Superintending Engineer for the year 2019-20, approved in G.O(D).No.31, PWD, dated 28.06.2019 and Thiru.C.Mohan, Executive Engineer was promoted as Superintending Engineer on 23.07.2019, by which time, the petitioner has retired from the service on 30.06.2019 AN, on attaining the age of superannuation. Hence, the petitioner is not eligible for restoration of seniority in the post of Superintending Engineer. Considering the above factual position in accordance to the provision of rules, the respondent, by its order dated 09.11.2022, in G.O(2D).No.71, WR (A1) Department, had ordered to include the name of



the petitioner in the temporary list of Assistant Executive Engineer for promotion to the post of Executive Engineer for the year 2016-17 at Seniority No.1 and had also ordered that the pay of the petitioner shall be regulated as per the first proviso of Ruling 17 under Fundamental Rule 27. Considering his ineligibility for promotion to the post of Superintending Engineer, the respondent has not issued any orders. Hence, he prayed for dismissal of the petition.

7. Considering the submissions made by the learned counsel on both sides and on perusal of the records, it is seen that Thriu.C.Mohan, Executive Engineer was promoted as Superintending Engineer on 23.07.2019, by which time, the petitioner has retired from service on attaining the age of superannuation on 30.06.2019 AN. Hence, the petitioner is not eligible for restoration of seniority in the post of Superintending Engineer. While examining the suitability of the petitioner to the post of Executive Engineer, it was found that the petitioner was on unauthorized absence from duty for the period from 27.04.2007 to 08.11.2010 and the irregularity of unauthorized absence from duty was completed on 08.11.2010 AN. Therefore, as per the provisions of Clause 13 under Part A (II) contained in



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Schedule XI of the Tamil Nadu Government Servants (Conditions of Service)

Act, 2016, the petitioner is not eligible for inclusion of his name in the panel of Executive Engineers for the year 2015-16. Hence, this Writ Petition has no merits and the same is liable to be dismissed.

8. Accordingly, this Writ Petition is dismissed. No costs.

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Index : Yes / No

Speaking order / Non-speaking order

To

The Secretary to Government of Tamil Nadu,
Public Works Department,
Secretariat, Fort St George, Chennai 9.



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VIVEK KUMAR SINGH, J.

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