



W.A.No.2604 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.2604 of 2022 and

CMP No.20643 of 2022

The Principal Secretary to Government,
Public Works Department, Secretariat,
Chennai 600 009.

... Appellant

Vs.

A. Subramani

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 28.01.2022 passed by this Court in W.P.No.27864 of 2019 and allow the writ appeal.

For Appellant : Mr.V.Manoharan, Addl.Govt.Pleader

For Respondent : Mr.R.Prem Narayan
for respondents 1 to 3

JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra Court appeal has been filed by the Government as against



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the impugned order passed by the learned Single dated 28.01.2022 in W.P.No.27864 of 2019, in and by which, the impugned order dated 12.07.2018 was quashed and the appellant herein was directed to promote the respondent herein, temporarily as Assistant Executive Engineer and Executive Engineer, on par with his immediate juniors, with all service and monetary benefits.

2. The brief facts leading to the filing of the present writ appeal is as follows:

The respondent herein was directly recruited as Assistant Engineer by the Tamil Nadu Public Works Commission on 23.10.1987. While he was working in Nambiyar Reservoir Project, Tirunelveli, a criminal complaint was registered against him as well as other 18 Engineers and 27 contractors on 29.05.1995 in Crime No.3/1995 for the offences punishable under Sections 120, 409 and 420 IPC r/w 13 of Prevention of Corruption Act, in which the respondent was arrayed as 5th accused. After 8 years from the date of FIR, charge sheet was filed on 04.09.2003 in Special Case No.5/2023 before the Chief Judicial Magistrate-cum Special Judge,



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Tirunelveli, however, trial has not been commenced on the date of filing writ petition, even after 15 years.

2.1 In such circumstances, the Department had issued G.O.Ms. No.369, Pubic Works Department, dated 04.12.2007 by promoting juniors to the respondent as Assistant Executive Engineer, however, he was denied promotion, inview of pendency of the above criminal case. On the date of promotion of juniors on 4.12.2007, the respondent had no 17(b) charge pending against him and hence, he filed W.P.No.5437/2014 on 21.02.2014, seeking promotion as Assistant Executive Engineer under Rule 39(d) of the Tamil Nadu State and Subordinate Service Rules, without prejudice to the criminal case. Immediately, the respondent was served charge memo under 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules on 14.05.2014, i.e. after a lapse of more than 22 years, for the allegation of the year 1991 to 1994 and the respondent. The above charge memo was challenged before this court by filing W.P.No.44625/2016, in which, interim stay was granted.



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2.2. In the meantime, the above W.P.No.5437/2014 was allowed by the writ court on 23.03.2018, directing the appellant to consider the case of the respondent for promotion notwithstanding the pendency of the criminal prosecution and if there is no other legal impediments, subject to the result of the criminal prosecution. Pursuant to the order of the writ court, the respondent, has passed an order dated 12.07.2018, rejecting the claim for promotion as Assistant Executive Engineer, on the sole ground that a charge memo under Rule 17(b) is pending. Against which, the respondent filed W.P.No.27864/2018 to quash the above order and it was allowed, by order dated 28.01.2022, as stated supra. Now challenging the order of the writ court in W.P.No.27864/2018, the present writ appeal has been filed.

3. The Additional Government Pleader appearing for the appellant submitted that the respondent had attained the age of superannuation on 31.03.2013 itself and he was not permitted to retire from service and now he is getting the subsistence allowance only, as per the provisions under the Rules. Therefore, the relief sought for by the respondent cannot be granted. He further submitted that, still the criminal case in Spl.Case.No.5/2023 is



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pending against the respondent and hence, the order of the writ court is liable to be set aside.

4. The learned counsel for the respondent submitted that, the charge memo, which was issued by the appellant against the respondent on 14.05.2014 under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for the allegation of the year 1991 to 1994, i.e. after a lapse of 22 years, was quashed by this Court by order dated 08.01.2020 passed in W.P.No.44625/2016. He further submitted that, as against the order passed in W.P.No.44625/2016, the Department had filed appeal in W.A.No.391/2022, which was also dismissed on 25.02.2022. Further, he also produced the copy of the order passed in W.A.No.391/2022, dated 25.02.2022. Therefore, the appellant/ Department may be directed to give notional promotion as well as the other benefits to the respondent.

5. Heard the learned Additional Government Pleader appearing for the appellant and the learned counsel for the respondent and we have perused the materials on record.



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6. The following facts are not denied by both sides.

i) A criminal case in Special Case No.5/2023 (Crime No.3/1995 for the offence punishable under Sections 120, 409, 420 IPC r/w Section 13 of Prevention of Corruption Act) is still pending before the Chief Judicial Magistrate cum Special Judge, Tirunelveli, against the respondent herein.

ii) The order passed by this Court in W.P.No.5437/2014, dated 23.03.2018, directing the appellant to consider the respondent for promotion temporarily, subject to the outcome of the above criminal case, has become final and the same was not challenged by the appellant.

iii) The charge memo dated 14.05.2014 issued against the respondent was quashed by this Court in W.P.44625/2016, vide order dated 08.01.2020 and the appeal in W.A.No.391/2022 was also dismissed on 25.02.2022.

iv) The respondent had attained the age of superannuation on 31.03.2023 and he was not permitted to retire from service.

7. Admittedly, the earlier order of the Writ Court in W.P.No.5437/2014 had attained finality and the charge memo issued against the respondent has also been quashed. In the meanwhile, the respondent had attained the age of superannuation on 31.03.2023. In such circumstances, there is no legal impediment to consider the claim of the respondent notionally. Accordingly, the respondent is entitled for notional promotion and other monetary benefits, as per Rules, subject to the outcome of Spl.Case No.3/2023.



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8. At this juncture, the learned counsel for the respondent submitted that, the above criminal case was originally numbered as Spl.Case No.5/2003 and subsequently, it was renumbered as Spl.Case No.5/2023. He further submitted that, one T.Ayappa Raja, co accused in the above case, had filed CrI.RC No.230/2017 before the Madurai Bench of this court, as against the dismissal order passed in the discharge petition by the Trial Court and the same was dismissed on 21.08.2018. Challenging the above order, he moved a special leave petition in SLP No.10960/2018, before the Hon'ble Supreme Court, in which a specific direction was issued on 04.01.2019 to the Trial Court to expedite hearing of the case and dispose it, within six months from that date. However, the above criminal case is still pending for more than 30 years and hence, appropriate direction may be given to the above special court to dispose the case at an earliest.

9. Considering the fact that the above Spl.Case No.3/2023 (originally numbered as Spl.Case No.3/2003) is pending for more than three decades, the learned Chief Judicial Magistrate-cum Special Judge, Tirunelveli is directed to the conduct the case on day-to-day basis, if no other legal



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impediment, and dispose the above case at an earliest, without any further delay. Further, *the learned Chief Judicial Magistrate-cum-Special Judge, Tirunelveli is directed to submit a report before this court, after six months period.* The Superintendent of Police, Tirunelveli is also directed to give necessary direction to the concerned police officials to co-operate for early disposal of the above case.

10. With the above directions, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (K.B.J.)

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Internet: Yes/No

Index : Yes/No

mst

Copy to:

1. The Chief Judicial Magistrate cum Special Judge, Tirunelveli.
2. The Superintendent of Police, Tirunelveli.



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and
K. KUMARESH BABU, J.

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