



W.P.No.26795 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.26795 of 2022

and

W.M.P.Nos.25847 & 25848 of 2022

M.Bhaskaran

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Petitioner

Vs

1.The Secretary to Government,
Agriculture Production Commissioner &
Principal Secretary to Government,
Agriculture Department,
Fort St.George, Chennai – 9.

2.The Chief Engineer,
Agricultural Engineering,
487, Anna Salai,
Nandanam, Chennai – 600 035.

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Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent in connection with the impugned order passed by him in Letter No.GE3/20115/2021 dated 29.08.2022 and quash the same and direct the respondents to consider the claim of the petitioner for inclusion of his name in the panel of Executive Engineer fit for promotion as Superintending Engineer (Agricultural Engineering) for the panel year



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2020-2021 as published by the respondents in GO 2(D) No.204, Agriculture (AA3) Department, dated 01.12.2020 and further direct the respondents to promote the petitioner as Superintending Engineer, Agricultural Engineering notionally and grant him all consequential service and monetary benefits at par with his junior.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

For Respondents : Dr.T.Seenivasan
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 29.08.2022 in Letter No.GE3/20115/2021 passed by the second respondent, thereby rejected the claim of the petitioner for promotion to the post of Superintending Engineer (Agricultural Engineering) for the panel year 2020-2021.

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

3. The petitioner had joined the service as an Assistant



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Engineer/Agricultural Engineer through a selection conducted by TNPSC on 11.02.1985. Thereafter, he was promoted to the post of Assistant Executive Engineer on 07.09.2016. Further, he was promoted to the post of Executive Engineer on 30.10.2017. On attaining the age of superannuation, he retired from service in the month March 2023. He had attained sufficient seniority and merit for consideration of his claim for promotion to the post of Superintending Engineer in the panel for the year 2020-2021. The crucial date for the preparation of the panel for the post of Superintending Engineer from the post of Executive Engineer is 01.04.2020. The estimated vacancy for the post of Superintending Engineer for the panel of 2020-2021 was six. However, the claim made by the petitioner was rejected and other six persons have been included in the panel for the promotion to the post of Superintending Engineer on 01.02.2020. Therefore, the petitioner made a representation. However, it was rejected by an order dated 18.02.2021 on the ground that the petitioner is facing criminal case in respect of replacement of old motor pumpset with new pumpset. It was challenged before this Court in W.P.No.13906 of 2021.

4. As per Section 7(1) Schedule XI – Rule 5 & 6 of the



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Tamil Nadu Government Servants (Conditions of Service) Act, 2016, non-inclusion of petitioner's name in the promotion panel prepared for the year 2020-2021 by the respondent is contrary to the Rules. Accordingly, more filing of cases in Courts by the appropriate Investigating Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. Therefore, this Court, by an order dated 27.06.2022, set aside the order passed by the second respondent and directed the respondents to consider the case of the petitioner afresh and pass appropriate orders in accordance with law by taking note of Section 7(1) Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 within a period of twelve weeks. On the strength of the panel, once again, by an order dated 29.08.2022, the second respondent rejected the claim of the petitioner.

5. The learned Senior Counsel appearing for the petitioner contended that admittedly, on the crucial date i.e., 01.04.2020, there was no charge sheet filed as against the petitioner, pursuant to the registration of the FIR in Crime No.7 of 2021 on the file of the V & AC, Vellore Detachment, Vellore. In fact, after registration of the FIR, the petitioner



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was given promotion to the post of Assistant Executive Engineer on 07.09.2006 and further he was promoted to the post of Executive Engineer on 30.10.2017. In the said FIR, the Investigating Agency completed the investigation and final report was filed on 14.07.2020 and the same has been taken cognizance by the Trial Court in C.C.Nos. 5 & 6 of 2021, which is pending for trial.

6. A perusal of the counter filed by the second respondent reveals that a criminal case has been registered as against the petitioner in Crime No.7 of 2012. Thereafter, prosecution sanction was accorded by the first respondent in G.O.(3D) No.53, Agriculture (AA8) Department, dated 16.04.2019 and G.O.(3D) No.54, Agriculture (AA8) Department, dated 16.04.2019 respectively to the Vigilance Department for prosecuting the petitioner. Subsequently, a charge sheet has been laid and the same has been taken cognizance in C.C.Nos. 5 & 6 of 2021 on the file of the Chief Judicial Magistrate, Vellore, for the charges under Sections 120-B, 409, 467, 467 r/w 471, 468, 468 r/w 471, 477-A, 167 of IPC and Section 13(1)(c)&(d) of Prevention of Corruption Act, 1988 r/w 109 of IPC.

7. In view of the criminal case pending with the petitioner,



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the petitioner's name was not considered to include in the panel for promotion to the post of Superintending Engineer. Further, it reveals that though a crucial date of Superintending Engineer panel is 01.04.2020, the issue of promotion is being considered now and hence, the date of actual consideration of the petitioner's name is the present date. Therefore, as per Section 7(1) of the Schedule XI, Part-A, II(1), the petitioner cannot be considered for promotion.

8. Admittedly, a criminal case was registered as against the petitioner and others in Crime No.7 of 2012 on the file of the V & AC, Vellore Detachment, Vellore on 24.02.2012. The first respondent accorded sanction to prosecute the petitioner only on 16.04.2019 by G.O.(3D) No.53, Agriculture (AA8) Department, dated 16.04.2019 and G.O.(3D) No.53, Agriculture (AA8) Department, dated 16.04.2019. Thereafter, the investigating agency completed the investigation and filed final report on 14.07.2021 and the same was taken cognizance on 19.08.2021 by the Chief Judicial Magistrate, Vellore in C.C.Nos.5 & 6 of 2021 as against the petitioner for the aforesaid charges. No doubt, the petitioner is now facing criminal prosecution.

9. The crucial date for the preparation of the panel for the



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post of Superintending Engineer is 01.04.2020. On the date of crucial date, no charge sheet was laid as against the petitioner, pursuant to the registration of the FIR in Crime No. 7 of 2012 on the file of the V & AC, Vellore Detachment, Vellore. Infact, pending FIR in Crime No.7 of 2012, the petitioner was granted promotion to the post of Assistant Executive Engineer on 07.09.2016 and further he was promoted to the post of Executive Engineer on 30.10.2017. Therefore, the petitioner submitted a representation to consider his name in the panel for promotion to the post of Superintending Engineer and the same was rejected by the impugned order dated 18.02.2021. The said impugned order was quashed by this Court and the respondents were directed to consider the case of the petitioner afresh. Unfortunately, once again for the very same reason, the petitioner was denied promotion to the post of Superintending Engineer by the impugned order dated 29.08.2022.

10. It is relevant to extract the provision under Section 7(1) Schedule XI – Rule 5 & 6 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 :

“(5) Mere filing of cases in Courts by the



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appropriate Investigating Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list.

(6) The name of a member of service shall not be considered for inclusion in the approved list if he is arrested for an offence under the Prevention of Corruption Act, 1988.”

11. Thus, it is clear that mere filing of cases as against the petitioner shall not be a bar for inclusion of his name in the approved list for promotion to the next post. That apart, as per Rule 6, a member shall not be considered for inclusion in the approved list if he is arrested for an offence under the Prevention of Corruption Act. Admittedly, the petitioner was not arrested pursuant to the registration of the FIR in Crime No.7 of 2012 on the file of the V & AC, Vellore Detachment, Vellore. Further, no charge sheet was laid as against the petitioner as on 01.04.2020. The charge sheet was only laid on 14.07.2020 and the same was taken cognizance by the Trial Court on 19.08.2021. Now, the



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petitioner attained the age of superannuation and as such, he is entitled for notional promotion to the post of Superintending Engineer.

12. In view of the above, the order dated 29.08.2022 in Letter No.GE3/20115/2021 passed by the second respondent, is hereby quashed. Accordingly, this writ petition stands allowed. The respondents are directed to promote the petitioner as Superintending Engineer, Agricultural Engineering notionally and grant him all consequential service and monetary benefits on par with his juniors. Now, the petitioner is facing criminal proceedings and as such, grant of consequential service and monetary benefits on par with the juniors does not arise. Consequently, connected miscellaneous petitions are closed. No costs.

31.01.2024

Internet : Yes
Index : Yes/No
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G.K.ILANTHIRAIYAN, J.

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To



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