



Writ Petition No.14532 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>04.03.2024</i>
<i>Pronounced on</i>	<i>22.04.2024</i>

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.14532 of 2017

K.Ashok Kumar

..Petitioner

vs.

1.The Principal Secretary to Government
of Tamilnadu,
Micro, Small and Medium Enterprises
E(1) Department, Secretariat,
Chennai-600 009.

2.The Additional Chief Secretary/
Industries, Commissioner, and
Director of Industries and Commerce,
III Floor, SIDCO Corporate Office Building,
Thiru Vi. Ka. Industrial Estate,
Guindy, Chennai-600 032

3.Thiru T.Kannan,
Deputy Director (Technical),
District Industries Centre,
Virudhu Nagar.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of



Writ Petition No.14532 of 2017

India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records of the first respondent pertaining to his letter no.4375/E1(1)/2016-2 dated 08.03.2017 and communicated by the second respondent on 28.04.2017 in Endt no.10793/EE1-2015 to the petitioner, quashing the same and consequently direct the first and second respondents to give him notional promotion as Deputy Director (Technical) with effect from 09.10.2014, when his junior, the third respondent was promoted to the post of Deputy Director(Technical) as per G.O.(4D) no.04, Micro, Small and Medium Enterprises E-1(1) Department vide S.No.8.

For Petitioner : Ms.Meenalochini for

Mr.P.Chandrasekaran

For Respondents : Mr.L.S.M.Hasan Fizal, AGP for R1 &
2

ORDER

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the entire records of the first respondent pertaining to his letter no.4375/E1(1)/2016-2 dated 08.03.2017 and communicated by the second respondent on 28.04.2017 in Endt no.10793/EE1-2015 to the petitioner, quash the same and consequently, direct the first and second respondents to give him



notional promotion as Deputy Director (Technical) with effect from 09.10.2014, when his junior, the third respondent was promoted to the post of Deputy Director (Technical) as per G.O.(4D) no.04, Micro, Small and Medium Enterprises E-1(1) Department vide S.No.8.

2.The brief facts, which constrained the petitioner to approach this Court by way of the present Writ Petition are as follows:

The petitioner initially joined in the second respondent Department as Junior Engineer (Industries) in the year 1982 and his services were regularized in the year 1990 and later, he was promoted to the post of Assistant Director (Technical) and posted as Project Manager at District Industries Centre, Tiruvarur with effect from 10.02.2010. While so, the first respondent and second respondent proposed to prepare a panel to the post of Deputy Director (Technical) for the period 2013-2014. According to the petitioner, since he had reached the zone of consideration for promotion to the post of Deputy Director(Technical), he made a representation on 01.03.2013 to the second respondent to include his name in the panel. A Government



Writ Petition No.14532 of 2017

Order in G.O.(4D) No.49 Micro, Small and Medium Enterprises E1(1)

Department, dated 30.12.2013 was issued by the Government, wherein, the seniority of the petitioner in the list to the post of Assistant Director (Technical) was fixed as seniority no.78 while the seniority of the third respondent was fixed at seniority no.79. The Annual Confidential Reports (in short "ACRs") of the petitioner for the period from 25.05.2010 to 07.06.2011 and 01.02.2012 to 17.07.2012 were called for by the second respondent, for which, the District Collector, Kancheepuram had sent ACRs for the period from 25.05.2010 to 07.06.2011. However, the ACR for the period from 01.02.2012 to 17.07.2012 was not sent by the District Collector, Tiruvarur. On 26.02.2014 and 05.05.2014, the petitioner made representations, requesting the first and the second respondents to get necessary ACRs from the concerned authority and to include his name in the panel.

3.Be that as it may, according to the petitioner, to his shock and surprise, he was issued a memo dated 16.04.2014, by the second respondent under Rule 17(a) of the Tamilnadu Civil Services



(Disciplinary and Appeal) Rules for a certain lapse, which was said to have been taken place during the period between 04.06.1997 and 01.06.2007. The petitioner has submitted his explanation on 19.05.2014 and requested to exonerate him from the charges. However, the second respondent vide proceedings dated 23.05.2014, held that the charge was proved against the petitioner and imposed with a punishment of penalty of recovery of the amount equivalent to cut off increment for a period of one year without cumulative effect. Pursuant to the same, the petitioner has also remitted the amount.

4.In the meanwhile, the petitioner had reached the age of superannuation and he was permitted to retire from service as Assistant Director (Technical) on 31.05.2014 vide G.O.No.84 dated 02.06.2014. The first respondent vide G.O.No.44 dated 09.10.2014, had drawn a panel to the post of Deputy Director of Industries and Commerce (Technical/Material) for the year 2013-14, consisting of 8 persons, showing the name of the petitioner as un-numbered S.No.(in between S.Nos.7& 8) by mentioning the same as “retirement” on 31.05.2014.



The junior of the petitioner, who is the third respondent herein was shown at serial no.8 and all the said 8 persons were posted as Deputy Directors vide G.O.No.45, dated 09.10.2014.

5.Later, aggrieved by the the imposition of punishment, the petitioner preferred an Appeal before the first respondent, who in turn, set aside the punishment vide order dated 05.02.2015 and also ordered to repay the amount to the petitioner which was recovered from him. Thereafter, the petitioner made a representation dated 24.04.2015 and 05.10.2015 to the first respondent, requesting to include his name in the panel to the post of Deputy Director (Technical) for the panel year 2013-14 and give him notional promotion as in the case of one Palanisamy, Joint Director (Engineering). However, the second respondent vide proceedings dated 23.11.2015 has not considered the claim of the petitioner on the ground that the petitioner had retired from service even before sending of panel proposals and finalization of the same and also due to the disciplinary proceedings which ended in punishment and also as no ACR was received at a relevant point of



time. As against the rejection, the petitioner preferred an appeal before the first respondent on 19.06.2016, who in turn, rejected the Appeal stating that the request of the petitioner for inclusion of his name in the panel and providing notional promotion, cannot be accepted as his case cannot be compared on par with that of the said A.Palanisamy. Aggrieved by these orders, the petitioner has constrained to file the present Writ Petition.

6.A counter affidavit has been filed on behalf of the 1st and 2nd respondents, wherein, it is stated that the claim of the petitioner for inclusion of his name in the panel for the post of Deputy Director (Technical) for the year 2013-14 was not considered, based on the preliminary enquiry by the Director of Vigilance Anti Corruption, the 1st respondent had recommended to take disciplinary action against the petitioner for the lapses occurred during his tenure as Junior Engineer (Industries), which culminated in the punishment of stoppage of increment for a period of one year. Later, the petitioner was permitted to retire from service on his attaining the age of superannuation on



31.05.2014. It is further stated that the annual confidential report of the petitioner was called for it was found that he has not obtained ACR for the periods from 25.05.2010 to 07.06.2011 and 01.02.2012 to 17.07.2012 from the District Collector, Tiruvarur respectively. The petitioner's name did not figure in the approved list, while the eight individuals who were included in the approved list, were issued with the posting orders by the first respondent vide G.O.No.46, dated 9.10.2014. The case of the petitioner cannot be compared on par with the individual Thiru A.Palanisamy, whose name was deferred due to framing of charges and later, as the charges were set aside, he was given notional promotion, while in the case of the petitioner, his name was not deferred in the approved panel due to pendency of charges and later, he was not in service on the date of approval of the panel since he had retired from service even before sending of panel proposals by the second respondent for the year 2013-14 and since his junior, i.e. 3rd respondent was in service and his name was approved, he was promoted. It is further stated that even after setting aside of the punishment, the request of the petitioner for inclusion in the panel for



the post of Deputy Director (Technical) could not be considered since the petitioner had already retired on superannuation on 31.05.2014.

With these averments, the 1st and 2nd respondent sought for dismissal of the Writ Petition.

7.The contention of the petitioner is that his name has to be included in the panel to the post of Deputy Director of Industries and Commerce(Technical) for the panel year 2013-2014 as done in the case of Thiru A. Palanisamy, Joint Director, Engineering and to sanction the terminal benefits and pension in the post of Deputy Director (Technical) with effect from 01.06.2014. It appears that in view of the pendency of the disciplinary proceedings his name was not considered. It is an admitted fact that the second respondent vide proceedings dated 23.05.2014 held that the charge framed against the petitioner was proved and imposed with a punishment of penalty of recovery of the amount equivalent to cut of increment for a period of one year without cumulative effect. But in an Appeal preferred by the petitioner against the order of imposition of punishment, the Appellate Authority has set



aside the punishment order and also ordered to repay the amount to the petitioner, which was recovered from him by order dated 05.02.2015.

In the light of the order of the Appellate Authority dated 05.02.2015, the order passed by the second respondent in disciplinary proceedings against the petitioner was set aside. Thereafter, the petitioner requested the respondents to include his name in the panel for the year 2013-14 and to give him notional promotion as already he was retired from service on 31.05.2014. The reasons stated by the respondents for not considering the request of the petitioner is that before sending the panel proposals to the post of Deputy Director (Technical) to the Government for the year 2013-14, the petitioner was retired from service on 31.05.2014 and as such his case cannot be considered as a similar case with the case of Thiru A. Palanisamy and accordingly, rejected the request of the petitioner. In the case of Palanisamy also disciplinary proceedings under Rule 17-b of the Tamilnadu Civil Services(Discipline & Appeal) Rules 1955 were pending and though he was qualified for the panel year 2005-06 on the crucial date i.e., on 15.04.2005, in view of the pendency of disciplinary proceedings, his



case was not considered and he was also permitted to retire on 31.10.2005 without prejudice to the disciplinary proceedings which was dropped vide G.O.(2D) No.22, Small Industries(E.11.2) Department dated 29.03.2007. Thereafter, when his request for notional promotion was not considered, he approached this Court by filing WP.No.10087 of 2011 and the same was allowed by order dated 06.03.2013. Against the order of the learned Single Judge in W.P.No.10087 of 2011, the official respondents therein filed Writ Appeal in WA.No.557 of 2017. The said Appeal was dismissed by a Division Bench of this Court vide judgment dated 30.04.2014. In the light of the order of this Court the said Palanisamy was granted notional promotion.

8.In the present case also though the petitioner was entitled to include his name for the post of Deputy Director of Industries and Commerce (Technical) for the year 2013-14 his name was not considered due to pendency of disciplinary proceedings against him. The petitioner was permitted to retire from service on 31.05.2014. It is



an admitted fact that in the Appeal, which was filed against the order of imposition of punishment, the Appellate Authority passed the order on 05.02.2015 setting aside the punishment order and also directed to repay the amount to the petitioner which was recovered from him. As per the Appellate Authority order dated 05.02.2015, there is no punishment order against the petitioner, as such the respondents ought to have considered the request of the petitioner to grant notional promotion.

9.For the above stated reasons, the order impugned in this Writ Petition is liable to be set aside.

10.Accordingly, the Writ Petition is allowed with the following directions:

(i)The impugned order of the first respondent vide in no.4375/E1(1)/2016-2 dated 08.03.2017 is set aside.

(ii) The respondents are directed to issue order for notional promotion considering the fact that he is eligible to be included for the



Writ Petition No.14532 of 2017

panel year 2013-2014 for the purpose of revision of pension alone,
within a period of two months from the date of receipt of a copy of this
order.

No costs.

22.04.2024

Index : Yes/No
Speaking order: Yes/No
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To

1.The Principal Secretary to Government
of Tamilnadu,
Micro, Small and Medium Enterprises
E(1) Department, Secretariat,
Chennai-600 009.

2.The Additional Chief Secretary/
Industries, Commissioner, and
Director of Industries and Commerce,
III Floor, SIDCO Corporate Office Building,
Thiru Vi. Ka. Industrial Estate,
Guindy, Chennai-600 032



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Writ Petition No.14532 of 2017

BATTU DEVANAND, J

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Writ Petition No.14532 of 2017

22.04.2024