



W.P.No.1092 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2025

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.1092 of 2020

M.Kamaraj

...Petitioner

Vs

1. The Principal Secretary to Government,
Highways & Minor Ports (HL1) Department
Fort St.George, Chennai – 9.

2. The Director General (Highways),
Highways Department,
Chepauk, Chennai – 5.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to consider the claim of the petitioner for promotion as Superintending Engineer by including him in the panel of the year 2012-13 and promote him notionally as Superintending Engineer and grant him all consequential service and monetary benefits including revision of pension within a reasonable time along with arrears.

For Petitioner : Ms.R.Deepika Sonali
for Mr.M.Muthappan

For Respondents : Mr.T.M.Rajangam,
Government Advocate



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ORDER

This petition has been filed for directing the respondents to consider the claim of the petitioner for promotion as Superintending Engineer by including him in the panel of the year 2012-13 and promote him notionally as Superintending Engineer and grant him all consequential service and monetary benefits including revision of pension within a reasonable time along with arrears.

2. The sequence of events leading to the filing of this Writ Petition are as follows:-

2.1 The petitioner entered Government service as Assistant Engineer in Highways Department on 25 September 1981. He was promoted as Assistant Divisional Engineer and later as Divisional Engineer.

2.2 While so, the Chief Engineer (General) Highways, Chennai issued a charge memo dated 14.05.2009 to the petitioner containing as

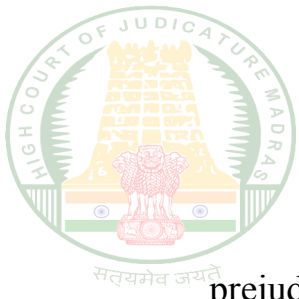


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many as four charges. Similarly, four other employees were also proceeded departmentally. The Enquiry Officer submitted a report to the effect that charges 1 and 2 have not been proved. With respect to charge No.3, the Enquiry Officer reported that it was partly proved. Since charge No.3 was partly proved, the Enquiry Officer opined that charge No.4 was also proved. The Enquiry Officer arrived at a finding that the petitioner executed work by using the required quantity of bitumen and emulsion and that there was no loss to the Government. According to the Enquiry Officer, there was a procedural lapse in accounting materials at section level. The Disciplinary Authority issued second show cause notice to the petitioner and thereafter, imposed the punishment of stoppage of increment for a period of three months without cumulative effect by G.O.(D)No.216 Highways and Minor Ports (HL1) dated 25.10.2013. The said order is challenged by the petitioner in W.P.No.33208 of 2013, which was allowed setting aside the order of punishment by order dated 09.03.2015 passed by this Court.

2.3 In the interregnum, the petitioner has filed another Writ Petition in W.P.No.3986 of 2014 seeking to implement the punishment without



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prejudice to the contention raised by him in W.P.No.33208 of 2013 and this Court by order dated 12.02.2014 directed the respondents to implement the punishment imposed on the petitioner in the aforesaid order from the date on which it was communicated, within a period of four weeks from the date of receipt of a copy of that order. As there was no response to the said order passed by this Court, the petitioner has also filed another Writ Petition in W.P.No.20499 of 2015 seeking to consider and pass orders on the representation made by the petitioner for promotion as Superintending Engineer for the panel year 2009-2010 and this Court by order dated 09.07.2015 directed the first respondent to consider the said representation and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of that order. Thereafter, the petitioner has retired from service on 31.12.2015 on attaining the age of superannuation as Divisional Engineer.

2.4 After a lapse of five years, the respondents had filed Writ Appeal along with the application to condone the delay in filing the same, which was condoned and the Writ Appeal is numbered as W.A.No.1899



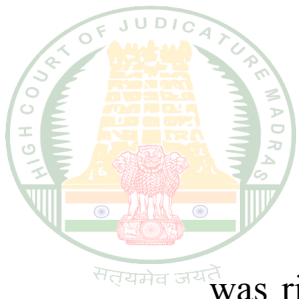
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of 2018. However, the Division Bench of this Court has not granted any stay of the order dated 09.03.2015 in W.P.No.33208 of 2013 passed by this Court.

2.5 Despite several representations and legal notices to consider the claim of the petitioner for promotion and in the absence of any stay granted by the Division Bench of this Court, the respondents have not considered the petitioner for promotion to the post of Superintending Engineer. At the same time, one Mani, who is petitioner's in terms of seniority in the feeder category post, was promoted as Superintending Engineer on 23.08.2013. Therefore, the petitioner has filed this Writ Petition to direct the respondents to consider his claim for promotion as Superintending Engineer by including him in the panel of the year 2012-13 and promote him notionally as Superintending Engineer and grant him all consequential service and monetary benefits including revision of pension within a reasonable time along with arrears.

3. The respondents have filed counter affidavit stating that the petitioner has committed procedural lapses and as such, the punishment



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was rightly imposed. The claim of the petitioner was never overlooked, but he had made himself ineligible for consideration. The Government had independently analyzed the issue on the basis of Charge Memo explanation of the petitioner, Inquiry Report, further explanations and the connected records before imposing the punishment. The petitioner has misled this Court while deciding W.P.No.3986 of 2014 by suppressing about the clarification issued by the Government dated 11.09.2009 clarifying that the currency of punishment (including withholding of increment) begins when the punishment order is communicated to the concerned Government Servant and concludes when the actual period of punishment is over. Since the increment for the petition was due on 01.10.2014, the date of conclusion of three months period is 31.12.2014. Therefore, the respondents have filed Review Application for reviewing order dated 12.02.2014, in W.P. No.3986 of 2014 along with application to condone delay in filing the same, which is pending. As the petitioner had obtained two different orders regarding implementation of the punishment imposed on him, the request of the petitioner cannot be considered.



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4. The learned counsel for the petitioner would submit that in the absence of any stay granted by the Division Bench of this Court, the respondents ought to have considered the claim of the petitioner. She would further submit that the respondents have filed the Writ Appeal in W.A.No.1899 of 2018 just to prolong the litigation so that the petitioner would suffer. After the filing of this Writ Petition, the Writ Appeal in W.A.No.1899 of 2018 filed by the respondent has been disposed by order dated 01.03.2022 with a direction to extend the benefits to the petitioner.

5. The learned Government Advocate appearing for the respondents would reiterate the submissions made in the counter affidavit justifying the acts of the respondents.

6. At this juncture, it would be necessary to notice that this Court by an elaborate order dated 09.03.2015 allowed the Writ Petition in W.P.No.33208 of 2013 holding as follows:-

"Conclusion :-

21. The petitioner has clearly proved that enquiry was initiated and concluded after a period of ten years. There were



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no materials before the Enquiry Officer to arrive at a conclusion that there was a procedural lapse on the part of the petitioner so as to give a positive finding with respect to charge no.3. The Disciplinary Authority violated the mandatory provisions of law by not considering the further representation submitted by the petitioner. The petitioner must thereafter succeed in this Writ Petition.

22. The impugned order in in GO (D) No.216, Highways & Minor Ports (HL1) Department dated 25 October 2013 is set aside.

23. In the upshot, I allow the Writ Petition."

It would also be necessary to extract the relevant portion from order dated 12.02.2014 in W.P.No.3986 of 2014, which reads as follows:-

"4. Though the petitioner filed writ petition in W.P.No.33208 of 2013 before this Court challenging the punishment imposed against him, he made a representation to the respondents for implementation of the said punishment since if the order of punishment order is implemented from the date on which he was served, the period of punishment will be



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over by 01.12.2013 and thereby he would become eligible for next promotion. The petitioner relied upon the guidelines issued by the Government in respect of giving effect to the punishment in Lr.No.28790/3/2000/1 Personnel & Administrative Reforms (s) Department dated 05.07.2001 in and by which, it is categorically stated that an order imposing any punishment including withholding of increment takes effect from the date on which the said order is communicated to the concerned government servant. In fact, after imposing the punishment, there was no impediment for the respondents to implement the order of punishment since there was no interim order in the writ petition filed by the petitioner restraining them from implementing the order of punishment. Therefore, it is incumbent upon the respondents to implement the order of punishment once imposed against the petitioner.

Accordingly, the respondents are directed to implement the punishment imposed on the petitioner in GO(D)No.216 Highways and Minor Ports (HL1), dated 25.10.2013 from the date on which it was communicated as per the guidelines



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*issued by the Government in Letter No.28790/3/2000/1
Personnel & Administrative Reforms (s) Department dated
05.07.2001, within a period of four weeks from the date of
receipt of a copy of this order."*

It must also be noticed that after the filing of this Writ Petition, the Division Bench of this Court by judgment dated 01.03.2022 had disposed W.A.No.1899 of 2018 holding as follows:-

"7.Once the impugned order is quashed, it is deemed that the order impugned in the writ petition is non-est in the eye of law and the employee should have been considered for promotion. In this case, even assuming for the sake of argument that the writ petitioner has not filed W.P.No.33208 of 2013 and accepted the punishment, atleast from the futuristic date, he should have been considered and promoted and depending upon the outcome of the writ petition the benefits could have been extended retrospectively. In the present case on hand neither the case of the writ petitioner has been considered for the future promotion nor benefits have been extended even after the writ petition was allowed. If the



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writ petitioner was eligible as per the order of this Court dated 12.02.2014 in WP.No.3986 of 2014 and he being in service, the benefits ought to have been extended from the future date, taking note of the crucial date and zone of consideration, if found eligible. Once the order has been quashed, the writ petitioner would be automatically entitled to all the benefits, as if there is no punishment at all in the eye of law.

8. With the above observation, this Writ Appeal is disposed of....."

7. In such circumstances, the parties are bound to abide the aforesaid judgment of the Division Bench of this Court. Viewed from that perspective, the respondents are directed to consider the claim of the petitioner in the light of the aforesaid judgment of the Division Bench of this Court and pass appropriate orders on merits and in accordance with law.

8. With the above observations, the Writ Petition is disposed of.



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There shall be no order as to costs.

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Index: Yes/No
Speaking order/Non-speaking order
kv

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V.BHAVANI SUBBAROYAN,J.

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