

(2011) 07 MAD CK 0487

In the Madras High Court

Case No : Writ Petition No. 9968 of 2010 and M.P. No. 1 of 2010

K. Duraikannu

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2011) 07 MAD CK 0487

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S. Mani, for the Appellant; K.V. Dhanapalan, Additional Government Pleader, for the Respondent

Judgement

T. Raja, J.—The Petitioner-K. Duraikannu has filed the present Writ Petition seeking for the issuance of a Writ of Certiorari Mandamus, calling for the entire records culminated in passing of the order in G.O.(D). No. 516, Public Works (A1) Department, dated 04.11.2009, on the file of the Respondent, quash the same insofar as it denies the monetary benefit to the Petitioner and further direct the Respondent to pay full salary to the Petitioner in the post of Junior Director, Institute of Water Studies, Chennai, from 12.03.2008 till 04.11.2009 or at least from 06.09.2008 till 04.11.2009 with all consequential monetary benefits.

2. No counter has been filed by the Respondent. Heard the parties on both sides.

3. It is the case of the Petitioner that he was appointed to the post of Assistant Engineer through the Tamil Nadu Public Service Commission on 19.12.1977. The next avenue of promotion being the post of Assistant Executive Engineer, his case was ripe for consideration in the year 1995-1996. However, in the panel that was drawn on 18.01.1996, the Petitioner's name was not included on the ground of pendency of disciplinary proceedings against him. Aggrieved over non-inclusion of his name, the Petitioner filed O.A. No. 6194 of 1998 before the Tamil Nadu Administrative Tribunal. During the pendency of the above said Original Application, his name was not included for the said post. Therefore, he once

again approached the Tribunal by filing another Application in O.A. No. 4972 of 1999. As the Tribunal was abolished, the said Original Application stood transferred to this Court and re-numbered as W.P. No. 32799 of 2005. Finally, the Writ Petition was ordered by an order dated 03.02.2006, with a direction to the Respondents to include his name and give promotion in the panel drawn for the year 1995-1996. By virtue of the order passed by this Court, his name was included in the panel for promotion to the post of Assistant Executive Engineer in the year 1995-1996 and G.O.(D) No. 443, Public Works Department, dated 13.08.2007, was also issued squarely including his name in between the names of M/s. K. Jayachandran and M. Ponnuraj. Finally, he was promoted to the post of Executive Engineer in the year 2003-2004 by placing him again in between M/s. K. Jayachandran and M. Ponnuraj, vide G.O.(D) No. 624, Public Works Department, dated 30.10.2007. Therefore, his case is that though he was given due promotion both in the cadre of Assistant Executive Engineer and Executive Engineer, the further avenue of promotion to the post of Superintending Engineer was denied, while the name of his junior viz., Ponnuraj was included and he was also given promotion as Superintending Engineer on 12.03.1998. Since, promotion to the post of Superintending Engineer is denied to him, the Petitioner submitted a representation dated 27.03.2008 and the Respondent rejected the same on 04.08.2008 on the ground that in the disciplinary proceedings initiated against him, charges have been framed under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules. Subsequently, the Petitioner filed W.P. No. 19690 of 2008 seeking to quash the order passed by the Respondent dated 04.08.2008 with a further direction to include his name in the panel drawn in the year 2007-2008. This Court, by an order dated 06.09.2008, by holding that the Petitioner did not suffer any departmental proceeding on the crucial date viz., 01.04.2007 as well as on the date of consideration of his juniors on 12.03.2008, finally, issued a direction to the Respondent to include the Petitioner's name in the panel by specifically observing that he is entitled to get promotion to the post of Superintending Engineer in the light of the judgment of the Hon'ble Supreme Court in the case of Coal India Ltd. and Others Vs. Saroj Kumar Mishra, . By virtue of the order passed by this Court dated 06.09.2008 in W.P. No. 19690 of 2008, though the promotional issue was put to an end, it was complained that the monetary benefits due with effect from 12.03.2008 were denied. Therefore, the grievance of the Petitioner in the present case is that when the case of the Petitioner was accepted by the Respondent by giving him promotion to the post of Superintending Engineer with effect from 12.03.2008, Fundamental Rule 27 (17) cannot be applied against the Petitioner, the reason being, the Petitioner was given promotion by virtue of the order passed by this Court in W.P. No. 19690 of 2008, dated 06.09.2008, wherein, this Court has specifically issued a direction to include the name of the Petitioner by holding that he is entitled to get promotion to the post of Superintending Engineer.

4. The Respondent never placed their stand to the effect that the case of the Petitioner would be considered only for promotion without payment of any

monetary benefits. Secondly, the ratio laid down by the Hon"ble Apex Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., , clearly makes the issue clear beyond any iota of doubt that if a promotion is given to a Junior with retrospective effect, the denial of promotion to his senior was not justified. Further, it holds that when an employee is completely exonerated in criminal/ disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases. But in the present case, admittedly, the Petitioner's name was placed in between the names of K. Jayachandran and M. Ponnuraj when both of them were junior and they were given promotion to the post of Junior Engineer. The paper promotion to the Petitioner given without granting the monetary benefit is running contrary to the ratio laid down by the Hon"ble Apex Court in the case of Union of India etc., cited supra. Further, this is not a case where the Petitioner suffered any departmental proceedings. Though, he was issued with a charge memo subsequently, the department came forward to drop the proceedings and the Petitioner also retired from service on reaching the age of superannuation. Therefore, when the Petitioner was given promotion with effect from 12.03.2008, no doubt, he is entitled to get not only promotion but also the monetary benefits paid for the promotional post viz.,Superintending Engineer, with effect from 12.03.2008.

5. In that view of the matter, the Writ Petition stands disposed of by giving a direction to the Respondent to disburse all the monetary benefits accrued to the Petitioner for the period starting from 12.03.2008 till 04.11.2009 within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.