
(2011) 03 MAD CK 0585

In the Madras High Court

Case No : Writ Petition No. 12539 of 2007 (T) and O.A. No. 2559 of 2003

M. Doraiswamy

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0585

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; S. N. Kriubanandam, Special Government Pleader (Forests), for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumarw, J.—At the time of filing of the Original Application before the Tamilnadu Administrative Tribunal, Chennai, the Petitioner was aged 57 years and was working as Assistant Conservator of Forests, Forest Protection Squad, Nilgris. He entered the Forest Department as a Research Forester on 29.07.1968 through employment exchange and thereafter, on completion of the qualifying examination conducted by the Government, was chosen as Ranger.

2. For certain allegations of the year 1983, disciplinary action was initiated and that the Petitioner was imposed a penalty of stoppage of increment for six months without cumulative effect by the District Forest Officer, Uthagamandalam on 09.01.1991. A punishment of censure was also imposed by the District Forest Officer, Tiruvannamalai on 17.02.1994. The Petitioner was also implicated in a criminal case, which ended in acquittal by the Assistant Sessions Judge, Tiruvannamalai on 27.04.2000.

3. According to the Petitioner, though, he was eligible to be included in the panel of Assistant Conservator of Forests for the year 1996-97, the Respondents have overlooked his case on the following grounds

(1) pendency of the criminal case in Cr. No. 99/93, Santhavasal Police Station, for

the death of Thiru.N. Venkatesan, Forest Watcher.

(2) Currency punishment of Stoppage of increment for six months without cumulative effect, ordered by the District Forest Officer, Uthagamandalam in Proc. No. 1705/90/Es, dated 09.01.1991.

(3) Punishment of Censure imposed by the District Forest Officer, Tiruvannamalai, in Proc. No. 8998/93 dated 17.02.1994.

Subsequently, the Petitioner was included for promotion to the post of Assistant Conservator of Forests, for the year 1997-98 and accordingly orders were issued in G.O.(2D) No. 19, dated 22.05.2002, including him in the panel to the above said post.

4. In addition to the above facts, placing reliance on the Government letter Ms. No. 248, PAR(S) Department, dated 20.10.1997, Mr. M. Ravi, learned Counsel for the writ Petitioner submitted that though the punishment of stoppage of increment for six months without cumulative effect has been inflicted within the check period of five years, yet as the incident related to the year 1983, proviso to paragraph No. 4(II)(2) of the above said Government letter would be applicable to the case of the Petitioner and in such circumstances, the punishment ought not to have been held against the writ Petitioner. He also submitted that as the Criminal case has ended in acquittal, the Petitioner is entitled for retrospective promotion.

5. Pleadings and material on record discloses that by G.O.(2D) No. 19, Environmental Forest (Forest-I) Department, dated 22.05.2002, the Government have issued orders overlooking the case of the writ Petitioner for inclusion in the panel of Assistant Conservator of Forests for the year 1996-97 for the following three reasons

1 pendency of the criminal case in Cr. No. 99/93, Santhaval Police Station, for the death of Thiru.N. Venkatesan, Forest Watcher.

2 Currency punishment of Stoppage of increment for six months without cumulative effect, ordered by the District Forest Officer, Uthagamandalam in Proc. No. 1705/90/Es, dated 09.01.1991.

3 Punishment of Censure imposed by the District Forest Officer, Tiruvannamalai, in Proc. No. 8998/93 dated 17.02.1994.

6. Indisputedly, the order of the Government has not been challenged by the writ Petitioner. In so far as preparation of panel for appointment by promotion / by recruitment by transfer, the Government have issued orders in G.O. Ms. No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993, revising the norms from time to time. The effect of pendency of Vigilance enquiry/charges on inclusion in a panel for promotion and recruitment by transfer, effect of punishment on inclusion in the panel and consideration of adverse remarks are some of the factors directed to be taken into account while preparing the panel.

7. While assessing the inter-se merit of the candidates for inclusion of their names in the panel, the Government have issued further guidelines in their letter Ms. No. 248, Personnel and Administrative Reforms (S) Department, dated 20.10.1997. Paragraph No. 4(II)(2) of the above said letter deals with the effect of punishment on inclusion in the panel and it reads as follows"

II. Effect of punishments of inclusion in the panel:

1) As warning or severe warning is not a statutory punishment and since there is no provision for appeal, it need not be held against the Officer, whether it was awarded after framing of charges under Rule 17(a) or (b) of Tamilnadu Civil Services (Discipline and Appeal).

2) Any punishment, other than "Censure" imposed on an officer within a period of five years to the crucial date and a punishment of "Censure" within a period of one year prior to the crucial date should be held against the Officer. In such a case the Officer's name should be passed over.

Provided that if the Officer was imposed with any of the punishments within the check period as mentioned above for irregularities / delinquencies which occurred five years prior to the date of punishment, such punishment need not be held against him. Provided that an Officer passed over once, need not be passed over for the second time on account of the same punishment at the time of subsequent consideration for the next panel.

3. Currency of Punishment: Whenever an Officer is undergoing a punishment and there is currency of punishment in the crucial date the name should be passed over at the time of first consideration irrespective of the time of occurrence of irregularity. If the currency of that punishment continue at the time of subsequent consideration, for the next panel then the name may be included in the panel on the basis that a name should not be passed over for the second time on account of the same punishment.

4. It is further clarified that the charges framed under Rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules and any of the punishments awarded after the crucial date and till the date of issue of the panel, shall also be taken into consideration for assessing the suitability of the Officer for inclusion in the panel.

8. The post of Assistant Conservator of Forests, is a selection post and merit and ability are certainly a criteria for consideration. In a given case, where penalty other than "Censure" imposed on an officer within a period of five years to the crucial date and a punishment of "Censure" within a period of one year prior to the crucial date, the same has been directed to be held against the Officer for that particular year, for which the panel is prepared. Therefore, while considering the suitability of the persons, falling within the zone of consideration and subject to satisfying the educational qualifications, age, etc., as provided in the recruitment rules, the appointing authority has to apply the guidelines to assess

the inter-se merit of the candidates, evaluate their performance and suitability, with reference to the post for which the panel is prepared and if there is any punishment within the check period of five years, it has to be held against the Government servant. All these factors have to be taken into consideration, particularly, when the panel is prepared for a selection post

9. The above said Government guidelines have undergone a series of changes and in Government letter No. 52716/S/99-1, Personnel & Administrative Reforms (S) Department dated 01.10.1999, the Government have substituted Paragraph No. 4(II)(3) as follows:

Whenever an officer is undergoing any punishment, other than Censure and the crucial date or on the date of consideration, then irrespective of the time of occurrence of the irregularity, his name should be passed over for that panel. If the currency of punishment continues at the time of subsequent consideration for the next panel (S) he should still be passed over on the grounds that an officer should not be considered for promotion or promoted during the currency of any punishment. After the completion of its currency, no punishment should be held, once again, against an official even it falls within the check period of any panel, if it has already been held against the official on any earlier occasion. In respect of "Censure" the guidelines issued in Paragraph 4 II(2) of Letter Ms. No. 248, P&AR (S) Department, dated 20.10.1997.

10. The contention of the Petitioner that the stoppage of increment is only a minor punishment without cumulative effect and therefore, the same ought not to have been held against the writ Petitioner for inclusion in the panel for the post of Assistant Conservator of Forests for the year 1996-97, cannot be countenanced for the reason that mere reading of paragraph No. 4(II)2 of the Government letter Ms. No. 248, Personnel and Administrative Reforms (S) Department dated 20.10.1997, makes it explicit that any punishment, other than "Censure" imposed on an officer within a period of five years to the crucial date and a punishment of "Censure" within a period of one year prior to the crucial date, should be held against the Officer and therefore, when the heads of the department / appointing authorities, have been directed to consider any punishment, not withstanding the fact whether it is minor or major and particularly when the intention of the Government is to defer the case of the Government servant for inclusion in the panel even during the pendency of the disciplinary proceedings initiated under Rule 17(b) Tamilnadu Civil Services (Discipline & Appeal) Rules, the appointing authority or the Head of the Department cannot ignore the punishment imposed on the Government servant.

11. When the Government have issued instructions stating that even a punishment of Censure within a period of one year prior to the crucial date should be taken into consideration and held against the officer, the contentions that stoppage of increment imposed without cumulative effect should be ignored, is untenable. Provision to paragraph 4(II)(2) of the Government letter dated 20.10.1997, relied on by the writ Petitioner reads as follows

Provided that if the Officer was imposed with any of the punishments within the check period as mentioned above for irregularities / delinquencies which occurred five years prior to the date of punishment, such punishment need not be held against him.

12. Reading of the Government order in entirety shows that while assessing / evaluating the merit of the Government servant for inclusion in the panel, punishment imposed on the Government servant should be taken into consideration. In a given case, where the Government / appointing authority / disciplinary authority, comes to know any irregularities / misconduct, such as misappropriation, financial irregularities causing loss of revenue to the Government, accumulation of wealth beyond the known sources of income and offences involving moral turpitude, which are only illustrative in nature and action is not taken immediately, but after five years, from the date of occurrence or in some cases, where the Government / Appointing authority takes a decision to initiate disciplinary action, but deferred till the conclusion of any prosecution launched against the Government Servant, which takes some time and if the erring official is acquitted by the Criminal Court, then it cannot be contended that the appointing / disciplinary / Head of Department has no jurisdiction to initiate disciplinary action under the Tamilnadu Civil Services (Discipline and Appeal) Rules.

13. It is well settled that delay in initiation of disciplinary proceedings is not fatal in all the cases and each case has to be decided on its own merits. It is also to be noted that even pendency of a charge under 17(b) of the Discipline and Appeal Rules and charge sheet in a Criminal Court are to be held against the Government Servant for inclusion of his name in the panel. If the arguments of the Petitioner are to be accepted, then, the government servant may also contend that, for the irregularities / misconduct, occurred prior to the check period of five years, and if any charge memo is issued, and pending at the time of preparation of panel, the same should not be held against him. Such an interpretation would be against the very purpose of ascertaining the suitability of the government servant for any promotional post and contrary to the government guidelines, when the pendency of the grave charge under Rule 17(b) of the Discipline and Appeal rules, itself has to be considered as a bar, irrespective of the date of occurrence, whether it is five years prior to check period or not. If proviso to paragraph No. 4(II)(2) has to be given an independent effect notwithstanding the penalty, within the check period, then as per the arguments of the Petitioner, the name of the officer has to be included in the panel on the sole ground that irregularities / delinquencies, have occurred prior to the date of punishment, in which event, the proviso would overreach the main criteria i.e. punishment should be held against the Government servant. To illustrate, if for the irregularities, said to have occurred, prior to the check period of five year, and at the time of preparation of the panel, the government servant is imposed with a penalty of reduction in rank or reduction in pay, say in, two stages for two years, or even reversion, as a measure of penalty, then by giving

effect to the punishment, the position of the government servant in the order of seniority is likely to be affected, or he would be downgraded to lower post, in which event, he may not even fall within the zone of consideration for promotion. Therefore, in interpreting the guidelines, the intention of the Government in making the provisions have to be given importance and weightage, having regard to the object of selecting a suitable person on the basis of the criteria, merit and ability. As between two candidates within the zone of consideration, one with a pendency of the charge / penalty and the other without any adverse order / charge, if both have to be treated alike for inclusion, notwithstanding the adversity, then the main provision, would become otiose. In view of the above decision, this Court is of the view that the proviso to the clause II of paragraph

4 of the Government letter Ms. No. 248, Personnel and Administrative Reforms (S) Department dated 20.10.1997, has to be interpreted in such a way to give effect to the main provision and the object of assessment of candidates, falling within the zone of consideration.

14. The question as to whether stoppage of increment can be held against a Government servant for inclusion of his name in the panel for promotion, is no longer *res integra* in view of the decisions of the Supreme Court. A few of which are reproduced hereunder.

(i) The Supreme Court in *L. Rajaiah v. Inspector General of Registration & Stamps, Hyderabad* and Ors. reported in 1996 (8) SCC 246, considered the case of denial of promotion on the ground of punishment of stoppage of increment and at Paragraph 4, held as follows:

when seniority-cum-fitness is the criteria, the imposition of the penalties for one year on 01.03.1988 and in another enquiry, stoppage of increment for five years from 01.03.1989, i.e., till 28.02.1994, disentitled him to be considered; so he did not regain fitness for consideration for promotion as he was under disability undergoing punishment. Consequently, when the promotion to the post of Senior Assistant is on the basis of merit and ability under special rules, fitness is one of the considerations for the purpose. Since he was undergoing punishment during the relevant period, he is not eligible for consideration for promotion.

(ii) The issue as to whether, withholding of promotion due to punishment would amount to double jeopardy, is no more *res integra*, as the same has been considered by the Supreme Court in *Union of India v. K.V. Jankiraman* reported in 1991 (4) SCC 109, at Paragraphs 28 and 29, the Supreme Court held that,

28. The Tribunal has also struck down the following portion in the Section sub-para after Clause (iii) of para 3 which reads as follows: "if any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the Court proceedings against him, the findings in the sealed cover/covers shall not be acted upon" and has directed that if the proceedings result in a penalty, the person concerned should be considered for promotion in a Review DPC as on the Original date in the light of the results of the sealed cover as also the

imposition of penalty, and his claim for promotion cannot be deferred for the subsequent DP Cs as provided in the instructions. It may be pointed out that the said sub-paragraph directs that "the officer's case for promotion may be considered in the usual manner by the next DPC which meets in the normal course after the conclusion of the disciplinary/court proceedings". The Tribunal has given the direction in question on the ground that such deferment of the claim for promotion to the subsequent DP Cs amount to a double penalty. According to the Tribunal, "it not only violates Articles 14 and 16 of the Constitution compared with other employees who are not at the verge of promotion when the disciplinary proceedings are initiated against them but also offends the rule against double jeopardy contained in Article 20(2) of the Constitution". The Tribunal has, therefore, held that when an employee is visited with a penalty as a result of the disciplinary proceedings there should be a review DPC as on the date when the sealed cover procedure was followed and the Review DPC should consider the findings in the sealed cover as also the penalty imposed. It is not clear to us as to why the Tribunal wants the Review DPC to consider the penalty imposed while considering the findings in the sealed cover if, according to the Tribunal, not giving effect to the findings in the sealed cover even when a penalty is imposed, amounts to double jeopardy. However, as we read the findings of the Tribunal, it appears that the Tribunal in no case wants the promotion of the officer to be deferred once the officer is visited with a penalty in the disciplinary proceedings and the Tribunal desires that the officer should be given promotion as per the findings in the sealed cover.

29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when he penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to

have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequences of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on the ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-para after Clause (iii) of para 3 of the said memorandum. We therefore, set aside the said findings of the Tribunal.

(iii) In yet another decision in Collector of Thanjavur District v.S. Rajagopalan reported in 2000 (9) SCC 145, the Apex Court, while considering the question as to whether, withholding of promotion due to the punishment of stoppage of increment at the time of empanelment of the candidates would amount to double jeopardy, at Paragraph 7, held as follows:

We respectfully follow the said decision. It has been clearly pointed out there that the denial of promotion would not amount to penalty and that it would be open to the authorities to take into account the fact that some punishments were imposed on them during the relevant period.

In the above reported case, some of the Assistants, whose names were not included in the list of Deputy Tahsildars for the year 1982, challenged their non-inclusion of the panel before the Tribunal on the ground that the stoppage of increment was a minor penalty and therefore, the Department ought not to have considered the said penalty which were imposed against them during the anterior period. The Tribunal issued a direction that the names of the Petitioners should be considered uninfluenced by the minor punishment inflicted on them and that if by such consideration they were found fit for inclusion in the list, suitable placement be allotted to them in the list of seniority for the cadre. The Supreme Court set aside the judgment of the Tribunal".

15. As stated supra, if the intention of the Government is to take into consideration all punishments including "censure" earned by the Government servant, for assessing the merit for promotion to a selection post, apart from suitability with reference to the promotional post, ie., nature of duties and responsibilities, evaluated on the basis of his performance, skill, excellence, satisfactory service, etc., then the contention of the learned Counsel for the Petitioner that stoppage of increment without cumulative effect ought not to have been held against the Petitioner for inclusion in the panel for the year 1996-97, is untenable.

16. Considering the Government guidelines issued from time to time, the purpose and intention of the government to consider the punishment, as bar, for promotion, the proviso cannot be construed as reducing the powers of the appointing authority / government from giving effect to punishment. The proviso cannot reduce the efficacy of the government guidelines, regarding the pendency of the grave charges or punishment, at the time of consideration of his name in the panel.

17. In *Sarat Kumar Dash and Others Vs. Biswajit Patnaik and Others*, , while considering the criterion, merit-cum-suitability, at paragraphs 7 and 8, the Supreme Court, held as follows:

7. In *Capoor* case (stated supra) this Court has stated with regard to the principle thus: (SCC p.856, para 37)

When Regulation 52) says that the selection for inclusion in the list shall be based on merit and suitability in all aspects with due regard to seniority, what it means is that for inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale. But, to say, as the High Court has done, that seniority is the determining factor and that it is only if the senior is found unfit that the junior can be thought of for inclusion in the list is, with respect, not a correct reading of Regulation 5(2). I do not know what the High Court would have said had Regulations 5(2) said: "Selection for inclusion in the select list shall be based on seniority with due regard to merit and suitability". Would it have said that the interpretation to be put upon the hypothetical sub-regulation (2) is the same as it put upon the actual sub-regulation?

8. In case of merit-cum-suitability, the seniority should have no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a juniormost man may steal a march over his seniors and jump the queue for accelerated promotion. This principle inculcates dedicated service, and accelerates ability and encourages merit to improve excellence. The seniority would have its due place only where the merit and ability are approximately equal or where it is not possible to assess inter se merit and the suitability of two equally eligible competing candidates who come very close in the order of merit and ability. Under those circumstances, the seniority will play its due role and calls it in aid for consideration. But in case where the relative merit and suitability or ability have been considered and evaluated, and found to be superior, then the seniority has no role to play. In our view the PSC has evolved correct procedure in grading the officers and the marks have been awarded according to the grading. It is seen that the four officers have come in the grading of "B". In consequence, the PSC had adopted the seniority of the Appellants and Panda in the lower cadre in recommending their cases for

appointment in the order of merit.

18. It is also to be noted that during the relevant period, the Petitioner was also involved in a criminal case in Cr. No. 99/93, Sandavasal Police Station for the death of Thiru.N. Venkatesan, Forest Watcher and that he was acquitted only on 27.04.2000. Involvement of the government servant in a criminal case, relating to the death of person is also a serious charge. Mere acquittal of the writ Petitioner at a later point of time, would not give any right for retrospective promotion to the writ Petitioner and again, it is open to the appointing authority to consider as to whether he was honourably acquitted or only on benefit of doubt. Right to consider for promotion has now been recognised as a fundamental right, but it is the prerogative of the appointing authority to assess the inter-se merit and suitability of the government servant to the promotional post. Lastly, the Petitioner has not even chosen to challenge the Government Order in G.O.(2D) No. 19, Environment and Forest (Forest-1) Department, dated 22.05.2002, rejecting his case for inclusion for the above said panel and therefore, this Court cannot grant the relief in the form of Mandamus, which is issued only if there is a failure on the part of the appointing authority, in considering his case. As the appointing authority had already exercised his discretion and discharged his duties and rejected the case of the Petitioner, as not eligible for inclusion, Mandamus cannot be issued, and that would tantamount to setting aside, an order of rejection.

19. As to when a Mandamus can be issued, it is worthwhile to extract the decision of this Court rendered in *The Managing Director, Tamil Nadu Housing Board v. S. Gajendran* reported in 2010 (3) MLJ 643, wherein the principles in granting Mandamus are extracted.

12. The contention of the Appellant that the first Respondent has no enforceable right for seeking direction to re-convey the land by the second Respondent is also well founded. Writ of mandamus cannot be issued merely because a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for mandamus. The said position is well settled by in series of decisions.

(a) In the decision reported in *State of U. P. and others Vs. Harish Chandra and others*, in paragraph 10, the Apex Court held as follows:

10.... Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in *Union of India (UOI) and Another Vs. S.B. Vohra and Others*, the Supreme Court considered the said issue and held that "for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued

against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.-... The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.

12. These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh after referring to the earlier decisions in Lekhraj Sathramdas Lalvani v. N.M. Shah, Rai Shivendra Bahadur (Dr.) v. Nalanda College and Umakant Saran (Dr.) v. State of Bihar this Court observed as follows in para 15 of the Reports (SCC): (Sipahi Singh case, SCC pp. 152-53)

15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.... In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 the Constitution and the High Court was not competent to issue the same.

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities....

20. For the reasons stated supra, this Court is of the considered view that the Petitioner is not entitled for a direction to include his name in the panel of Assistant Conservator of Forests for the year 1996-97. Hence the writ petition is dismissed. No costs.