

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 9.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.21774 OF 2014

A.Theerthagiri ... Petitioner

versus

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

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

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in conection with the impugned order passed in letter No.583/HL1/2014/2 dated 10.6.2014 and quash the same and further direct the respondents to implement the punishment imposed in GO (D) No.217 Highways & Minor Ports (HL1) Department dated 25.10.2013 from the date on which it was communicated to the petitioner.

For petitioner Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For respondents Mr.P.H.Aravindh Pandian, Addl. Advocate General,
assisted by Mr.P.Sanjay Gandhi, A.G.P.

O R D E R

This Writ Petition raises a short point of some importance relating to the implementation of punishment, in view of the contentions taken by the respondents that punishment of stoppage of increment would be implemented only from the date of next annual increment, meaning thereby, the currency of punishment would continue even beyond the actual period of punishment.

An outline of facts :-

2. The petitioner entered the service as Assistant Engineer, in the Highways Department. He was promoted to the post of Assistant Divisional Engineer and Divisional Engineer, thereafter. The name of

the petitioner was not considered for promotion for the panel year 2009-10 and 2010-11 and 2011-12 on the ground of currency of punishment.

3. The present Writ Petition relates to the disciplinary proceedings initiated by the Government pursuant to the charge memo dated 14 May 2009. The Enquiry Officer appointed by the Government submitted a report to the effect that out of three charges, only charge no.3 was proved. Charge no.4 was connected to charge no.3 and as such, the Enquiry Officer opined that the said charge was also proved. The Disciplinary Authority finally imposed the punishment of stoppage of increment for three months, without cumulative effect. The said order was communicated to the petitioner on 11 November 2013. The petitioner submitted a representation dated 18 December 2013 requesting the respondents to implement the punishment of stoppage of increment for three months without cumulative effect forthwith so that he would become eligible for promotion to the post of Superintending Engineer in the subsequent panel for the panel year 2013-14.

4. The first respondent rejected the representation on the ground that punishment would be implemented only from 1 July 2014 in spite of the fact that the currency of punishment would start on 11 November 2013. Feeling aggrieved by the said order, the petitioner is before this Court.

5. The first respondent filed a counter affidavit wherein it was indicated that the Government have issued a letter No.18667/S/2006-1, Personnel and Administrative Reforms Department dated 28 April 2006, clarifying that the punishment of stoppage of increment would be implemented only from the date of next annual increment. According to the first respondent, even though punishment was communicated on 11 November 2013, it would be implemented only from 1 July 2014 to 30 September 2014. In short, it is the contention of the first respondent that punishment of three months of stoppage of increment would be in force from 11 November 2013 to 30 September 2014.

6. Submissions in brief :-

(a) The learned senior counsel for the petitioner contended that on account of the Government letter No.18667/S/2006-1, Personnel and Administrative Reforms Department dated 28 April 2006, the currency of punishment of stoppage of increment for a period of three months would continue for a total period of 9 months and 15 days. According to the learned senior counsel, the letter dated 28 April 2006 was the subject matter in W.P.No.29297 of 2006 etc. batch. The learned Single Judge held that the Government letter dated 28 April 2006 cannot be taken as a device to deny the claim of the delinquent beyond the period of punishment.

(b) The learned Senior Counsel, by placing reliance on the

judgment of a Full Bench of this Court dated 27 April 2011 in W.A. (MD) Nos.315 of 2011 etc. batch, contended that the Full Bench have already made the law very clear that letters issued by the Government are not statutory in character and as such, it cannot be read either with Tamil Nadu Government Servants Conduct Rules or Tamil Nadu Civil Service (Discipline & Appeal) Rules. The learned senior counsel referred to 1(k) of the Government Order in G.O.(D) No.217, Highways and Minor Ports (HL1) Department, dated 25 October 2013, and contended that the Government have now made it clear that punishment imposed shall take effect from the date on which the order is served on the member of the Service concerned. According to the learned senior counsel, respondents are deliberately keeping the order punishing the petitioner in currency, so as to deprive the petitioner of legitimate promotion.

7. The learned Additional Government Pleader submitted that the impugned order was passed on the basis of the Government letter in letter No.18667/S/2006-1, Personnel and Administrative Reforms Department dated 28 April 2006 and as such, it is legal.

Discussion :-

8. The punishment in question was imposed on the petitioner by order dated 25 October 2013. It was served on the petitioner on 11 November 2013. The petitioner wanted the respondent to implement the punishment forthwith so that there would not be any currency of punishment after a period of three months. The respondents on the other hand have taken up a contention that the next increment is due only on 1 July 2014 and as such, the punishment would be implemented only thereafter. The punishment in question is stoppage of increment for three months without cumulative effect. In case the punishment is implemented with effect from 12 November 2013, taking into account the date of communication, the period would expire by 12 February 2015.

9. The respondents are relying on Government letter dated 28 April 2006 to postpone the implementation of punishment till the next date of annual increment. In case the stand taken by the first respondent is approved, the punishment would expire only on 30 September 2014. In this process, the punishment of stoppage of increment for a period of three months would become 9 ½ months.

10. The core question is whether in view of the Government Order in G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 24 February 2014, and the order dated 20 February 2007 in W.P.No.29297 of 2006, it was correct on the part of the respondents to postpone the implementation of punishment.

11. The Government letter dated 28 April 2006 relied on by the first respondent in the impugned order was the subject matter of consideration in W.P.No.29297 of 2006. The learned Single Judge deprecated the practice adopted by the respondents therein to

postpone the implementation of punishment on the basis of the letter dated 28 April 2006. While allowing the Writ Petition and issuing a writ of mandamus to respondents to consider the case of the petitioners therein for next promotion, the learned Single Judge made the following comments:-

"17. In view of the above facts and circumstances of the case, I have no hesitation to come to the conclusion that the reliance placed on by the respondents on the letter of the Government dated 28.4.2006 has no basis whatsoever, since the said letter is a total misnomer, inasmuch as the effect of such letter is not only to extend the period punishment beyond the period given by the punishing authority but also to deny the claim of the delinquents, who have already completed the period of punishment undergone especially in cases where there has been stoppage of increment."

12. The legality and correctness of the letters issued by the Government, clarifying certain issues without reference to the statutory rules came up for consideration before a Full Bench of this Court in W.A.(MD) Nos.315 of 2010 etc. batch. The Full Bench held that a detailed instruction given by the Government cannot be equated to statutory rules framed under proviso to Article 309 of the Constitution of India. The Full Bench opined that the Government letters are not statutory in nature framed under the proviso to Article 309 of the Constitution of India and as such, it cannot be read either with the Tamil Nadu Government Servants Conduct Rules or under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

13. The validity of the Government letters were therefore considered by a learned Single Judge and Full Bench of this Court. In view of the decisions cited supra, the first respondent was not correct in placing reliance on the Government letter No.18667/S/2006-1, Personnel and Administrative Reforms Department dated 28 April 2006, to postpone the implementation of punishment.

14. There is one more aspect to be looked into in this matter, which was overlooked by the first respondent. The Government have issued an order in G.O.Ms.No.22 Personnel and Administrative Reforms (S) Department, dated 24 February 2014, making amendments to the General Rules under the Tamil Nadu State and Subordinate Services.

The Government inserted 1(k) which reads thus :-

"(1-K) Any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service

concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over".

15. The amended Rules very clearly provide that punishment would take effect from the date on which it was served on the concerned member of service. The first respondent has virtually flouted this order passed by the Government by rejecting the claim made by the petitioner for implementation of punishment. The rules are applicable not only to the petitioner but equally so, to the first respondent. When the Statute says that punishment would be implemented from the date on which it was served on the employee, the first respondent cannot be heard to say that he would follow only the letter issued by the Government, which has no statutory force. I am therefore of the view that the first respondent erred in rejecting the request made by the petitioner for implementing the punishment forthwith.

Disposal :-

16. In the result, the impugned order dated 10 June 2014 is set aside. The first respondent is directed to implement the punishment with effect from 12 November 2013. The first respondent is further directed to pass a consequential order regarding implementation of punishment as expeditiously as possible and in any case within a period of 15 days from the date of receipt of a copy of this order.

17. In the upshot, I allow the Writ Petition. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

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

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

1 cc to Government Pleader, Sr.No13254

1 cc to Mr.M.Muthappan ,Advocate, SR.No.13146

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ggk(co)

pmk.16.3.2015