

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 24.2.2015

Delivered on :: 4.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.30109 of 2013

and

M.P.Nos.1/3 to 3/13 and
1/14 to 1/14

Dr.N.A.Senthilnathan ... Petitioner
versus

1.The Principal Secretary/
Commissioner,
Corporation of Chennai,
rep. By its Commissioner,
Rippon Building,
Chennai 600 003.

2.Dr.M.Jagadeesan

3.Dr.E.Saraswathy

4.Dr.S.Mani ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records comprised in resolution no.705, passed by the 5th respondent and the two consequential proceedings both bearing ref. P.D.Na.Ka.No.E2/38447/2013 dated 5.11.2013, issued by the 1st respondent and quash the same as being illegal, arbitrary, irrational and consequently direct respondents 1 and 5 to appointing the petitioner herein as Additional City Health Officer Grade IB, in the 5th respondent Corporation as and from the date on which his next immediate junior viz., 2nd respondent joined in the said post by placing the petitioner above the name of his immediate junior viz., the 2nd respondent herein in the seniority list, without taking into consideration the stoppage of increment for three months without cumulative effect imposed on the petitioner and the consequent pending appeal preferred by the petitioner before the Government of Tamil Nadu.

For petitioner

Mr.Subhang Nair,
for Mr.Satish Parasaran

For respondents

Mr.A.P.Balasubramaniam, for R-1
Mr.G.Sankaran, for R-2
Mr.A.Suresh for R-3
Mr.S.Gunalan, for R-4

O R D E R

The petitioner was not considered for promotion to the post of Additional City Health Officer on the ground that punishment of stoppage of increment for three months without cumulative effect imposed on him by the Chennai Municipal Corporation by order dated 15 November 2012, commenced only on 1 July 2013 and the currency of the punishment continued even as on 1 April 2013, the date on which panel for promotion to the said post was prepared.

Brief facts :-

2. The petitioner joined the services of Chennai Corporation on 29 June 1992 as Assistant Health Officer. The respondents 2 to 4 are his juniors. The post of Assistant Health Officer was later re-designated as Zonal health Officer. The next avenue of promotion is to the post of Additional City Health Officer, Class II. The petitioner was eligible to be promoted as Additional City Health Officer in view of the regularization of his services as Assistant Health Officer on 29 March 2004 and his position as senior most Zonal Health Officer.

3. While so, Chennai Corporation initiated disciplinary proceedings against the petitioner vide charge memo dated 27 October 2012. The Disciplinary Authority ultimately imposed the punishment of stoppage of increment for three months without cumulative effect vide order dated 15 November 2012. The order was served on the petitioner immediately. However, it was not implemented till 31 June 2013 on the ground that the next increment was due only on 1 July 2013. The Chennai Corporation in the meantime, prepared a panel for promotion to the post Additional City Health Officer, taking 1 April 2013 as the crucial date. Since the Corporation implemented the punishment imposed on the petitioner only from 1 July 2013, the punishment was in currency as on 1 April 2013. The name of the petitioner was therefore excluded from the list and respondents 2 to 4, who were far juniors to him, were all promoted. The petitioner initially filed a Writ Petition to quash the resolution dated 26 September 2013 on the file of the first respondent. Thereafter, the petitioner amended the prayer to quash the consequential order dated 5 November 2013 whereby and whereunder, respondents 2 to 4 were promoted as Additional City Health Officers.

4. The Assistant Corporation, Chennai Corporation, in the counter affidavit admitted that the Corporation imposed punishment of stoppage of increment for a period of three months without cumulative effect by order dated 15 November 2012. According to the first respondent, the punishment period commenced only from 1 July 2013, being the actual date of increment. The currency of the punishment continued till 30 September 2013. The crucial date for preparation of panel for appointment to the post of Additional Health Officer was on 1 April 2013. In view of the currency of punishment, the name of the petitioner was not considered for promotion. Respondents 2 to 4 were promoted by order dated 5 November 2013.

Submissions :-

5. The learned counsel for the petitioner submitted that the first respondent was not correct in postponing the punishment and implementing it from 1 July 2013 notwithstanding the fact that the order of punishment was served on the petitioner as early as on 16 November 2012 itself. According to the learned counsel, in case punishment was implemented forthwith, it would have been over by 16 February 2014 and in which case, the name of the petitioner could have been included in the panel for promotion, inasmuch as 1 April 2013 was the crucial date. The learned counsel submitted that during the currency of the Writ Petition, petitioner was also promoted to the post of Additional City Health Officer and as such, his present request is to refix the seniority by placing him senior to respondents 2 to 4 and consider him for further promotion.

6. The learned Standing Counsel for Chennai Corporation submitted that the Government have issued letter No.18667/S/2006-1, Personnel and Administrative Reforms Department dated 28 April 2006 and Lr.No.13400/S/ 2007-6 dated 11 September 2009 to the effect that punishment should be implemented only from the date on which next increment is due. The Corporation followed those letters and postponed the implementation of punishment to the actual date of increment, which was on 1 July 2013. The learned counsel admitted the factual position that respondents 2 to 4 were juniors to the petitioner. In short, the learned Standing Counsel submitted that the currency of the punishment imposed on the petitioner as on the crucial date alone made the Corporation to deny him promotion.

7. The learned counsel for the second respondent justified the impugned orders. According to the learned counsel, the punishment would commence only from 1 July 2013. Since the punishment was in operation as on the crucial date, name of the petitioner was rightly not considered for promotion.

8. The learned counsel for the 4th respondent fairly admitted that respondents 2 to 4 are juniors. According to the learned

counsel, punishment was imposed only at a later point of time and that was the reason to deny punishment to the petitioner.

Analysis :-

9. The petitioner was initially appointed as Assistant Health Officer, Corporation of Chennai. He joined duty on 29 June 1992. His service were regularized by the Corporation vide order dated 29 June 1992. The Chennai Corporation issued a charge memo dated 24 October 2012 to the petitioner and thereafter, disciplinary proceedings were initiated against him. The Chennai Corporation by order dated 15 November 2012, imposed a punishment of stoppage of increment for a period of three months without cumulative effect. The order was served on the petitioner on 16 November 2012 itself. However, the Corporation failed to implement the order immediately thereafter. According to the Corporation, the Government have issued letter No.18667/S/2006-1, Personnel and Administrative Reforms Department dated 28 April 2006 and Lr.No.13400/S/2007-6, dated 11 September 2009, to the effect that punishment of stoppage of increment would commence only from the actual date of increment. In the case of the petitioner, the actual date of next increment was on 1 July 2013. The Corporation therefore implemented the punishment only with effect from 1 July 2013. In the meantime, the Corporation took action to prepare a panel for promotion to the post of Additional City Health Officer. The crucial date for such promotion was taken as 1 April 2013. Since the punishment order was imposed only from 15 November 2012, it continued up to 30 September 2013. The fact that punishment of stoppage of increment for three months imposed on the petitioner vide order dated 15 November 2012 was in operation even on 1 April 2013, made the Corporation to deny him promotion. The Corporation excluded the name of the petitioner and included the name of respondents 2 to 4 for promotion, in spite of the fact that they were juniors to him.

10. The core question is whether the Chennai Corporation was correct in postponing implementation of punishment on the basis of two letters issued by the Government without any statutory basis to the effect that currency of punishment of stoppage of increment would commence only from the actual date of increment.

11. The Government letter dated 28 April 2006 relied on by the first respondent 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 letter dated 28 April 2006. While allowing the Writ Petition and issuing a writ of mandamus to the 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 observation with regard to Government letter dated 28 April 2006 that it has no statutory force would also apply to the subsequent Government letter dated 11 September 2009.

13. 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 detailed instruction given by the Government cannot be equated to statutory rules framed under the proviso to Article 309 of the Constitution of India. The Full Bench opined that the Government letters are not statutory in nature as it was not 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.

14. 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 Government letters dated 28 April 2006 and 11 September 2009 on the file of Personnel and Administrative Reforms Department, to postpone the implementation of punishment.

15. When the Statute says that punishment should 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 letters 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.

16. Similar issue came up for consideration before the Supreme Court in Shiv Kumar Sharma v. Haryana State Electricity Board, 1988 Supp SCC 669. The appellant before the Supreme Court was subjected to disciplinary proceedings by the Punjab Electricity Board. The Board imposed a minor punishment of stoppage of one increment

without cumulative effect on the appellant. After the expiry of the punishment period of one year, he was given the increment. The appellant completed his probation, along with respondents 2 to 19 in the civil appeal. Though the respondents 2 to 19 were confirmed in the post with effect from 1 April 1969, the appellant was confirmed only with effect from 1 December 1969 on account of the currency of punishment of stoppage of increment for one year. He was placed below his juniors in the seniority list. While setting aside the order passed by the Electricity Board and upsetting the order passed by the High Court declining relief to the appellant, the Supreme Court observed that the act of the Board placing him junior and declaring probation at a later date on account of the currency of punishment of stoppage of increment for one year would amount to double punishment.

The Supreme Court said :

"5. The only point that is involved in this appeal is whether the Board was justified in confirming the appointment of the appellant in the post of Assistant Engineer, Class II, with effect from 1-12-1969 and placing him below his juniors, namely, Respondents 2 and 4 to 19, in the seniority list. As has been noticed already, there is no material to show why the appellant was confirmed in the post with effect from 1-12-1969, when he had completed his probationary period of two years satisfactorily. It is submitted on behalf of the Board that as the minor penalty was imposed on the appellant by way of stoppage of his increment for one year, he was confirmed with effect from 1-12-1969 and placed below Respondents 2 and 4 to 19 in the seniority list.

6. We are unable to accept the above contention. The penalty was imposed on 15-4-1968 and, as a result of which, he was deprived of the monetary benefit of one increment for one year only. The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant's increment for one year was stopped and such stoppage of increment will have no effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from 1-12-1969, that is, long after the date of confirmation of the said Respondents 2 to 19. The question of seniority has nothing to do

with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list."

17. The legality and correctness of prescribing check period for considering the case of employees for promotion after the expiry of the period of punishment came up for consideration before a Full Bench of this Court in Deputy Inspector General of Police, Thanjavur Range and another vs. V.Rani, 2011 (3) CTC 129. The Full Bench answered various questions referred to it. Paragraph 28(5) of the judgment relates to check period. It reads thus :-

"Consequently, the embargo put on the right of Government servants for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period' viz., one year in the case of censure and five years in the case of other minor punishments is illegal and impermissible under the Statutory rules."

18. Even though the petitioner was eligible for promotion to the post of Additional City Health Officer, he was denied promotion on account of the decision taken by the Corporation to postpone the implementation of punishment. I am therefore of the view that the petitioner must succeed.

19. The petitioner has already been promoted to the post of Additional City Health Officer vide order dated 23 October 2014. In view of my finding that the petitioner was denied his due promotion earlier without any rhyme or reason and that he should have been promoted even before giving promotion to the respondents 2 to 4, necessarily his seniority in the post of Additional City Health Officer should be refixed.

20. In the result, the impugned resolution dated 26 September 2013 and the consequent order dated 5 November 2013 are set aside. The first respondent is directed to pass appropriate orders to promote the petitioner as Additional City Health Officer, Grade-IB, with effect from 5 November 2013, the date on which the second respondent was promoted. In view of the admitted position that the petitioner is senior, the seniority list with respect to the post of Additional Health Officer Grade-IB should contain the name of the petitioner at Sl.No.1. In short, the petitioner should be treated as senior to respondents 2 to 4, who were promoted on 5 November 2013, to the post of Additional City Health Officer. The Commissioner, Corporation of Chennai, is directed to implement this order within a period of two weeks from the date of receipt or production of a copy of this order.

21. In the upshot, I allow the Writ Petition. Consequently, M.P.Nos.1 to 3 of 2013 and M.P.Nos.1,3 to 5 of 2014 are closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

tar

To

1. The Principal Secretary/
The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

1 cc to M/s. G.Sankar, Sr. 12059

1 cc to M/s. Satish Parasaran, Advocate, sr. 12033

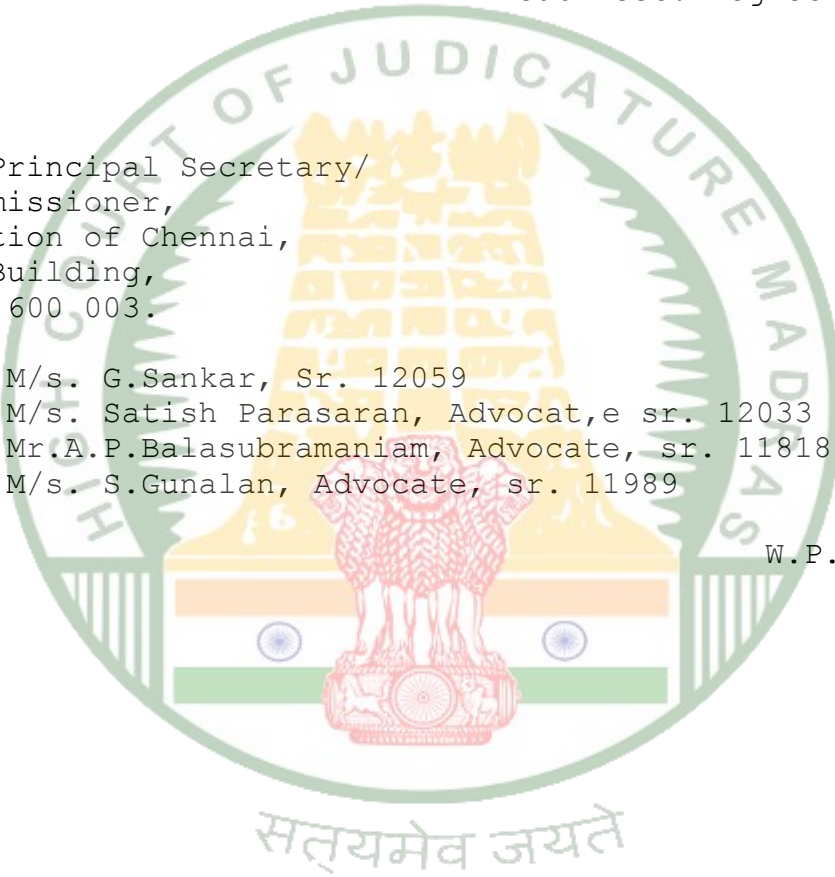
1 cc to Mr.A.P.Balasubramaniam, Advocate, sr. 11818

1 cc to M/s. S.Gunalan, Advocate, sr. 11989

W.P.No.30109 of 2013

AD (CO)

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