

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.9.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.983 of 2015 & M.P.Nos.1 and 2 of 2015
W.P.No.21771 of 2015 & M.P.No.1 of 2015
W.P.No.31633 of 2014 & M.P.No.1 of 2014

W.A.No.983/2015

K.Rajalakshmi

...Appellant

Versus

1 The Principal Secretary to Government
School Education Department
Secretariat Chennai-600 009.

2 The Director of Government Examinations
College Road Chennai-600 006

3 The Joint Director (Personnel)
of Government Examinations
College Road
Chennai-600 006.

...Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters
Patent against the order dated 5.6.2015 passed in W.P.No.243 of
2015 on the file of this court.

W.P.No.243 of 2015:

Petition filed under Article 226 of the Constitution of
India, praying this Hon'ble Court to call for the records of the
3rd respondent dt. 12.12.2014 in Na.Ka.No.027435/E1-1/2014 and
quash that order by issue of a writ of Certiorarified Mandamus
or any other appropriate writ/order/direction directing the
respondents to include petitioners name from the list of
Superintendents of Directorate of Government Examinations of the
3rd respondent dt. 16.05.2014 into the promotion list for 2014-
15 of Regional Secretary to the Deputy Director of Government
Examinations in Sl.No.9 below S.No.8 Sailakshmi and above
S.No.10 A.Anbazhagan as petitioners period for 6 months ended
on 31.03.2012.

W.P.No.21771/2015

K.Rajalakshmi

...Petitioner

Vs

- 1 The Principal Secretary to Government
Personal & Administrative
Reforms Department Secretariat
Fort St. George Chennai 600 009
- 2 The Principal Secretary to Government
School Education Department
Secretariat Fort St. George
Chennai 600 009
- 3 The Director of Government Examination
College Road Chennai 600 006
- 4 The Joint Director (Personnel)
of Government Examination
College Road
Chennai 600 006

...Respondents

Prayer: Writ Petition No.No.21771 of 2015 filed under Article 226 of the Constitution of India seeking for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent relating to G.O.22 P& AR (S) dated 24.2.2014 published in T.N.Govt. Gazette extraordinary - Part.III Section 1 (b) dated 24.2.2014 pertaining to Part-D Clause F1 (HH) and quash the same as illegal unconstitutional and null and void and consequently directing respondents 2 to 5 to include the name of the petitioner in the list for promotion from the post of Superintendent to Regional Secretary to the Deputy Director of Govt. Examination for the year from 2014-15 and further to promote her and list her name in the appropriate place in the promotion list.

W.P.No.31633/2014

V.Saravanan

...Petitioner

vs.

- 1 The Secretary to Government
Personnel & Adm. Reforms (S) Department
Fort St. George Chennai-9

- 2 The Special Tahsildar
Natham Land Survey & Settlement
Tambaram Chennai
- 3 The District Revenue Officer
Kancheepuram District Kancheepuram
- 4 The District Collector
Kancheepuram District
Kancheepuram

...Respondents

Prayer: Writ Petition No.No.31633 of 2014 filed under Article 226 of the Constitution of India seeking for issuance of a writ of declaration declaring the GO Ms No.22 P & AR (S) Department dated 24.2.2014 as null and void and ultravires and consequently direct the respondents to consider the claim of the petitioner for promotion as Deputy Tahsildhar in Kancheepuram District for the panel year 2012 without reference to the punishment of censure imposed on him by the 2nd respondent in Na.Ka.No.177/A/2012 dated 15.10.2012 and promote him as Deputy Tahsildhar and grant him all consequential service and monetary benefits.

For appellant in
W.A.No.983/2015 &
for petitioner in
W.P.No.21771/2015 : Mr.M.Kalyanasundaram,
Senior Counsel for
Mr.R.Vasudeevan

For petitioner in
W.P.No.31633 of 2014 : Mr.M.Muthappan

For Respondents in
all the three cases : Mrs.Vasudha Thiagarajan,
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. The challenge in the writ appeal and the writ petitions revolve around G.O. Ms No.22 P & AR (S) Department dated 24.2.2014, based on which, the appellant and the petitioner were denied promotion.

3. The appellant in the writ appeal viz., K.Rajalakshmi, who has also filed the writ petition in W.P.No.21771 of 2015, is aggrieved over the order passed by the learned Single Judge,

dismissing the writ petition, which was filed challenging the impugned order passed by the third respondent denying promotion to her as Secretary to Deputy Director of Government Examination. The ground for denial of promotion was shown to be the impugned G.O. which is also challenged by her in the writ petition in W.P.No.21771 of 2015. The very said G.O. is under challenge in the other writ petition in W.P.No.31633 of 2014 filed by one V.Saravanan.

4. The case of the appellant-K.Rajalakshmi is that but for the impugned G.O., she was, otherwise, eligible for the promotion to the post of Secretary to Deputy Director of Government Examination. According to her, she was imposed with a punishment of stoppage of increment for two years, with cumulative effect, by the third respondent, by order dated 20.7.2011, for her action in proceeding on leave without proper permission, which was later reduced to stoppage of increment for six months, without cumulative effect, by the second respondent, by his order dated 2.5.2012 and thereafter, she became eligible to get increments and she was awarded increments from 1.4.2012, by order dated 31.7.2012, passed by the third respondent. Whiles, it appears that her name was not included in the panel for promotion based on G.O.Ms.No.22 P&AR (S) dated 24.2.2014 and the same was intimated to her by the third respondent, by his letter dated 12.12.2014. This letter was put to challenge by her in the writ petition in W.P.No.243 of 2015. The learned Single Judge, dismissed the writ petition mainly on the ground that as per G.O.Ms.No.22 P&AR (S) dated 24.2.2014, the punishment of stoppage of increment falls within the period of five years and hence, she is disqualified as per that G.O. This order is in challenge in the writ appeal.

5. The case of the petitioner V.Saravanan in W.P.No.31633 of 2014 is that on the allegation that he has not handed over the official documents when he proceeded on leave, charges were framed and he was imposed with a punishment of censure by the order of second respondent, dated 15.10.2012. It appears that subsequently, on 10.1.2013, his name was also included in the panel for the promotion Deputy Tahsildar. Whiles, he was also denied promotion on the basis of G.O.Ms.No.22 P&AR (S) dated 24.2.2014 and hence, he is constrained to file the present writ petition.

6. Before proceeding further, it is relevant here to point out that there were several G.Os. and instructions, by way of Government Letters from 1993 onwards till the year 2013, which were already tested by a Full Bench of this Court, by its judgment dated 27.4.2011 in W.A.(MD) No.315 of 2011 and a batch of cases wherein it was held that the innovated principle of check in period imposing an embargo on a person, who has suffered a punishment, for being considered for promotion for a

period of five years, after the currency of punishment period and prior to the date of crucial date is illegal and impermissible under the statutory rules. The Full Bench has held that the said impediment, in the nature of 'check period' can never be imposed on a Government Servant. The concept of imposing the 'check period' was in existence prior to the decision of the Full Bench, vide the circulars and Government instructions and not as a statutory rule under the proviso to Article to 309 of the Constitution of India. The Full Bench, while observing that the said letters, stating the currency of punishment as an embargo for considering for further promotion during the period of punishment, cannot be said to be antithesis to the principles of law, held that the embargo imposed in respect of further period as stated therein can never be said to be authorized under the statutory rules.

7. Such being the position, the same concept of 'check period' is once again introduced by way of amendment to Rule 4 (a) of the General Rules for the Tamil Nadu State and Subordinate Services, G.O.Ms.No.22 P&AR (S) dated 24.2.2014 which cannot have a statutory force as it is a well settled principle that a law that has got penal consequences, cannot have retrospective effect.

8. When the impugned G.O. is gone through, it is seen that it carries four amendments in toto. The first limb is that the approved list of candidates shall be prepared in the manner as specified in schedule VII and the introduction of that schedule, which contains the procedures to be followed in Parts A to D, being the second amendment. Whiles, the third limb of amendment is nothing but insertions to be made in Part A of the second amendment and the fourth limb of amendment is the insertions to be made in Part D. When the impugned G.O. itself is for introduction of Schedule VII, the insertions in third and fourth amendments, which could have very well been shown in the apt places, were shown to be further amendments, which itself reveals that it is nothing but, a patch work of previous instructions and circulars issued by the Government.

9. An instance for the same would be that after Parts A to D of Schedule VII so introduced, the third amendment is introduced with insertion of (1-A) after item (1) in Paragraph II of Part A, which reads as follows:-

"(1-A) If the disciplinary proceedings under rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules pending against a member of service are merely stayed by a Court, his case shall be deferred till the judicial proceedings are concluded, unless a contrary order is passed by the Court and it is decided not to challenge the same. If the Court

quashes the charge memo, then the name of the member of service concerned shall be considered for inclusion in the approved list for promotion or for appointment, if he is otherwise qualified."

The very next sentence in the third amendment is

"for item (1-A) as so inserted, the following items shall be substituted, namely:-",

and under such a phrase, several new clauses are added, the first one being (1-A) once again, but, it deals with pendency of enquiry against a member of service and the original insertion of (1-A) which is extracted above is once again inserted as item (1-G).

10. Coming to the provision described as item (1-HH) which is attacked in the present cases is concerned, it is relevant to extract the said provision here which reads as under:-

"(1-HH) Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment."

Be that as it may, it is also apt to have a conjoint reading of the above provision with another provision viz., (1-H) which finds place just above this provision, in the impugned G.O., which reads as under:-

"If a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion."

11. On a mere reading of both the clauses viz., (1-HH) and (1-H) would reveal that both are contradictory as clause (1-HH) suggests that a member of service shall not be considered for promotion if he is imposed with any punishment other than Censure within a period of five years and within a period of one year in case of Censure, from the crucial date. Whereas clause (1-H) which is above the insertion (1-HH) suggests that a member

of service shall be considered for promotion even though he was imposed with punishment, but for the irregularities that were committed five years prior to the crucial date and the only condition imposed therein being that the member of service should not have been undergoing such punishment on the crucial date or on the date of consideration for actual promotion.

12. Therefore, it is clear that the impugned G.O. is with several ambiguities, based on which, the appellant herein and the writ petitioner are denied promotion, even after the expiry of currency of punishment on the ground of 'check period' or treating 'Censure' as an embargo for granting promotion. Hence, the impugned G.O., insofar as it suggests the 'check period' and treats the 'Censure' as an embargo for granting promotion, which was already condemned by a Full Bench of this court, cannot be maintained as a valid one. In view of the above, the order of the learned Single Judge passed in W.P.No.243 of 2015 is set aside and the impugned G.O. is quashed, insofar as it suggests the 'check period' and treats the 'Censure' as an embargo for granting promotion. The appellant and the writ petitioner shall be considered for promotion with retrospective effect, from the date when they became otherwise, eligible, within a period of three months from the date of receipt of a copy of this judgment. The writ appeal and the writ petitions are disposed of accordingly. No costs. The connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

ssk.

To

- 1 The Principal Secretary to Government
School Education Department
Secretariat Chennai-600 009.
- 2 The Principal Secretary to Government
Personal & Administrative
Reforms Department Secretariat
Fort St. George Chennai 600 009

3 The Director of Government Examinations
College Road Chennai-600 006

4 The Joint Director (Personnel)
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5 The Special Tahsildar
Natham Land Survey & Settlement
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6 The District Revenue Officer
Kancheepuram District Kancheepuram

7 The District Collector
Kancheepuram District Kancheepuram

8 The Secretary to Government,
Personnel & Adm. Reforms (S) Department,
Fort St. George,
Chennai - 9.

1 CC to Mr.R.Vasudeevan, Advocate, SR. 52059

1 CC to Mr.M.Muthappan, Advocate, SR. 52198

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M.P.Nos.1 and 2 of 2015
W.P.No.21771 of 2015 &
M.P.No.1 of 2015
W.P.No.31633 of 2014 &
M.P.No.1 of 2014

SV (CO)
PSI 06/10/2016

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