

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.7819 of 2008

V.Nagavelu (Deceased)

P-2 N.Komala,

P-3 N.Palani,

P-4 N.Senthil

(P2 to P4 are substituted as LRs of deceased V.Nagavelu as per Order dated 05.10.2016 by R.S.K.J in M.P.No.1 of 2011 in W.P.No.7819 of 2008)

...Petitioner/LRS of Deceased

..Vs..

1.The Director of Fire and Rescue Services,
Tamil Nadu,
Marshalls Road,
Egmore, Chennai - 600 008.

2.The Deputy Director,
Fire and Rescue Services,
North West Region,
Vellore.

3.The Divisional Officer,
Fire and Rescue Services,
Vellore Division,
Vellore.

...Respondents

Prayer: : Writ petition filed under Article 226 of the Constitution of India to issue a Writ or order or Direction more fully in the nature of a Writ of Certiorarified Mandamus, (i) to call for records relating to the proceedings of the Divisional Officer, Fire and Rescue Services, Vellore Division, Vellore, the third respondent made in Ta.Pa.Oo.No.506/2005, Na.Ka.No.8614/AA1/2005, dated 15.07.2005, quash the same in so far as the petitioner is concerned and consequently to direct the respondents herein to upgrade the petitioner to the post of Leading Fireman with effect from the date on which his immediate juniors came to be upgraded to the post of Leading Fireman with all consequential attendant, service and monetary benefits and

pay all the arrears within a short date that may be fixed by this Court.

For petitioner :Mr.K.Rajkumar

For Respondents :Mr.Jaya Prakash Narayanan, Spl.GP

ORDER

The prayer in the Writ Petition is for issuance of a Writ of Certiorarified Mandamus, calling for records relating to the proceedings of the Divisional Officer, Fire and Rescue Services, Vellore Division, Vellore, the third respondent made in Ta.Pa.Oo.No.506/2005, Na.Ka.No.8614/AA1/2005, dated 15.07.2005 quash the same in so far as the petitioner is concerned and consequently to direct the respondents herein to upgrade the petitioner to the post of Leading Fireman with effect from the date on which his immediate juniors came to be upgraded to the post of Leading Fireman with all consequential attendant, service and monetary benefits and pay all the arrears within a short date that may be fixed by this Court.

2. The short facts leading to filing the case are as follows:-

The petitioner was appointed as Fireman in the Fire Service Department on 06.04.1981. He had continued in the said post for 27 years without their being any promotion to the post of leading fireman. The petitioner was granted Selection Grade in the year 1991 and special grade during the year 2001. He had been serving with utmost satisfaction to his superiors.

3. The next avenue of promotion for the petitioner is the post of Leading fireman. As per the service rules, a person who has put in 5 years of service in the post of Fireman is eligible for promotion to the post of Leading Fireman. However, for want of vacancy, for several years, no promotion had been given for Leading Fireman to several persons like the petitioner. Therefore, they have represented to the Government. Ultimately, the Government have come forward to issue G.O.Ms.No.510 Home (Police XVII) Department dated 20.06.2005, by which, the State Government, after considering the plight of the persons, working in Fire Services Department like the petitioner, has decided to upgrade the post of Fireman, Fireman Driver, Leading Fireman and also driver Mechanic to Leading Fireman, Driver Mechanic, Assistant Station officer and station officer respectively.

4. The said G.O would disclose the said facts in para 3 which reads as follows:-

3. The Government after careful examination accept the proposal of the Director, Fire and Rescue Services with certain modifications and order for

effecting promotions to the following Fire and Rescue Services personnel:-

Sl. No	Present Post	Post to which proposed o be upgraded	Criteria proposed to be adopted in the present post	No.of posts to be upgraded
i.	Fireman	Leading Fireman	20 years & above	550
ii.	Fireman Driver	Driver Mechanic	15 years & above	280
iii.	Leading Fireman	Assistant Station Officer	10 years & above	240
iv.	Driver Mechanic	Station Officer	10 years & above	50
Total				1120

5. The case of the petitioner is that, though, the Government has come out with the policy decision of upgrading several posts in the Fire Services Department for the benefit of personnel like the petitioner who have stagnated for long years for getting any promotion, by way of the Government Order No.510, dated 20.06.2005 and though several persons had been given up-gradation/promotion in their respective category as per the said G.O.No.510, no such promotion or up-gradation are given to the petitioner. Therefore, the petitioner had made representation and request to the respondents for considering him for the purpose of promotion/up-gradation pursuant to the G.O referred to above. Ultimately, by the impugned order dated 15.07.2005, the third respondent has rejected the case of the petitioner.

6. Insofar as the petitioner is concerned, who stood as Serial No.7 in the said impugned order, the third respondent has given the reasons for rejection that the petitioner, by order dated 13.02.2000 was inflicted a punishment of stoppage of increment without cumulative affect for a period of one year and in view of the said punishment inflicted on the petitioner and the currency of the punishment was still there in the check period i.e., five years prior to 15.07.2005, being the crucial date.

7. Challenging the said impugned order, the present Writ Petition has been filed with the aforesaid prayer.

8. Heard, both sides.

9. The learned counsel appearing for the petitioner would submit that, no doubt, there was a punishment inflicted on the petitioner by order, dated 13.02.2000, whereby, the punishment of stoppage of increment without cumulative for one year was imposed. Therefore, from 13.02.2000 to 13.02.2001, the petitioner had undergone the punishment. The crucial date, even according to the respondents, as cited in the impugned order, for consideration of promotion is 15.07.2005. If five years check period is calculated from 15.07.2005 certainly, the currency of the punishment period would come within the said five years period.

10. However, the learned counsel appearing for the petitioner would submit that the mere currency of the punishment within the five years check period can not be a criteria for rejection of promotion. In support of his submissions, the learned counsel appearing for the petitioner relied upon Government Letter M.S.No.248, dated 20.10.1997 of Personnel and Administrative Reforms (S) Department, where the learned counsel relied upon clause (ii) in the heading "Effect of punishments on inclusion in the panel" and especially in the proviso to clause (2) in the same which is reproduced hereunder:-

II. Effect of Punishments on 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 17(b) of Tamil Nadu Civil Services (D&A) Rules.

(2) Any punishment, other than 'Censure' imposed on an officer within a period of five years prior 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 punishment 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.

11. By relying upon the said proviso, the learned counsel appearing for the petitioner would contend that if the five years check period within which, the occurrence, which ended in punishment, had not been taken place, in other words, if any date of occurrence falls beyond the check period of five years from the crucial date, then, the currency of punishment,

even though falls within the five years period, would not in any way stand for giving consideration for the person like the petitioner for promotion and only if the occurrence as well as currency of the punishment falls in that five years period then only it shall not be considered for promotion.

12. The learned counsel appearing for the petitioner also relied upon, the Division Bench Judgment of this Court reported in 2002(2) CTC 134 in The Secretary to Government, Home (Transport-I) Department, Fort.St.George, Chennai - 9 and another Vs.K.Kolappapillai and another, where the proposition as held by a Division Bench of this Court is that any punishment awarded with regard to incident which took place beyond five years of crucial date should be ignored for further promotion.

13. So, the learned counsel appearing for the petitioner by relying upon the said Division Bench judgment in the teeth of the proviso to the said Government letter, would contend that there is no bar in respect of the petitioner's case for consideration of promotion to the Leading Fireman and in that view, the learned counsel appearing for the petitioner would submit that the impugned order would not be a sustainable one and therefore liable to be quashed.

14. The learned Government Pleader appearing for the respondents would submit that the crucial date, for consideration of promotion for the petitioner to the Leading Fireman was fixed as 15.07.2005 and the five years check period would be 15.07.2000. So, in between these period, if the petitioner suffered with any punishment and undergone the punishment, certainly, he would not be entitled for any promotion.

15. The learned Special Government Pleader further submits that as far as the case of the petitioner is concerned, he was given punishment on 13.12.2000 for one year period which he has undergone till 13.12.2001. This one year period would certainly fall within the five year check period from the crucial date i.e., between 15.07.2000 and 15.07.2005. Therefore, obviously, since the petitioner's currency of the punishment falls within five years check period, he would not be entitled for any promotion and therefore actually reiterating the said reason, the respondents have rejected the claim for Leading Fireman and in that view, the learned Government Pleader submits that the impugned order in so far as the petitioner is concerned is sustainable and the Writ Petition is liable to be dismissed.

16. In respect of the said submissions made by the learned Government Pleader, the learned counsel appearing for the petitioner would further rely upon G.O.22 Personnel and Administrative Reforms (S) Department dated 24.02.2014. By the

said G.O, the earlier G.Os and rules relating to the service conditions especially in respect of promotion and other aspects of the Government employees had been modified or amended and a consolidated rule by way of this G.O has been brought in. Para 37 of the said G.O shows that the applicability or enforceability of this rule from the said G.O would take effect retrospectively from 18.10.1993. Therefore, by this G.O.22 whatever amendment has been made would go back to October 1993 i.e., from 18.10.1993 and therefore for all practical purposes even to consider the claim of the petitioner, this G.O can be pressed into service.

17. The learned counsel appearing for the petitioner would rely upon clause (e) of the G.O whereby, the following amendment has been made:

(e) before item (1-J) as so inserted, the following item shall be inserted, namely:-

"(1-11) 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".

18. By relying upon the said amendment, the learned counsel appearing for the petitioner would contend that in view of the clear rule position, the reasoning given by the respondents in the order impugned cannot be sustained and therefore, the case of the petitioner is well founded and therefore he wants the Writ Petition to be allowed.

19. I have considered the rival submissions made by the respective counsel as well as the material placed before this Court.

20. The facts as has been narrated above are not in much controversy. The petitioner has undergone a punishment between 13.12.2000 and 13.12.2001. The crucial date for the promotion for the post of Leading Fireman was fixed as 15.07.2005. Where also, if the five years check period is given which goes to 15.07.2000 . So, whoever in between the check period would become eligible without having any punishment or occurrence can certainly be considered for promotion even according to the respondents. Insofar as, the punishment is concerned, even though it falls within the five years period, whether that can be taken into account for the purpose of denying the promotion to the petitioner has to be looked into.

21. Firstly, by Government letter referred to above and secondly, by the orders of this Court in the Division Bench Judgment, reported in 2002 (2) CTC 134 and ultimately by way of amendment as Clause (1h) which was newly inserted by G.O.No.22, P&DR Department, dated 24.02.2014 which takes effect from 18.10.1993, the case of the petitioner has been strengthened stage by stage.

22. If we perused the amendment especially clause (1h) it would clearly provide that a person's promotion can be considered if the member of the service has not undergone any punishment on the crucial date or on the date of consideration of actual promotion for irregularities or delinquencies prior to the crucial date. The irregularities or delinquencies as has been mentioned in the amended clause is nothing, but the occurrence which was taken place between 10.07.2000 and 14.07.2000 within those dates, the petitioner was charged for unauthorized absence and with a result, it was ended in punishment of stoppage of increment without cumulative effect for one year from 13.02.2000. Even if the last date of unauthorized absent being 14.07.2000 can be taken as effective occurrence date, the five years period would end on 14.07.2005. However, the crucial date according to the respondents is 15.07.2005. It is the fortune of the petitioner who had absented for duty only till 14.07.2000 not beyond that. Therefore, the irregularities or delinquencies as has been mentioned in the amended clause of the rule by way of G.O.22 would enable the petitioner to claim that his occurrence which ended in punishment was taken place prior to the check period and in that view of the matter, he can claim promotion.

23. Therefore, the reasoning given by the respondents in the order impugned, calculating the punishment dated 13.02.2000 as a currency of punishment within the five years period and hence the petitioner was not entitled for promotion, cannot be stated to be a sustainable one and this Court is of the considered view that the said reason cannot stand in the legal scrutiny.

24. In view of the aforesaid rule position and the factors this Court has no hesitation to hold that the impugned order is unsustainable and accordingly, the same is quashed.

25. Resultantly, the petitioner shall be entitled to be promoted as Leading Fireman from the date when his immediate Junior is promoted and from that date onwards, he should be treated as Leading Fireman for all service benefits. Since, the employee/petitioner already died, his legal heirs who have been impleaded as parties are entitled to get all service benefits accrued on the petitioner's service. Therefore, the respondents are directed to calculate all the service benefits including

monetary benefits, pay arrears, retirement benefits, family pension and arrears of family pension, if any and pay the same to the legal heirs of the Government employee who are impleaded petitioner's herein within a period of three months from the date of receipt of a copy of this order.

26. The Writ Petition is allowed with the above terms without any costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Director of Fire and Rescue Services,
Tamil Nadu, Marshalls Road,
Egmore, Chennai - 600 008.

2.The Deputy Director,
Fire and Rescue Services,
North West Region,Vellore.

3.The Divisional Officer,
Fire and Rescue Services,
Vellore Division,Vellore.

+ 1 cc to the Government Pleader Sr.63309
+ 1 cc to Mr.K. rajkumar, Advocate Sr.63245

W.P.No.7819 of 2009

SS(CO)
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