

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.171 of 2012

&

M.P.No.1 of 2012

The State of Tamil Nadu
rep.by its Secretary to Government
Home (Pol.II) Department
Fort St.George
Chennai 600 009

... Appellant

Vs.

V.D.Singaravelu

... Respondent

WRIT APPEAL filed under Clause 15 of Letters Patent against the order passed in W.P.No.30780 of 2006 dated 4.01.2010.

W.P.No.30780 of 2006 : Writ Petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.6241 of 1998 from the file of the Tamil Nadu Administrative Tribunal with a prayer to call for the records on the file of the respondent herein in connection with the order passed by him in G.O.Ms.No.924, Home (Police II) Department, dated 16.07.1998 and quash the same and direct the respondent herein to promote the Petitioner as Deputy Superintendent of Police (Category 1) in pursuance of his inclusion in the regular panel of Inspector of Police fit for appointment by recruitment by transfer of Deputy Superintendent of Police (Category 1) for the year 1996-97 approved in G.O.1612, Home (Police II) Department, dated 07.11.1997 with all consequential service and monetary benefits at par with his juniors.

For Appellant : Mr.R.Ravichandran,
Additional Government Pleader

For Respondent : Mr.P.Manikannan

J U D G M E N T

(Judgment of the Court was delivered by A.SELVAM, J)

This writ appeal has been directed against the order dated 4.1.2010 passed in writ petition No.30780 of 2006 by the learned Single Judge of this court, whereby he set aside the Government Order in G.O.Ms.No.924, Home (Police-II) Department dated 16.7.1998 passed by the appellant herein.

2. The respondent herein during the relevant period has served as Inspector of Police in Avadi Police Station. During tenure of his service, a charge memo has been issued, which culminated in disciplinary enquiry, wherein it is found that he has committed a mistake mentioned therein and subsequently he has been awarded a punishment of stoppage of increment for one year without cumulative effect. Since he has been given punishment, his name has not been included for promotion in the panel prepared for the year 1996-1997 and the same has been challenged by way of filing Original Application No.6241 of 1998 on the file of the Tamil Nadu Administrative Tribunal.

3. On abolition of the Tamil Nadu Administrative Tribunal, the Original Application No.6241 of 1998 has been transferred to this Court and the same has been renumbered as Writ Petition No.30780 of 2006.

4. The learned Single Judge, after considering the contentions put forth on either side, has allowed the writ petition and thereby directed the respondent therein to include the name of the petitioner for promotion in the panel prepared for the year 1996-1997. The order passed by the learned Single Judge is being challenged in the present Writ Appeal.

5. The short point that arises for consideration in the present Writ Appeal is as to whether during the currency of punishment, the name of the petitioner can be included in the promotion panel prepared for the year 1996-1997.

6. The learned Additional Government Pleader appearing for the appellant/respondent has repeatedly contended that for identical relief, the respondent/petitioner has already filed two writ petitions in W.P.Nos.37254 of 2006 and 34110 of 2006 and both the writ petitions have been dismissed, but by way of suppressing the earlier writ petitions, Original Application No.6241 of 1998 has been filed and the learned Single Judge has erroneously allowed the Writ Petition No.30780 of 2006 and therefore, the order passed by the learned Single Judge is liable to be set aside.

7. Per contra, the learned counsel appearing for the respondent/petitioner has contended that on the basis of the contentions put forth on the side of the respondent/petitioner, the learned Single Judge has relied upon the decision reported in 2008 (5) MLJ 350 (Subramanian v. Government of Tamilnadu) and has rightly allowed the writ petition and therefore, the order passed by the learned Single Judge does not call for any interference.

8. It is an admitted fact that the request of the respondent/petitioner has been declined on 16.7.1998 by virtue of G.O.Ms.No.924, wherein it has been clearly mentioned that postponement of increment for one year dated 27.6.1997 is also one of the punishments imposed upon the petitioner.

9. It is also an admitted fact that the respondent/petitioner has filed W.P.Nos.37254 of 2006 and 34110 of 2006 on the file of this Court, wherein identical relief has been sought and this Court, after considering the contentions put forth on either side, has dismissed both the writ petitions. The respondent/petitioner by way of suppressing the earlier proceedings has filed O.A.No.6241 of 1998.

10. The learned Additional Government Pleader has befittingly drawn the attention of this Court to the decision reported in (2011) 4 MLJ (Volume 259) Page No.17 (Deputy Inspector General of Police, Thanjavur Range, Thanjavur and another vs. V.Rani), wherein, the Full Bench of this Court has considered the similar issue and ultimately opined as follows:

"1. During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division bench in Subramanian v. Government of Tamil Nadu rep.by its Secretary, Chennai and others (supra) stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

2. If any benefit has been conferred on the party to the judgment rendered by the Division Bench in Subramanian v. Government of Tamil Nadu rep.by its Secretary, Chennai and others (supra), the same shall not be affected by the judgment of this Bench since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

3. The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

11. From a mere reading of the observations made by the Full Bench of this Court, it is made clear that even during the currency of minor punishment, promotion cannot be claimed.

12. In the instant case, as mentioned earlier, the claim of the respondent/petitioner is that his name should be included for promotion in the panel prepared for the year 1996-1997. It is seen from the records that during the relevant period, he has been imposed the punishment of stoppage of increment for a period of one year without cumulative effect. Therefore, it is quite clear that the contentions put forth on the side of the appellant/respondent is really having subsisting force.

13. The learned Single Judge, without considering the existence of punishment during the relevant period, has erroneously allowed the writ petition and in view of the discussions made earlier, the order passed by the learned Single Judge is liable to be set aside.

In fine, this Writ Appeal is allowed without cost. The order dated 4.1.2010 passed in writ petition No.30780 of 2006 by the learned Single Judge of this court is set aside and Writ Petition No.30780 of 2006 is dismissed without cost. Consequently, the connected Miscellaneous Petition No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ajr

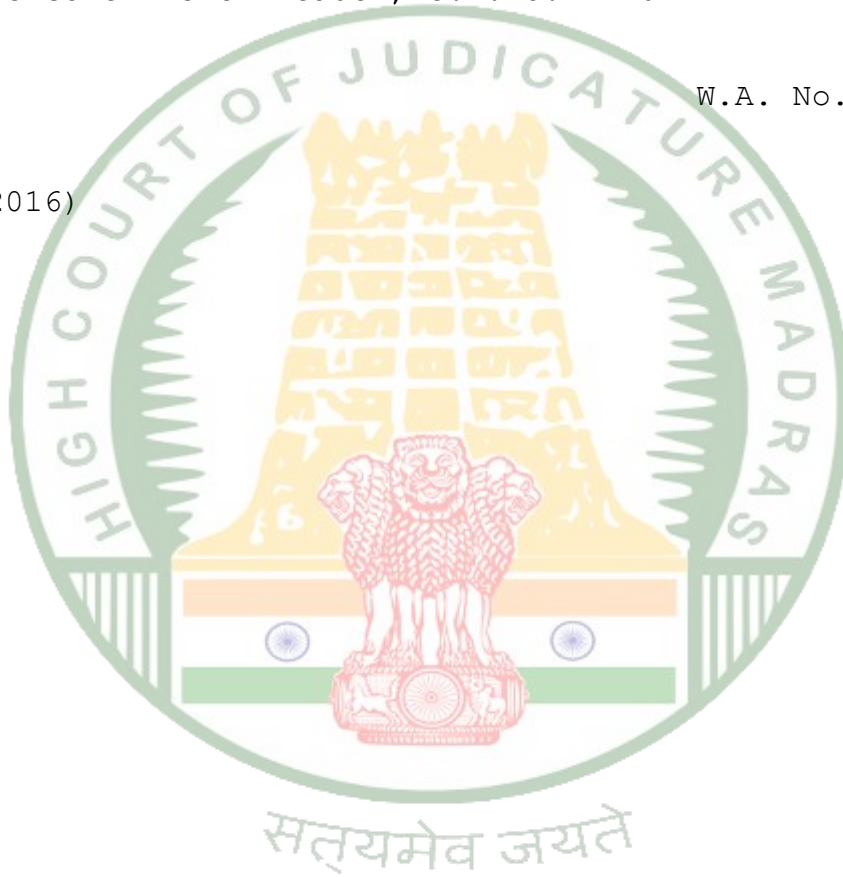
To

The Secretary to Government
State of Tamil Nadu
Home (Pol.II) Department
Fort St.George
Chennai 600 009.

+1cc to Mr.P.Manikandan, Advocate, S.R.No.41322
+1cc to the Government Pleader, S.R.No.41110

W.A. No.171 of 2012

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