



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.11.2016
Pronounced on : 19.12.2016

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition(MD) No.3887 of 2013

V.Balasundaram

...Petitioner

Vs.

1.The Principal Secretary to the Government,
Labour and Employment Department,
Fort St. George, Chennai - 9.

2.The Director of Employment and Training
Guindy, Chennai - 32.

... Respondents

Prayer : Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to promote the petitioner to the post of District Employment Officer (Recruitment by transfer) for the year 2010-2011 thereby granting all service benefits as per G.O.Ms.No.279, Labour and Employment dated 27.12.2010 forthwith.

For Petitioner : Mr.M.V.Venkatasehan

For Respondents : Mr.K.Guru,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner for the issuance of a Writ of Mandamus directing the respondents to promote the petitioner to the post of District Employment officer (Recruitment by transfer) for the year 2010-2011 thereby granting all service benefits as per Go.Ms.No.279, Labour & Employment, dated 27.12.2010.

2. The case of the petitioner is that initially, he studied upto S.S.L.C. Based on that he was appointed as Office Assistant through Employment Exchange, Madurai. On 28.07.1981, he was promoted as Junior Assistant and on 05.09.1986 he was promoted as Assistant and thereafter, on 22.12.2004, he was



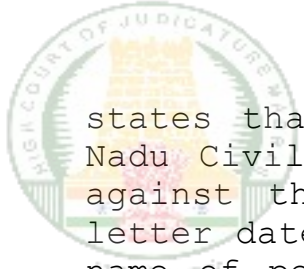
promoted as Junior Employment Officer. He was holding that post at the time of filing the writ petition.

3. It is further stated by the petitioner that his name was recommended for the post of District Employment Officer by proceedings of 1st respondent, dated 8.10.2010, and the same was ratified by the Tamil Nadu Public Service Commission also. The crucial date for preparation of panel was 01.09.2009 for promotion for the year 2010-2011. In the prepared panel, the petitioner was placed as Sr.No.19 for the promotion to the post of District Employment Officer.

4. It is further stated by the petitioner that at the instigation of some co-employees, who are not included in the panel, the 2nd respondent issued a charge memo on 7.12.2010 under rule 17(b) of Tamil Nadu State and Subordinate Service (Discipline & Appeal) Rule 1955. The case against him was that in the year 2007, when he was in in-charge of District Employment Officer post at Theni, he had recommended a candidate of inter-caste marriage for appointment as watchman in Oodapatty Town Panchayat. This was construed as misconduct under Rule 20 of Tamil Nadu Civil Service Conduct Rules 1973. The petitioner submitted his explanation and an enquiry was conducted. On 17.06.2011, the Enquiry Officer submitted his report to the 2nd respondent and in the reports, the enquiry officer clearly stated that the charges leveled against the petitioner is not proved. The 2nd respondent deferred from the report filed by the Enquiry Officer and even without issuing any notice to the petitioner, the 2nd defendant passed order by imposing the punishment of stoppage of increment for three months without cumulative effect by order, dated 11.01.2012. On 16.03.2012, the petitioner filed an appeal before the 1st respondent. At the time of filing of this writ petition, the said appeal was pending.

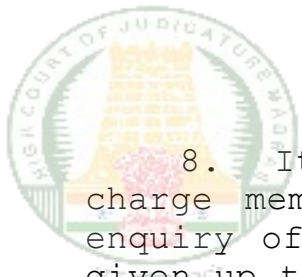
5 The main grievance of the petitioner is that the preparation of panel was prior to imposition of punishment. Further, the punishment was only minor and the pendency of charge memo was only a reason for not implementing the panel by the respondents that when the panel was prepared on 29.02.2010 and recommended by the Government on 08.10.2010, there was no charges pending against the petitioner and therefore, he stated that the denial of promotion was not proper. Therefore, he filed the above writ petition for promotion.

6. A counter affidavit has been filed on behalf of the respondents by the Deputy Secretary to Government Labour & Employment, wherein the service particulars of the petitioner is accepted by the respondents. It is stated in the counter affidavit that the name of the petitioner was also recommended for inclusion in the panel on 18.10.2010, but at that time, no disciplinary case is pending against him. The counter further



states that a disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules were initiated against the petitioner on 07.12.2010, the first respondent, by letter dated 27.12.2010 requested the 2nd respondent to exclude the name of petitioner from the panel. It is further stated by the respondents in the counter affidavit that while the petitioner was holding District Employment Officer in-charge at Theni, he had sponsored a priority candidate for the post of over head tank watchman at Oodapatty Town Panchayat union. As per rules "inter-caste marriage" priority candidate should not be sponsored to the local body establishment. Hence, a charge memo under Rule 17(b) was issued by 2nd respondent to the petitioner on 07.12.2010. It is also admitted by the Enquiry Officer that the charges are not proved. But the 2nd respondent held that the petitioner violated the rules and hence, imposed a punishment of stoppage of increment for three months without cumulative effect. It is also stated that appeal dated 16.03.2012 was sent to 1st respondent for necessary orders. The petitioner's name was included in Go.Ms.No.279, Labour & Employment, dated 27.12.2010 for the promotion to the post of District Employment Officer (Recruitment by Transfer). It is stated that as per the instruction issued by Personal and Administrative Reforms Department, letter dated 07.10.2005, if specific charge is framed against a person concerned, he shall not be promoted notwithstanding the fact his name has been included in the panel and hence, the name of the petitioner was removed from the panel. It is further stated that the petitioner can claim promotion for the year 2010-2011, if only he was proved innocent and exonerated from the charges. It is further stated that the denial of promotion is not illegal as the petitioner was not exonerated from the charge dated 7.10.2010 and a punishment was imposed, the denial of promotion is proper. There were three other charges of the year 2011 against the petitioner. Even in the panel 2012-2013, the name of the petitioner was not included considering the earlier said charges and certain punishments.

7. A reply affidavit to the counter was filed by the writ petitioner, wherein it is specifically stated that the crucial date for considering for promotion is 01.09.2009. The panel for the same was prepared on 27.12.2010, in which, the petitioner's name had been included as item No.19. In para No.3 of the counter the reference is made to the charge memo No.2/8805/09 dated 17.12.2010. Actually the charge memo is relating to the recommendation of the candidate of inter-caste marriage for the appointment of post of over head tank operator. On 11.01.2012, the punishment of stoppage of increment was awarded. The petitioner preferred an appeal before the 1st respondent. On 7.10.2013, the appeal was allowed setting aside the order of the punishment. So that it could not be a ground for denying the petitioner's promotion.



8. It is seen from the reply affidavit that relating to charge memo, dated 5.05.2011, an enquiry was conducted and the enquiry officer found that no charge is made out, accordingly he given up the charges. Regarding charge memo, dated 27.04.2011, the punishment of stoppage of increment for three months without any cumulative effect was ordered on 10.04.2012 only. The punishment was completed. It is further stated that this minor punishment imposed long after the preparation of panel. So this cannot be cited as reason for denying the petitioner's promotion.

Regarding the charge memo, dated 30.03.2011, it is submitted that the enquiry was conducted and the punishment of stoppage of increment for one year without cumulative effect was imposed on the petitioner on 26.08.2013 and the same was confirmed in appeal. It is submitted that the punishment was also minor penalty of stoppage of increment that too after the inclusive of the petitioner's name in the panel. This cannot be taken as reason for denial of his promotion when there was no charge memo is pending on the crucial date. It is further stated that the petitioner was relived on 31.05.2014 and even if the writ petition is going to be ordered, the petitioner will get only the notional promotion and with attended benefits which would only enhance his pension.

9. Heard Mr.M.V.Venkateshan, learned counsel appearing for the petitioner as well as Mr.K.Guru, learned Additional Government Pleader appearing for the respondents and perused the materials available on records.

10. It is seen from the records that the petitioner has joined as Office Assistant on 01.03.1975 and he has been promoted as Junior Assistant on 28.07.1981 and he was further promoted as Assistant on 05.09.1986. While he was in service, he completed his M.A. (Public Administration). Hence, the petitioner has been promoted as Junior Employment Officer on 22.12.2004 by the respondents. It is also admitted that his name was recommended for promotion for the post of Employment officer (Recruitment by Transfer) on 29.12.2010 when the panel was prepared for the crucial date as 01.09.2009. That was also recommended to the Government on 08.10.2010 and thereafter his name was inducted in the panel as per the G.O.Ms.No.279 Labour & Employment dated 27.12.2010. When the panel was yet to be implemented, it seems that a charge memo was issued by the 2nd respondent on 7.12.2010 under 17(b) of Subordinate Service Rules. Though the Enquiry Officer held that the charge was not proved, the 2nd respondent chosen to impose a punishment of stoppage of increment for 3 months without cumulative effect on 11.01.2012. Citing this as a reason, his name has been seems to have been removed from the panel.

11. In the reply, it has been stated that the punishment

dated 11.1.2012 was appealed to 1st respondent and the appeal was allowed on 07.10.2013 as per the G.O.(D)No.506 by the first respondent and the punishment was set aside. This aspect was not disputed or denied by the respondents.

12. Citing these facts, the learned counsel for the petitioner submitted that as on the crucial date, namely, on 01.09.2009, there was no charges pending against the petitioner. The charge was included against the petitioner only after his name was recommended and included in the panel for the post of District Employment officer. This fact is also admitted in paragraph 5 of the counter. When such being the case, it was argued that as there was no charge pending on the crucial date and especially when the punishment imposed subsequently was also expired, the petitioner should not have been denied the promotion.

13. The order of the 1st respondent in G.O.(D)No.506 dated 07.10.2013 is as follows:

“5.இத்தேர்வு, சம்மந்தமான அனைத்து ஆவணங்களையும், தமிழ்நாடு அரசுப் பணியாளர் தேர்வாணையத்தின் கருத்துக்களுடன் அரசு கவனமாக பரிசீலனை செய்தது. பரிசீலனைக்குப் பின், திரு.வ.பாலசுந்தரம், இளநிலை வேலைவாய்ப்பு, அலுவலர் அளித்த மேல்முறையீட்டினை ஏற்று அன்னாருக்கு வழங்கப்பட்ட “ஊதிய உயர்வினை திரண்ட பயனின்றி மூன்று மாதங்களுக்கு நிறுத்தி வைக்கும்” தண்டனையை ரத்து செய்யலாம் என முடிவு செய்து, அவ்வாறே அரசு ஆணையிடுகிறது.

6.மேலே நான் காவதாக படிக்கப்பட்ட தமிழ்நாடு அரசுப் பணியாளர் தேர்வாணையக் கடித நகல், திரு.வ.பாலசுந்தரம், இளநிலை வேலைவாய்ப்பு, அலுவலருக்கு இவ்வாணையுடன் இணைத்தனுப்பப்படுகிறது.”

14. Relating to subsequent charges mentioned in paragraph 8 of the counter in paragraph 4 of the reply it was stated that one charge was dropped and another charge there was only very same punishment of stoppage of increment for 3 months without cumulative effect. In another charge, there was stoppage of increment for 1 year without cumulative effect. If charges leveled against the petitioner, after the crucial date, namely, 01.09.2009 indicates to the mind of the Court that all the charges have been leveled by the 2nd respondent only to stop the promotional chances of the petitioner, for all the charges related to his officiation as District Employment officer in charge in 2007 at Theni. The crucial punishment dated 11.01.2012 which was the reason for deleting the name of the petitioner from the panel for the year 2010-2011 was ultimately set aside by the 1st respondent in Go.Ms.No.506 dated 7.10.2013.

15. As per the Judgment of this Court held in **P. Stanley Paulraj v. The State of Tamil Nadu rep. by its Secretary to Government, Public Works Department, Secretariat, Chennai-9 and**



another reported in **2013 (4) TNLJ 535 (Civil)** held as follows:

"13. The crucial date in this case has to be taken as 14 December 2011, the date on which Thiru. Krishnamoorthy Sugumar, junior to the petitioner in the Engineering service was given promotion as Superintending Engineer. There was no charge memo pending against the petitioner as on the date on which his junior was given promotion. The representation given by the petitioner on 21 December 2011 to consider him for further promotion was kept in cold storage. It was only when this Court directed the first respondent to consider the case of the petitioner vide order dated 13 June 2012 in W.P.No.10828 of 2012 the representation was taken up for consideration. It is a matter of record that only after this Court directed consideration of the case of the petitioner for promotion, the second respondent has issued the charge memo on 24 August 2012. Therefore it is evident that either on the date of promotion of the junior of petitioner on 14 December 2011 or on the date on which representation was made for promotion and the direction issued by this Court for consideration of his case, there was no charge memo pending so as to deny him promotion. The charge memo issued long after the crucial date cannot be the reason to deny legitimate promotion.

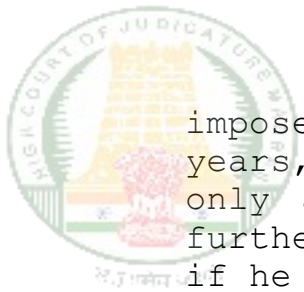
14. The Supreme Court in *Union of India & Ors. v. Sangram Keshari Nayak* (2007) 4 Supreme 246 held that the right to be considered for promotion is a fundamental right and such a right brings within its purview, an effective, purposeful and meaningful consideration. The Supreme Court in *Sangram Keshari Nayak* found that on the day on which the Departmental Promotion Committee held its meeting, no vigilance enquiry was pending against the employee. The charge sheet was issued only after the Departmental promotion Committee meeting. The Supreme Court upheld the order passed by the High Court directing the Government to promote the employee to the higher post from the date when his junior was promoted, notwithstanding the subsequent initiation of vigilance proceedings.

15. The first respondent was therefore not justified in denying promotion to the petitioner on the ground of initiation of disciplinary proceedings after the crucial date."

16. In another Judgment by this Court in ***Joseph v. The Deputy Inspector General of Police, Tiruchirappalli Range, Trichirappalli and another*** reported in **2014 (1) CWC 177** held as follows:

"15. In ***Subramanian v. Govt. of Tamil Nadu***, 2008 (5)

<https://hcservices.courts.gov.in/hcservices/> 115 330, a Division Bench of this Court (Eliphe Dharma Rao & S.Tamilvanan, JJ.) held that when an Employee is



imposed of a punishment of stoppage of increment for two years, without cumulative effect, that could be construed only as a minor punishment and he could not be denied further promotion, solely based on the date of increment, if he is otherwise fit for promotion.

16. In the unreported Judgment **N.Selvarajan v. The Secretary to Government**, W.P.(MD) Nos.3886 of 2010 & 2606 of 2010, dated 24.3.2010, this Court (P.Jyothimani, J.) in a similar case, based on a Government Letter, when the name of Inspectors of Local Fund Audit Department were not included, on the ground that the stoppage of increment was for a period of one year without cumulative effect, wherein it was decided that the currency of punishment was not from the date of increment, but from the date of punishment. Accordingly, this Court quashed that Order in the aforesaid Writ Petition and directed the authorities to include the name of the Inspectors of Local Fund Audit Department in the panel for promotion, on the ground that the currency of stoppage of increment of one year was over, commencing from the date of punishment and not from the date of increment. In this regard, it has been held as follows:

"5. Applying the dictum laid down by the Division Bench in Subramanian's case cited supra, there is absolutely no difficulty to conclude on the facts and circumstances of the present cases that the Petitioners having suffered the minor punishment of stoppage of increment for one year without cumulative effect, which has already come to an end as early as on 31.3.2009, I am of the considered view that the Respondents, being under the legal obligation, should include the names of the Petitioners for promotion to the post of Assistant Directors for the year 2009-2010."

17. This Court one another case in **G.Anburaj v. Government of Tamilnadu, rep. by its Secretary to Government, Commercial Taxes and Registration Department, Secretariat, Chennai-9** and another reported in **(2013) 6 MLJ 305** as follows:

"17. In my view, subsequent charge memo cannot be put against the petitioner for promotion for the year 2010-2011. As rightly contended by the learned counsel for the petitioner, the only impediment is charge memo, dated 8.4.2010. When the same was dropped, he has to be promoted pursuant to inclusion of his name in the panel for promotion to the post of Asst. Inspector General of Registration for the year 2010-2011. Subsequent charge memo, dated 7.3.2013 cannot be put against the



petitioner, particularly when the juniors included in the panel for the year 2010-2011 were promoted on 22.6.2010. Hence, the impugned letter dated 23.3.2013 is quashed and a direction is issued to the respondents to promote the petitioner as Asst. Inspector General of Registration, from the date on which his immediate juniors were promoted on notional basis, since G.O.(D) No.501, Commercial Taxes and Registration Department made it clear that promotion shall be on notional basis. The respondents are directed to complete the aforesaid exercise, within a period of six weeks from the date of receipt of copy of this order."

18. In the latest judgment of this Court rendered by His Lordship Mr. Justice B. Rajendran in **A. Kalaiselvan v. The State of Tamil Nadu, Rep. By the Principal to Government, Commercial Taxes and Registration Department, Secretariat, Fort St. George, Chennai-9 and another** reported in **2016 Writ L.R. 847** as follows:

"8.....when there is no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. Therefore, in the case on hand, as stated above, the subsequent charge memo issued against the petitioner after the crucial date cannot stand as a bar for promotion to him. Thus, the impugned proceedings of the respondent in denying to consider his case for promotion citing pendency of a charge memo is unsustainable in law."

19. This Court is also in consensus with the view in those decisions the learned judges of this Court have held that if there is no charge or punishment on the crucial date for preparation of panel for promotion, then subsequent punishment and even the currency of punishment would not be a bar for granting relief. This Court is in respectful agreement with the views expressed in those decisions. Yet another extenuating factor if the petitioner is admittedly retired on 31.05.2014, he was not going to officiate as District Employment officer what all he would get is only vindication of his grievance and some monetary benefit towards his pension. At same time issuing charge memo for recommending the name of an inter-caste married person that too for a post of overhead tank watch man for a panchayat when the petitioner was in-charge as District Employment officer in 2007 clearly indicates a vindictive attitude of the 2nd respondent and that punishment had subsequently set aside by Government on 7.10.2013 as mentioned supra. Hence, the overall consideration of relevant records would impel this court to lean in favour of the petitioner. As the facts mentioned above are in dispute by the respondents either in oral or written submissions before this Court. That it is decided that this writ petition deserves grant of relief.



20. Accordingly, I am inclined to pass the following orders:-

(a) the writ petition is allowed. The first respondent is directed to consider the case of the petitioner for the promotion to the post of District Employment officer (Recruitment by transfer) for the year 2010-2011, and taking into the account of retirement of the petitioner and further consider the case of the petitioner for grant of monetary benefits applicable.

(b) The entire exercise shall be completed by 1st respondent within a period of two months from the date of receipt of the copy of this order. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

vsa/skn

To

1. The Principal Secretary to the Government,
Labour and Employment Department,
Fort St. George, Chennai - 9.

2. The Director of Employment and Training
Guindy, Chennai - 32.

+1CC to Mr.M.V.Venkataseshan, Advocate Sr.No.81498

+1CC to Spl.Government Pleader Sr.No.74780

CSL/GSV/PM/SAR-3-23.12.16-9p-5C

Order made in
Writ Petition(MD) No.3887 of 2013
19.12.2016