

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.34384 of 2014
and M.P.No.1 of 2014
and W.M.P.No.17620 of 2016

V.Meiyalagan

.. Petitioner

Vs.

1.State of Tamil Nadu rep. by
the General Manager (Admn.),
O/o.The Managing Director,
Tamil Nadu Civil Supplies
Corporation, Head Office,
Chennai - 10.

2.Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Regional Office, Nagapattinam.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the second respondent pertaining to his order made in Rc.No.E2/1274/2013 dated 13.03.2014 (Annexure) insofar as the denial of promotion to the petitioner to the cadre of Assistant is concerned and the order of 1st respondent made in Na.Ka.No.AE5/9687/2014 dated 21.07.2014 rejecting the appeal of the petitioner and quash the same, consequent to direct the respondents to promote the petitioner to the cadre of Assistant at par with his juniors for the year 2012 with all attendant benefits including monetary benefits.

For Petitioner .. Mr.R.Malaichamy

For Respondents .. Mr.L.P.Shanmugha Sundaram

ORDER

Heard Mr.R.Malaichamy, learned counsel appearing for the petitioner and Mr.L.P.Shanmugha Sundaram, learned counsel appearing for the respondents.

2.Challenging the order of the second respondent dated 13.03.2014 and the order of the first respondent dated 21.07.2014 and for a consequential direction to the respondents to promote the petitioner to the post of Assistant, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner would submit that the petitioner, while working as Junior Assistant in the respondents Corporation, was imposed with a penalty of withholding of three increments vide order dated 19.10.2010. Though the order was issued on 19.10.2010, the same was not implemented and it was implemented only during January, 2012. Learned counsel would submit that the penalty period as stipulated in the order dated 19.10.2010 has worked itself out by March, 2012.

4.While so, even after the expiry of three months penalty period, the promotion to the next higher post of Assistant has not been granted to the petitioner. When the petitioner approached the office of the second respondent Corporation, he was informed that his case would be considered only after the disposal of the writ petition.

5.Learned counsel appearing for the respondents would submit that initially the petitioner was not granted promotion because of the currency of penalty. However, there was no valid explanation forthcoming from the first respondent as to why the promotion could not be given to the petitioner even after the expiry of the penalty period in 2012. Learned counsel has also drawn the attention of the Court to the decision of the Full Bench of this Court in The Deputy Inspector General of Police, Thanjavur and another Vs. V.Rani ((2011 (4) MLJ 1)). The relevant portion of the order passed by the Full Bench is extracted hereunder:

28. Therefore, after analysis of the entire law on the subject, we answer the reference 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 [2008 (5) MLJ 350] 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 [2008 (5) MLJ 350], 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.

4. The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

5. Consequently, the embargo put on the right of Government servant 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 other minor punishments is illegal and impermissible under the statutory rules.

6. Upon consideration of the rival submissions of the learned counsels, this Court is of the view that there is no justification in withholding the promotion of the petitioner from April 2012, if the petitioner is otherwise eligible for being promoted to the post of Assistant. In such view of the matter and in view of the categorical ruling of the Full Bench of this Court, there shall be a direction to the first respondent Corporation to consider the case of the petitioner for grant of promotion as Assistant with effect from 01.04.2012,

if he is otherwise eligible, in terms of the rules and regulations and if promoted, grant him all consequential and attendant benefits. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

7.The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

mmi

To

- 1.The General Manager (Admn.),
O/o.The Managing Director,
Tamil Nadu Civil Supplies
Corporation, Head Office,
Chennai - 10.
- 2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Regional Office, Nagapattinam.

+1cc to Mr.L.P.Shanmugansundaram, Advocate SR.No.47823
+1cc to Mr.R.Malaichamy, Advocate SR.No.47411

सत्यमेव जयते

W.P.No.34384 of 2014

SJ(CO)
GN(02/08/2017)

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