

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2017

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P. No.36369 of 2016 and
WMP No.31314 of 2016 and WMP No.752 of 2017

R.Chandra Mohan

Petitioner

Vs.

1. The Principal Secretary / Managing Director,
Tamilnadu Civil Supplies Corporation
Head Office, No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010
 2. The General Manger (Administration)
Tamilnadu Civil Supplies Corporation,
Head Office, No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010
 3. The Senior Regional manager,
Tamilnadu Civil Supplies Corporation,
Chennai (North) Region,
Gopalapuram, Chennai - 600 086
- Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records of the 1st respondent passed in proceedings Proc.No.AE13/52618/2015 dated 07.10.2016 and the consequential order of the 3rd respondent passed in Rc.No.E1/9419/2016 dated 08.10.2016 and quash the same.

For Petitioner : Mr. V.Sanjeevi

For Respondents : Mr. K.Venkataramani
Additional Advocate General
Assisted by
Mr.L.P.Shanmughasundaram
Special Government Pleader

O R D E R

The writ petition is filed against the impugned order of reversion dated 07.10.2016 passed by the Principal Secretary / Managing Director, Tamilnadu Civil Supplies Corporation, Chennai, 1st respondent herein in proceedings No.AE13/52618/2015

and consequential order passed by the 3rd respondent herein in Rc.No.E1/94919/2016 dated 08.10.2016.

2. The brief facts of the case are as follows:-

(a) After the petitioner was appointed and joined in service of Tamilnadu Civil Supplies Corporation (hereinafter referred to as TNCSC) as bill clerk on 13.12.1994, he was given promotion to the post of Assistant Quality Inspector on 15.12.1991 and transferred to Nagapattinam. Again, satisfied with his performance, he was further promoted as Quality Inspector and transferred to Dharmapuri on 30.01.2012. While serving as quality inspector, he suffered a charge memo dated 08.02.2013. Finally, departmental proceedings ended with an order imposing penalty of stoppage increment for one year without cumulative effect on 02.01.2014 passed by the General Manager, TNCSC. But the said order was not communicated to the petitioner. In the meanwhile, the Managing Director, TNCSC in proceedings dated 17.02.2016 included the petitioner's name in the panel of Assistant Manager, Quality Control for the year 2015 and he was issued with a promotional order dated 19.02.2016 promoting him as Assistant Manager, (Quality control) and posting him in Vigilance cell, Head office, Chennai. The petitioner also subsequently, joined the duty as Assistant Manager (Quality control) on 22.02.2016. The Managing Director, TNCSC, after giving promotion transferred the petitioner to Chennai (North) Region as Assistant Manager (quality control) on 19.07.2016. In accordance to the said order, the petitioner joined duty as Assistant Manager (Quality Control) in Chennai (North) Region on 02.08.2016.

(b) All of a sudden, the 1st respondent has passed the present impugned reversion order by cancelling the order of promotion to the post of Assistant Manager (Quality control) on 07.10.2016 and reverted the petitioner to the post of Quality Inspector on the ground that during the currency of punishment, the petitioner's name was included in the panel for the year 2015 and the General Manager (Administration) passed the order on 02.01.2014 imposing the punishment, i.e, stoppage of one year increment without cumulative effect. Pursuant to the said order of reversion, 3rd respondent, namely, the Senior Regional Manager, TNCSC, Chennai, also passed a consequential order, relieving the petitioner from the post of Assistant manager (Quality control) to the post of Quality Inspector on 08.10.2016. The said order of reversion was passed without issuing notice to the petitioner. The petitioner sent a representation dated 13.10.2016 to the General Manager, (Admin), TNCSC, Chennai, to furnish a copy of the punishment order dated 02.01.2014. Only on the request made by the petitioner on 13.10.2016, the General Manager, (Admin), TNCSC, Chennai furnished a copy of the Letter (endorsement) administration dated 02.01.2014 to the petitioner on 14.10.2016. Aggrieved by the order of reversion dated 07.10.2016 and consequential order passed by the 3rd respondent dated

08.10.2016, the petitioner is constrained to come to this Court by way of this writ petition.

3. Learned counsel appearing for the petitioner would submit that it is admitted by both the parties that the order of punishment dated 02.01.2014 was served upon the petitioner only on 14.10.2016. Therefore, only from the date of execution of order of punishment, the punishment shall come into force against the petitioner, while so, the promotion given to the petitioner, as Assistant Manager, Quality control, on 19.02.2016, cannot be cancelled without any notice whatsoever.

4. Secondly, the learned counsel appearing for the petitioner contended that when the punishment of stoppage of increment is for the period of one year without cumulative effect and even if it is presumed that the said order dated 02.01.2014 has been served upon the petitioner in time, the said period of punishment exists only between 01.04.2014 and 31.03.2015, hence it would have been come to an end on 31.03.2015. Admittedly, the crucial date for drawing the panel for promotion was 01.08.2015, therefore, the respondents should have considered the petitioner's name and hence the impugned order of reversion and subsequent order are liable to be set aside.

5. It is, at this stage, the learned Additional Advocate General appearing for the respondents would submit that when the punishment order was issued against the petitioner on 02.01.2014, he fairly acceded that the same was not served upon the petitioner in time. Due to deliberate negligence committed by the officers in the respondent-Department, 1st respondent had initiated departmental action against 8 officers, out of which, departmental proceedings have been initiated against 6 of them under Rule 17(a) of Tamilnadu Civil Supplies Corporation Employees Service Regulations, 1989 and against 2 of them, major disciplinary proceedings are initiated under Rule 8(1) of Tamilnadu Civil Supplies Corporation Employees Service Regulations, 1989. In addition thereto, he pleaded that the case of the petitioner would be considered only for the year 2016.

6. Learned counsel appearing for the petitioner acceding to the said submission of learned Additional Advocate General, requested this Court to pass an order.

7. Heard both sides and perused the documents available on record.

8. From the above said facts, it is clear that the petitioner had suffered a punishment of stoppage of increment for a period of one year without cumulative effect on 02.01.2014, which has not been admittedly served upon the petitioner and the same came to be served only on 14.10.2016.

Prior thereto the petitioner was issued with the promotional order on 19.02.2016. It is not known how such a promotional order could be issued against the petitioner, when a charge memo dated 08.02.2013 was pending, for which, the petitioner has given explanation on 07.03.2013 and the enquiry officer also had submitted his report on 14.08.2013 and that without there being any final order, the respondents ought not to have included the name of the petitioner for promotion for pendency of any charge memo issued under Regulation 4(11) Serial No.3, Chapter 2 of the Tamilnadu Civil Supplies Corporation Employees Regulations 1989.

9. Be that as it may, the punishment order dated 02.01.2014 has been served upon the petitioner only on 14.10.2016. In the meanwhile, unwittingly, the petitioner was promoted to the post of Assistant Manager (Quality Control) on 19.02.2016. Since the learned counsel appearing for the petitioner acceded to the submission made by the learned Additional Advocate General appearing for the respondents that the period of punishment suffered by the petitioner had come to an end on 31.03.2015 and his name should be included in the next panel year i.e., after the check period for the panel from 01.08.2014 to 31.07.2015, in the year 2016, this Court is of the view that the petitioner's name should be considered taking note of crucial date, i.e., 01.08.2016. Therefore, the respondents are directed to include the petitioner's name in the panel drawn on 02.12.2016 and consequently, promote the petitioner. The said exercise shall be completed within a period of three weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

ssd

To

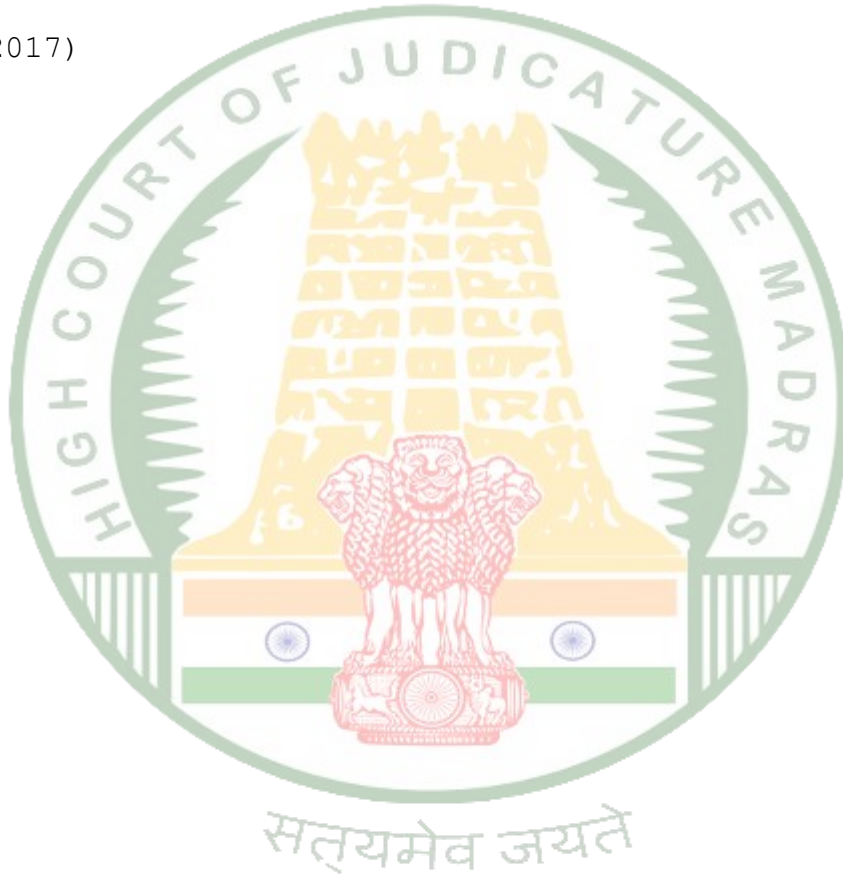
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+1cc to Mr.V.Sanjeevi, Advocate SR.No.74819

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GMR (CO)
GN (07/11/2017)



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