



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) No.899 of 2015

and

M.P. (MD) No.2 of 2015

- 1.The Additional Director General of Police /
Inspector General of Prisons,
Chennai-8.
 - 2.The Chairman Promotion Board &
Deputy Inspector General of Prisons
Chennai Range.
 - 3.The Superintendent of Prisons
Central Prison,
Palayamkottai,
Tirunelveli District
- ... Appellants
- vs-
- P.Jeyakumar
- ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 30.10.2012, made in W.P.(MD) No.11882 of 2012, on the file of this Court.

Prayer in WP(MD). 11882/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings NO. 23632/ES 3/2012 dated 22.08.2012 and quash the same in respect of the petitioner alone as illegal and consequently directing the 1st respondent to include the name of the petitioner in the state wide panel in the order of seniority and pass such further or other orders.

For Appellants : Mr.S.Chandrasekar
<https://hcservices.ecourts.gov.in/hcservices/> Government Advocate
For Respondent : Mr.B.Saravanan

J U D G M E N T

[Judgment of the Court by T.S.SIVAGNANAM, J.]

Heard Mr.S.Chandrasekar, learned Government Advocate appearing for the appellants / respondents and Mr.B.Saravanan, learned counsel appearing for the respondent / writ petitioner and perused the materials produced.

2. This writ appeal filed by the Additional Director General of Police / Inspector General of Police and two others is directed against the order, dated 30.10.2012, made in W.P.(MD) No.11882 of 2012.

3. The legal issue, which was considered by the Writ Court, was as to whether the respondent / writ petitioner can be denied carrier progression / promotion after the expiry of the punishment period. In other words, the appellants / respondents contended that in terms of G.O.(Ms) No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, there is a check period of five years and during which period, the employee cannot be considered for promotion, even though the punishment period is over.

4. The above said issue was referred to the Full Bench, in The Deputy Inspector General of Police, Thanjavur Range v. V.Rani, reported in 2011 (3) CTC 129, wherein one of us (T.S.S.J.,) was a party and the Full Bench, vide Judgment dated 27.04.2011, quashed the said Government Order fixing a check period. In the said Judgment, the Full Bench has held as follows:

"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.

Accordingly, -

(a) W.A.(MD)Nos.315, 355, 587, 869, 826 and 149 of 2010 as well as W.A.No.280 of 2011 stand allowed and the orders of the learned Single Judge stand set aside, however, making it clear that after the period of punishment was over, in respect of writ petitioners, they are eligible for being considered for further promotion, if they are otherwise eligible.

(b) W.P.(MD)Nos.2023 of 2010 and W.P.No.45960 of 2006 (O.A.No.9125 of 2000), which relate to the claim of promotion during the currency of punishment, which was rejected by the impugned



orders, stand dismissed, for the reasons stated above, making it clear that after the period of punishment is over, the petitioners shall be entitled to be considered for promotion in accordance with law.

WEB COPY

(c) W.P.(MD)No.3099 of 2011 which challenges the Government letter dated 20.10.1997 in letter No.248, Personnel and Administrative Reforms (S) Department, which is in the line of the letter dated 7.10.2005, stands allowed, as the said Government letter is held to be not a statutory rule framed under the proviso to Article 309 of the Constitution and hence, it is not having a binding force as the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules and that the principle of check period enunciated therein is also held to be illegal.

(d) W.P.No.47252 of 2006 (OA.No.8850 of 2000) challenges the order of the Deputy Commissioner, Commercial Taxes, Coimbatore, dated 28.9.1997. The inclusion of the name of petitioner in the list of promotion has been deferred due to the punishment awarded to him by the Assistant Commissioner, Commercial Taxes (Enforcement) Coimbatore dated 30.8.1991, viz., the punishment of stoppage of increment for six months without cumulative effect as a minor punishment, since the impugned order proceeds on the basis that the petitioner is not eligible for promotion due to the check period. Inasmuch as we have held that the concept of check period is unknown to the statutory rules and hence, it is illegal, the impugned order stands set aside and the writ petition stands allowed with direction to the respondents therein to consider the case of the petitioner for promotion immediately after the period of punishment was completed, subject to his eligibility and other criteria as per law and pass appropriate orders. The writ petition stands allowed accordingly.

(e) W.P.No.955 of 2007 (O.A.No.9117 of 2000): The writ petition is against the order of the Government refusing to consider the name of petitioner for promotion as a Ranger from the category of Forester on the ground that the petitioner has suffered a minor penalty of punishment of stoppage of increment for a period of three months without cumulative effect from 19.11.1991 in respect of the occurrence that had



WEB COPY

taken place on 27.9.1991 and since the punishment as well as date of occurrence fell within the check period of five years, the claim for promotion of the petitioner was rejected. As we have already held that the term, check period does not find a place in the statutory rules and therefore, it is not legal, the impugned order stands set aside and the writ petition stands allowed with direction to the second respondent therein to consider the case of petitioner for promotion to the post of Ranger after the currency of punishment was over, if he is otherwise eligible and pass appropriate orders as per law.

(f) W.P.Nos.22234 and 22235 of 2010 have been filed to declare the Government Order in G.O.Ms.No.248 dated 20.10.1997 as amended by the Government letter dated 27.8.2003 as illegal, by which the principle of check period has been innovated imposing an embargo on a person who has suffered punishment for being considered for promotion for a period of five years after the currency of punishment period and prior to the date of crucial date. The challenge is also made against the impugned order of the Tamil Nadu Slum Clearance Board dated 25.5.2010, refusing to include the name of petitioner concerned in the panel of Executive Engineers in the Slum Clearance Board on the basis of G.O.248 dated 20.10.1997, wherein the concept of check period was innovated. Since we have held that the principle of check period is not known to the statutory rules, the writ petitions stand allowed and the impugned orders are set aside with direction to the respective respondents to consider the case of the petitioners concerned for promotion after the currency of punishment period was over, subject to eligibility of the petitioners as per law and pass appropriate orders.

(g) W.P.No.26620 of 2010 challenges the order of the second respondent, Inspector General of Registration dated 14.9.2010, under which the claim of the petitioner who was working as a Assistant, to include his name in the promotion panel to Grade-II Sub Registrar for the year 2010-11, came to be rejected on the ground of currency of punishment period. It is seen that as per the show-cause notice issued under rule 17(a) of the Tamil Nadu Civil Services (Disciplinary



WEB COPY

and Appeal) Rules, the Inspector General of Registration, by order dated 30.4.2009 imposed a minor punishment of stoppage of increment for a period of 30 months without cumulative effect. Since the currency of punishment is in force, as held by us, for the reasons stated above, the petitioner is not entitled for the relief claimed and the writ petition stands dismissed, however, with liberty to the petitioner to approach the second respondent therein after the period of punishment is over for consideration of his name for promotion.

(h) W.P.(MD)No.3602 of 2011 is for a declaration that the G.O.Ms.No.248 Personnel and Administrative Reforms (S) Department, dated 20.10.1997 is ultra vires on the ground that the same is not forming part of the statutory rules framed under the proviso to Article 309 of the Constitution of India. It is seen that the petitioner therein was imposed with the punishment of withholding of increment for three months without cumulative effect on 19.2.2007. Since we have held that G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 cannot be equated with the statutory rules framed under the proviso to Article 309 of the Constitution of India and that the other Government letters have no legal force, the writ petition stands ordered accordingly.

5. The only ground on which, the appellants have filed this writ appeal is by contending that to get over the Judgment of the Full Bench, the Rule 4(a) of the General Rules for the Tamil Nadu State and Subordinate Services Rules has been suitably amended giving retrospective effect from 18.10.1993. This amendment was put under challenge in W.P.No.243 of 2015 and the same has been set aside by the Division Bench in the writ appeal, in W.A.Nos.983 of 2015, vide Judgment dated 14.09.2016.

6. At this juncture, it would be beneficial to refer the operative portion of the said order:

"12. Therefore, it is clear that the impugned G.O., is with several ambiguities, based on which, the appellant herein and the writ petitioner are denied promotion, even after the expiry of currency of punishment on the ground of 'check period' or treating 'Censure' as an embargo for granting promotion. Hence, the impugned G.O., insofar as it suggests the 'check period' and treats the



'Censure' as an embargo for granting promotion, which was already condemned by a Full Bench of this court, cannot be maintained as a valid one. IN view of the above, the order of the learned Single Judge passed in W.P.No.243 of 2015 is set aside and the impugned G.O., is quashed, insofar as it suggests the 'check period' and treats the 'Censure' as an embargo for granting promotion. The appellant and the writ petitioner shall be considered for promotion with retrospective effect, from the date when they became otherwise, eligible, within a period of three months from the date of receipt of a copy of this judgment. The writ appeal and the writ petitions are disposed of accordingly. No costs. The connected miscellaneous petitions are closed."

7. For the above reasons, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

- 1.The Additional Director General of Police /
Inspector General of Prisons,
Chennai-8.
- 2.The Chairman Promotion Board &
Deputy Inspector General of Prisons
Chennai Range.
- 3.The Superintendent of Prisons
Central Prison,
Palayamkottai,
Tirunelveli District

+1cc to Special Government Pleader, SR.No.50236

+1cc to M/S.B.Saravanan Advocate SR.No.50335

W.A. (MD) No.899 of 2015

and

M.P. (MD) No.2 of 2015

04.04.2017