



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD) No.10566 of 2016

and

W.M.P.(MD) Nos.8221 and 8222 of 2016

Pushbakaran

... Petitioner

Vs.

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

2.Joint Director (Crafts man Training),
Directorate of Employment and Training,
Guindy, Chennai-32.

3.The Government Industrial Training Institute,
Rep.by its Principal,
Tiruchendur,
Thoothukudi District.

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying for issue of a Writ of Certiorarified Mandamus to call for impugned panel list order passed by the 1st respondent in his proceeding vide Proc.No.TP1/30700/2015 dated 30.05.2016 and quash the same for non-inclusion of the petitioner's name for the promotion of Training Officer post and may consequently direct 1st respondent to promote the petitioner as Training Officer.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.J.Gunaseelan Muthaiah,
Government Advocate.

ORDER

This Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to call for the impugned panel list order passed by the first respondent in his proceedings, dated 30.05.2016, and to quash the same for non-inclusion of the petitioner's name for the promotion of Training Officer post and consequently, to direct the first respondent to promote the petitioner as Training Officer.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:



2.1. The petitioner was appointed as Work Shop Assistant in the third respondent Government ITI, Erode, on 20.02.1984. He was promoted as Junior Training Officer and transferred to North Madras on 01.08.1990. He was again promoted as Assistant Training Officer and working under the third respondent from 01.06.1995.

2.2 While the petitioner was serving under the third respondent, he was served with a charge memo by the second respondent, dated 08.06.2012, for unauthorized absence and not attending the Medical Board for examination as directed by his superiors. Pursuant to the disciplinary proceedings that was initiated against the petitioner, the second respondent inflicted the punishment of stoppage of increment for one year without cumulative effect. The appeal prepared by the petitioner was also negatived by the second respondent, by order dated 17.07.2015. However, a Writ Petition filed by the petitioner in W.P.(MD) No.20575 of 2015 is pending.

2.3. The grievance of the petitioner in the present Writ Petition is that the respondent prepared a panel for the year 2013-14, specifically excluding the petitioner's name on the ground of pendency of disciplinary proceedings against him. Once again, when the panel was prepared for the year 2015-16, the petitioner's name was not included for the same reason. In these circumstances, the petitioner has filed the present Writ Petition for the relief prayed for in the Writ Petition.

3. The second respondent has filed a detailed counter affidavit. According to the second respondent, the crucial period for the panel for the year 2015-16 is between 01.08.2014 to 31.07.2015. Since, the petitioner was inflicted with the punishment on 16.04.2016, the petitioner's name cannot be included in the promotional panel for the year 2014-15. Similarly, on the same ground, the second respondent also contended in the counter affidavit, that during the relevant period, namely, the period during 01.08.2014 to 31.07.2015, charges are pending against the petitioner, therefore the petitioner is not eligible for including his name for the panel prepared for the promotion of Training Officer.

4. Heard Mr.K.P.Narayanakumar, learned Counsel appearing for the petitioner, and Mr.J.Gunaseelan Muthaiah, learned Government Advocate, appearing for the respondents.

5. Having regard to the factual contentions of both sides, the only issue is, whether the petitioner's name can be excluded in the promotional panel prepared for the year 2013-14 and 2015-16 in view of the pendency of disciplinary proceedings and on account of subsequent punishment. The learned counsel for the petitioner relied upon an unreported judgment of the Honourable Full Bench of this Court in W.A.(MD)No.315 of 2010, dated 27.04.2011, in the case of The Deputy Inspector General of Police and others v. V.Rani, where this Court has held 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 the 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.

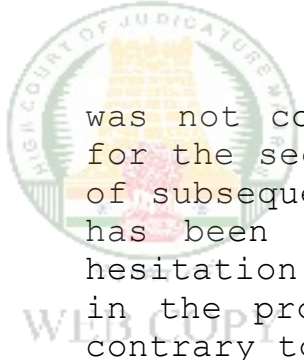
2. If any benefit has been conferred on the party to the judgment rendered by the Division Bench in Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and others [2008 (5) MLJ 350], the same shall not be affected by the judgment of this Bench since there is a factual finding in that 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. The learned counsel for the petitioner relied upon the consolidated instructions for preparation panel for appointment by Promotion/Recruitment by transfer. It is relevant to refer Annexure-I to the letter dated 07.10.2005. A reading of the general instructions would clearly indicate that, an Officer, who



was not considered in the previous panel may not be passed over for the second time on account of the same punishment at the time of subsequent consideration for the next panel. Since the position has been clarified by the letter dated 07.10.2005, I have no hesitation to hold that the non-inclusion of the petitioner's name in the promotional panel prepared for the year 2015-16 is also contrary to the administrative instructions.

7. Having regard to the admitted facts and the relevant provisions, this Court accepts the case of the petitioner. The judgment of the Honourable Full Bench of this Court fully support the view suggested by the learned counsel for the petitioner. Hence this Writ Petition is allowed and the impugned panel list prepared by the first respondent vide his proceedings, dated 30.05.2016, is quashed. Consequently, the first respondent is directed to promote the petitioner as Training Officer with effect from the date of promotion of his immediate junior, one Mr.C.Ramalingam. This exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, the connected W.M.P. (MD) Nos.8221 and 8222 of 2016 are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Employment and Training,
Guindy, Chennai-32.
2. Joint Director (Crafts man Training),
Directorate of Employment and Training,
Guindy, Chennai-32.
3. The Principal,
Government Industrial Training Institute,
Tiruchendur, Thoothukudi District.

+1 cc to Mr.K.P.Narayanakumar, Advocate, SR.No.53714

+1 cc to Special Government Pleader, SR.No. 54198

**W.P. (MD) No.10566 of 2016 and
W.M.P. (MD) Nos.8221 and 8222 of 2016
24.04.2017**