



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2017

CORAM

THE HON'BLE Mr. JUSTICE R. SURESH KUMAR

W.P. (MD) No.8584 of 2013

and

M.P (MD) 1/2013 AND MP (MD) 1/2014

S.P.Petchimuthu

... Petitioner

-vs-

The Regional Manager,
Tamil Nadu Civil Supplies Corporation
Virudhunagar Region, Virudhunagar,
Virudhunagar District

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records of the impugned order issued by the respondent in his proceedings Na.Ka.No.E1/5169/12 dated 02.05.2013 and quash the same.

For Petitioner : Mr.S.Subbiah

For Respondents : Mr..D.Mayarajan

O R D E R

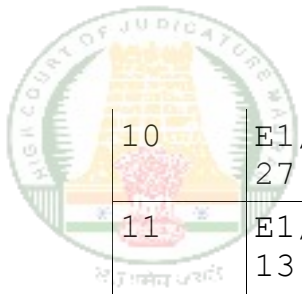
The prayer in the writ petition for a Writ of Certiorari to call for the records of the impugned order issued by the respondent in his proceedings Na.Ka.No.E1/5169/12 dated 02.05.2013 and quash the same.

2. The case of the petitioner is that he joined as Bill Collector in Tamil Nadu Civil Supplies Corporation, Virudhunagar District and was promoted as Junior Assistant with effect from 01.11.1991 and then Assistant from 06.03.2013. Accordingly, he had been discharging his duties as Junior Assistant with effect from 02.05.2013. Since the petitioner was fully qualified to the post of Assistant, his name was included in the approved panel of Assistants in Sl.No.1 for the year 2012 vide proceedings of the first respondent dated 06.03.2013 and accordingly, he was promoted as Assistant vide proceedings of the respondents dated 06.03.2013. After having been promoted as Assistant and was posted at the Regional Office of the respondent Corporation, Virudhunagar Region, he had been working as such from that date of promotion. While so, all of a sudden, the present impugned order of reversion dated 02.05.2013 was issued against the petitioner. Challenging the same, the petitioner has come out with the present writ petition.

that the reasons cited in the impugned order for reversion, according to the respondent, is that since the currency of punishment of the petitioner was there till 31.12.2013 and within which since the crucial date, ie., 01.10.2012 for the promotion to the post of Assistant falls, the wrong promotion given to the petitioner to the post of Assistant had to be necessarily reverted and therefore, accordingly, the petitioner was reverted from 02.05.2013 as Junior Assistant. This reason adduced in the impugned order, according to the learned counsel for the petitioner, is palpably wrong, because the respondent vide his proceedings dated 04.04.2012 obtained by the petitioner through Right to Information Act, has given the details of punishment inflicted on the petitioner for all these years from 1999 onwards. According to the said list of punishment mentioned in the said proceedings dated 04.04.2012, the last such punishment was given only in the year 2007 by proceedings dated 31.12.2007, whereby stoppage of increment for 6 months with cumulative effect was given against the petitioner and if the said punishment is over by atleast 2008, certainly, there can be no further impediment for the respondent to promote the petitioner in the year 2012 and therefore, what has rightly been given by way of promotion to the petitioner has been unnecessarily taken away by virtue of the impugned order, without even verifying the currency of the punishment, which, even according to the proceedings issued by the 2nd respondent as referred to above dated 04.04.2012, was over as early as in the year 2008 and therefore, the impugned order on this ground alone is liable to be quashed.

5. Per contra, the learned standing counsel for the respondent Corporation would rely upon the averments contained at paragraph No.3 of the counter affidavit filed by them. According to the learned counsel, though punishment was periodically awarded against the petitioner right from 1999 up to 2007, for 13 times, for the purpose of the present issue, the punishment awarded against the petitioner from the year 2004 can be taken into account. According to him, the following punishments had been awarded against the petitioner from the year 2004 to till 2007 and the same are reproduced hereunder:

Sl.NO	RM/VNR-Progs. No/Date		Details of punishment
6	E1/9813/02 09.03.2004	dt	Awarded stoppage of increment for one year without cumulative effect.
7	E1/7964/03 30.06.2004	dt	Awarded stoppage of increment for 3 years with cumulative effect
8	E1/9569/01 18.11.2004	dt	Awarded stoppage of increment for 3 months with cumulative effect.
9	E1/6093/04 09.11.2004	dated	Awarded stoppage of increment for 6 months without cumulative effect.

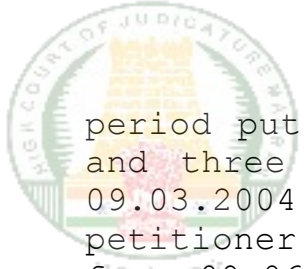


10	E1/3135/03 27.02.2006	dated	Awarded censure
11	E1/8916/09 13.02.2006	dated	Awarded stoppage of increment for one year without cumulative effect.
12	E1/5710/06 30.08.2007	dated	Awarded stoppage of increment for 3 years with cumulative effect.
13	E9/4301/07 31.12.2007	dated	Awarded stoppage of increment for 6 months with cumulative effect.

6. These punishments given to the petitioner for eight times at various period, except one time, where the punishment was given is only censure, comes for the total period of 9 years and three months. If the punishment starts even from the date of proceedings dated 09.03.2004, where it was awarded for stoppage of increment for one year without cumulative effect, total 9 years and three months period of stoppage of increment inflicted on the petitioner at various point of time during the year 2004, 2006 and 2007 as referred to in the above table would be over only on 09.06.2013. Therefore, no doubt, the currency of the punishment was in force against the petitioner till 09.06.2013. The learned counsel for the respondent would submit that the crucial date for promotion to the post of Assistant for the year 2012 is 01.10.2012. So, admittedly, the said crucial date would fall on within the currency of punishment ie., up to 09.06.2013. Therefore, there is absolutely no justification on the part of the petitioner to challenge the impugned order, wherein, the wrong promotion given to the petitioner without even verifying the currency of the punishment against the petitioner was withdrawn, after having considered the relevant punishment awarded against the petitioner, where such punishment was undergone by the petitioner till 09.06.2013, therefore, certainly, he would not have been eligible to be considered for the promotion to the post of Assistant. Therefore, only in that circumstances, by rectifying the earlier mistakes done by the respondent, they have passed the present impugned order, whereby the petitioner has been reverted and therefore, absolutely, there is no infirmity in the said order impugned herein.

7. This Court has considered the rival submissions made by the learned counsel for the parties.

8. The above stated facts cannot be in much controversy because the petitioner cannot deny that he had been inflicted with the punishments period as has been enumerated in the table referred above. If all the punishments are put together, one by one, it would come for the total period of 9 years three months, as the petitioner was awarded punishment initially in the year 2004 and the last such punishment was awarded in the year 2007. The currency of the punishment period for all these punishments

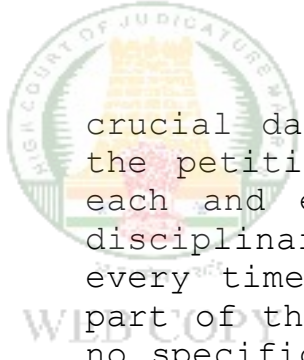


period put in combined together, would certainly come for 9 years and three months. This nine years and 3 months would be from 09.03.2004 and would be over only on 09.06.2013. Therefore, the petitioner become eligible to be considered for the promotion only from 09.06.2013 onwards. Therefore, the promotion given already to the petitioner by taking into consideration the crucial date as 01.10.2012, certainly, would be a wrong decision, as on the said crucial date, certainly, the currency of the punishment against the petitioner was in force. Therefore, there is every justification on the part of the respondents to pass the impugned order and there is a force in the submissions made by the learned counsel for the respondent. In view of the said facts, this Court is not inclined to entertain the challenge made by the petitioner against the impugned order, as the same is sustainable one and needs no interference from this Court.

9. However, after 31.12.2007, no punishment was awarded against the petitioner and even the currency of the last punishment awarded on 31.12.2007 would be over by 09.06.2013, as total period of punishment of 9 years and 3 months as referred to above, also has been undergone by the petitioner on the said date. Therefore, after 09.06.2013, since there was no punishment against the petitioner, certainly, the petitioner would be entitled to be considered for the promotion to the post of Assistant. It is submitted across the bar that the petitioner, since attained superannuation, retired from service on 30.11.2015. Even though originally, this Court by interim order dated 22.05.2013, granted interim order of stay of the impugned order in M.P.No.1 of 2013, the said interim order was given for a limited period of six weeks. Thereafter, the said order has not been extended and no action was initiated on the part of the petitioner to get extension of the interim order. Therefore, during the said period of six weeks, if the petitioner worked as Assistant and if any salary is paid to him, the same cannot be recovered from him. However, thereafter, if the petitioner is reverted pursuant to the impugned order and if he continued to work in the reverted post of Junior Assistant, the same also need not be disturbed. At the same time, as discussed above, since the petitioner has completed the entire currency of punishment by 09.06.2013, certainly, he would be entitled to claim promotion to the post of Assistant.

10. At this juncture, the learned counsel for the petitioner would also submit that even though the punishments were inflicted on the petitioner for so many times and each of the time, stoppage of increment for a particular period was given and if one punishment is overlapped the other, the punishment period can be calculated only concurrently and not separately.

<https://hcservices.ecourts.gov.in/hcservices/> the punishment period in entirety is taken into account as concurrent one, certainly, 9 years 3 months period of punishment would have been ended well in advance ie., before the



crucial date ie., 01.10.2012. This submission made on behalf of the petitioner cannot be countenanced for the simple reason that each and every punishment was awarded pursuant to the separate disciplinary proceedings initiated against the petitioner and every time, depending upon the veracity of the violation on the part of the petitioner, such punishment has been given. There is no specific order in each of the punishment that these punishments period shall run concurrently and the currency of punishment can go on concurrently and in absence of any such specific order in this regard, at the time of inflicting the punishments against the petitioner, such a plea raised by the petitioner cannot be accepted and therefore, the same is rejected.

12. In the result, the following orders are passed in the writ petition:

(i) The impugned order is sustainable and therefore, it requires no interference from this Court;

(ii) Since the entire punishment period against the petitioner was over by 09.06.2013, from that date, the petitioner would be eligible to be considered for the promotion to the post of Assistant and on such consideration, he shall be given notional promotion as Assistant from that date, if no other punishment inflicted on him, subsequent to the one dated 31.12.2007. If the petitioner's case is considered and promotion to the post of Assistant is given to him from 09.06.2013, it is needless to state that he shall be entitled to get all service benefits including monetary benefits and also corresponding revision in pension also. The aforesaid direction shall be complied with by the respondent within a period of eight weeks from the date of receipt of a copy of this order.

With these directions, the writ petition is disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar()

/True Copy/

Sub Assistant Registrar

To
The Regional Manager,
Tamil Nadu Civil Supplies Corporation
Virudhunagar Region,
Virudhunagar, Virudhunagar District
+1cc to MR.S.Subbiah, Advocate, SR.4410
+1cc to MR.D.Mayarajan, Advocate, SR.4333

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and M.P.Nos.1 of 2013 and 1 of 2014
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