

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.10.2018
CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND

THE HONOURABLE MR. JUSTICE S.BASKARAN
W.A.Nos.546 & 620 of 2015

&

M.P.No.1 of 2015

W.A.No.546 of 2015

1.Dr.M.Jagadeesan

2.Dr.E.Saraswathi

3.Dr.S.Mani

to 4

... Appellants/Respondents 2

-Vs.-

1.Dr.N.A.Senthilnathan

... Respondent/Writ Petitioner

2.The Principal Secretary/Commissioner

Corporation of Chennai

Rep by its Commissioner

Ribbon Building

Chennai - 600 003.

... Respondent/Respondent No.1

Prayer: Appeal filed under Section 15 of the Letters Patent against the order passed in the Writ Petition in W.P.No.30109 of 2013, dated 04.03.2015.

W.P.No.30109 of 2013

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified Mandamus calling for the records comprised in the Note dated 26.9.2013 bearing P.D. Na. Ka. No.E2/ 38447/ 2013 issued by the 1st respondent and quash the same as being illegal arbitrary irrational and consequently direct the 1st respondent to consider the name of the petitioner for inclusion in the selection list without taking into consideration the stoppage of increment for 3 months without cumulative effect imposed on the petitioner and the consequent pending appeal preferred by the petitioner before the Government of Tamilnadu.

For Appellants

:: Mr.G.Sankaran

For Respondents

:: Mr.R.Singaravelan,

Senior Counsel,

for Rahul Balaji, for R1

Mrs.Karthika Ashok,

Standing Counsel, for R2

W.A.No.620 of 2015
The Principal Secretary/Commissioner
Corporation of Chennai
Rep by its Commissioner
Ribbon Building
Chennai - 600 003.

... Appellant/1st Respondent

-Vs.-

1.Dr.N.A.Senthilnathan

... Respondent/Petitioner

2.Dr.M.Jagadeesan

3.Dr.E.Saraswathi

4.Dr.S.Mani

to 4

... Respondents/Respondents 2

Prayer: Appeal filed under Section 15 of the Letters Patent against the order passed in the Writ Petition in W.P.No.30109 of 2013, dated 04.03.2015.

For Appellant :: Mrs.Karthika Ashok

For Respondents :: Mr.R.Singaravelan,
Senior Counsel,
for Rahul Balaji, for R1

Mr.G.Sankaran,
for R2 to R4

COMMON JUDGMENT

N.KIRUBAKARAN, J

Can the punishment order in effect punish a person twice is the question before this Court. If the contention of the appellants in W.A. No. 546 of 2015 is to be upheld, then the first respondent would be punished twice by the single punishment order dated 15.11.2012.

2.The parties are referred as per their rank in W.A.No.620 of 2015.

3.The Appeals have been preferred against the order of the learned Single Judge quashing the resolution and the seniority list prepared by the Corporation and further, directing the Corporation to promote the first respondent in W.A.No.620 of 2015 as Additional City Health Officer Grade I-B with effect from 05.11.2013 instead of 23.10.2014 as already promoted by the Corporation.

4.The facts of the case are as follows:-

(a). The first respondent joined the appellant Corporation

of Chennai on 29.06.1992 as Assistant Health Officer and his service was regularized with effect from 29.06.1992 by an order dated 29.03.2004. The said post of Health Officer has subsequently been re-designated as Zonal Health Officer which is a Class-II post.

(b).The first respondent was issued a show cause notice making certain allegations against him on 24.08.2012 by Joint Commissioner (Health) and the reply dated 06.09.2012 was submitted by the first respondent. However, by proceedings dated 15.11.2012, the Deputy Commissioner imposed a penalty of stoppage of increment for a period of three months without cumulative effect. A review petition was filed by the first respondent on 06.12.2012 before the concerned authority. However, the said authority has not passed any orders on the said petition.

(c).On 11.01.2013, the first respondent filed an appeal before the Government of Tamil Nadu against the punishment order dated 15.11.2012 stopping the increment and the order of punishment should start to run from the date of service of order on the first respondent on 16.11.2012 or from the date of increment due. Mean while, the appellant Corporation prepared a panel for promotion to the post of Additional City Health Officer taking 1st April 2013 as crucial date and the first respondent's name was not included in the panel as he sustained a punishment on 15.11.2012.

(d).The Appellant/Corporation implemented the punishment order imposed on the first respondent only from 1st July 2013 on which date the next increment was due. The first respondent's name was not included in the promotion list and respondents 2 to 4, who were juniors to the first respondent were promoted. Challenging the resolution dated 26.09.2013 passed by the Corporation by which the aforesaid promotion was made, a writ petition was filed and thereafter, the prayer in the writ petition was amended to quash the consequential order dated 05.11.2013 by which respondents 2 to 4 were promoted as Additional City Health Officer.

(e).The appellant/Corporation contended that the implementation of the punishment was based on two Government letters viz., Letter No.18667/S/2006-1, Personnel and Administrative Reforms Department, dated 28.04.2006 and Lr.No.13400/S/2007-6, dated 11.09.2009 which state that the punishment of stoppage of increment would commence only from the actual date of increment. However, disagreeing with the said contention, the learned Single Judge allowed the writ petition relying upon the earlier order passed in W.P.No.29297 of 2006 dated 29.07.2006, wherein it has been held that the Government

letters dated 28.04.2006 and 11.09.2009 have no statutory force and that cannot be acted upon.

(f).The learned Single Judge also relied upon the full bench judgment of this Court in the case of Deputy Inspector General of Police, Thanjavur Range and another v. Rani reported in 2011 (3) CTC 129, wherein it was held that a detailed instruction given by the Government cannot be equated to the statutory rules framed under proviso to Article 309 of the Constitution of India and the Government letters are not statutory in nature as they are not framed under proviso to Article 309 of the Constitution of India. Therefore, the learned Single Judge rejected the contention raised by the Corporation. Further, the learned Single Judge also relied upon the judgment of the Hon'ble Apex Court in the case of Shiv Kumar Sharma v. Haryana State Electricity Board reported in 1988 Supp SCC 669, wherein the Hon'ble Apex Court had set aside the order placing the appellant therein below his juniors and declaring the probation on a later date on account of currency of stoppage of increment for one year holding that it would amount to double punishment. Further, relying on the full bench judgment wherein it was held therein that the embargo put on the right of the Government Servants for being considered for promotion for further period after the period of minor punishment is over in the name of check period is illegal and impermissible under the statutory rules, the learned Single Judge held that the first respondent was denied his due promotion and he should have been promoted even before the promotion of respondents 2 to 4 and directed the Corporation to refix the seniority. The said order is being challenged before this Court.

5.Mr.G.Sankaran, learned counsel appearing for respondents 2 to 4 would submit that the Government passed G.O.Ms.No.22 P & AR (S), dated 24.02.2014 by which an amendment has been introduced to Rule 4(a) of the General Rule for the Tamil Nadu State and Subordinate Services. By the amendment of the Rule, a check period has been introduced with retrospective effect from 27.08.2003 and therefore, there is an embargo for inclusion of the first respondent's name in the panel for the year 2013 . Therefore, the contention of the Corporation that the first respondent is ineligible for being considered for promotion as Additional City Health Officer Grade I-B for a period of 5 years has to be sustained.

6.The Full Bench Judgment which declared that there is no embargo for the Government Servants for being considered for promotion after the period of minor punishment is over in the name of check period namely, one year in the case of censure and 5 years in the case of other minor punishment is illegal and impermissible under the statutory rule, was nullified by way of

statutory rule framed under Article 309 of the Constitution of India by G.O.Ms.No.22 P & AR (S), dated 24.02.2014.

7.Once the statutory rule has been incorporated on 24.02.2014, it would apply retrospectively and for one year from 15.11.2012 till 14.11.2013, the first respondent would not be eligible for promotion in view of the check period.

8.The punishment order dated 15.11.2012 namely, the stoppage of increment without cumulative effect can be implemented only from the next date of increment namely, 01.07.2013 and therefore, the first respondent was not considered for promotion as he was ineligible on the crucial date viz., 01.04.2013.

9.Mrs.Karthika Ashok, learned standing counsel appearing for the Appellant/Corporation would submit that the Corporation could not include the name of first respondent in the panel, as on the crucial date, the first respondent suffered a punishment order dated 15.11.2012 and the Corporation implemented the punishment only with effect from 01.07.2013 as the said date is the actual date of next increment, relying upon the Government letters dated 28.04.2006 and 11.09.2009 and since the punishment period commenced only from 1st July 2013, the currency of punishment continued till 30th September 2013 and hence, the first respondent could not be promoted. However, the first respondent was subsequently promoted by an order dated 23.10.2014 and hence, there could not be any grievance for the first respondent. Therefore, the learned standing counsel appearing on behalf of the Chennai Corporation seeks to set aside the order passed by the learned single Judge.

10.Mr.R.Singaravelan, learned Senior Counsel appearing on behalf of the first respondent vehemently contended that the first respondent was punished by denying promotion by postponement of punishment contrary to the full bench judgment and the earlier order passed by a learned single judge in W.P.No.29297/2016. He relied upon the Government letter No.28790/S/2001-1, dated 06.07.2001, wherein the Government had clarified that the order of imposing any punishment including withholding of increment takes effect from the date on which the said order is communicated to the concerned Government servant.

11.Heard the parties and perused the records.

12.There is no dispute with regard to the appointment of first respondent as Health Officer on 29.06.1992 and issuance of the charge memo on 24.08.2012, imposing punishment of stoppage of increment for a period of three months without cumulative effect by an order dated 15.11.2012. Thereafter, only the dispute arose as to whether the order of punishment would

commence immediately on service of the punishment order dated 15.11.2012 on the first respondent on 16.11.2012 or whether it could be postponed and implemented only from the actual date of increment namely 1st July 2013 has to be decided.

13. In any circumstance, only one option can be exercised, even though there were two options available to the appellant/Corporation i.e., either to implement the punishment from the date of service of the punishment order on the first respondent viz., 16.11.2012 or from the actual date of increment namely 01.07.2013. If the appellant/Corporation had chosen to implement the order from the date of service viz., 16.11.2012, the three months punishment period would have ended on 15.02.2013 and only during that period, there would be currency of punishment and therefore, after expiry of three months period, there is no embargo for the Corporation to include the name of the first respondent in the panel drawn for promotion because as on the crucial date viz., 01.04.2013, the currency of punishment would have already ended on 15.02.2013. Hence, the name of the first respondent could have been included and he could have been promoted.

14. The second option available for the Corporation is to postpone the implementation of punishment or stoppage of increment for a period of three months without cumulative effect from the actual date of increment viz., 01.07.2013. If it is so, the currency of punishment would end only on 30.09.2013. In such circumstances, the previous period namely the period prior to 01.07.2013 could be only termed as charge period and it should be deemed that there was no punishment, as the same was postponed and given effect only on 01.07.2013. Therefore, on the relevant crucial date viz., 01.04.2013, only a minor charge which could not be a bar for promotion in view of G.O.Ms.No.368, dated 18.10.1993 should be deemed to be pending and there was no other major punishment. Hence, the name of the first respondent could have been included in the panel and he could have been promoted. Without choosing an option, the appellant/Corporation had jeopardized the first respondent twice from 16.11.2012 to 30.09.2013 viz., 16.11.2012 to 15.02.2013 and 01.07.2013 to 30.09.2013.

15. As already stated, the learned Single Judge relying on the judgment made in W.P.No.29297 of 2016, passed by a learned Single Judge wherein this Court had deprecated the practice of adoption of postponement of implementation of punishment on the basis of the letter dated 28.04.2006, rightly held that the letters dated 28.04.2006 and 11.09.2009 have no statutory force. The learned Judge had also relied upon the full bench judgment of this Court in the case of Deputy Inspector General of Police, Thanjavur Range and another v. Rani reported in 2011 (3) CTC

129, wherein it was held that a detailed instruction given by the Government cannot be equated to the statutory rules framed under proviso to Article 309 of the Constitution of India and the Government letters are not statutory in nature and the letters cannot be read either with the Tamil Nadu Government Servants' Conduct Rules or with the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

16.The approach of the learned Single Judge is correct as the Government letters dated 28.04.2006 and 11.09.2009 have no statutory force and the appellant/Corporation should not have postponed and if it is so, the order of punishment dated 15.11.2012 would have taken effect on 16.11.2012 being the date of service of the order and the three months period would have ended on 15.02.2013 and in that event, there would have been no currency of punishment as on 01.04.2013 being the crucial date for preparation of panel.

17.The learned Single Judge also relied upon the judgment of the Hon'ble Apex Court in the case of Shiv Kumar Sharma v. Haryana State Electricity Board reported in 1988 Supp SCC 669, wherein an employee was imposed a minor punishment of stoppage of one increment without cumulative effect and after expiry of punishment period of one year, he was given increment. The appellant therein completed his probation along with respondents 2 to 19 in the Civil Appeal and the respondents were confirmed in the post with effect from 01.04.1969, whereas the appellant therein was confirmed only with effect from 01.12.1969 on account of stoppage of increment for one year and he was placed below his juniors in the seniority list. In the said case, the Hon'ble Apex Court held that the act of the employer namely, Haryana State Electricity Board in placing the appellant therein below his juniors and declaring probation on a later date on account of currency of punishment of stoppage of increment for one year would amount to double punishment. In view of the above decision also, the learned Single Judge held that denial of promotion to the first respondent on account of the postponement of punishment is illegal. Therefore, the order passed by the learned Single Judge is correct.

18.The matter does not end there. After the order of the learned Single Judge, the Government passed G.O.Ms.No.22 P & AR (S), dated 24.02.2014 by which an amendment has been introduced to Rule 4(a) of the General Rule for the Tamil Nadu State and Subordinate Services to nullify the full bench judgment reported in 2011 (3) CTC 129. By the amendment of the Rule, a check period has been introduced with retrospective effect from 27.08.2003. The first respondent cannot be considered for promotion as on 01.04.2013, Mr.G.Sankaran, learned counsel for the appellants and Ms.Karthika Ashok, learned standing counsel

for the Chennai Corporation would submit, relying upon the said amendment.

19. However, Mr. R. Singaravelan, learned Senior Counsel would submit that the amendment cannot be introduced by the State Government to nullify the effect of full bench judgment reported in 2011 (3) CTC 129 and therefore, the amendment itself is illegal. Moreover, amendment cannot be applied retrospectively as penal consequences would result. If at all, the new rule is applicable, it is only from 24.02.2014 onwards and not before that. The promotion has to be made based on the existing rule on the date of accrual of right to the first respondent. The amendment cannot bring back the circulars/letters quashed by the full bench. Further, he would point out that a Division Bench of this Court by an order dated 14.09.2016 in W.A.No.983 of 2015 in the case of K. Rajalakshmi v. Principal Secretary to Government, School Education Department and two others quashed G.O.Ms.No.22 P & AR (S), dated 24.02.2014. The very same decision was followed in W.P.(MD).No.551 of 2015, dated 17.04.2017 in the case of K. Elango v. State of Tamil Nadu and two others. Therefore, the subsequent events of incorporating a check period by way of amendment to Rule 4(a) of the General Rule for the Tamil Nadu State and Subordinate Services cannot have any effect in the case of the first respondent.

20. From the above, it is clear that the Government wanted to nullify the full bench decision of this Court by issuance of G.O.Ms.No.22 P & AR (S), dated 24.02.2014. However, as rightly pointed out by Mr. R. Singaravelan, the amendment which causes penal consequences cannot be applied retrospectively. Further, the said amendment by way of G.O.Ms.No.22 P & AR (S), dated 24.02.2014 was quashed by the Division Bench judgment of this Court dated 14.09.2016 made in W.A.No.983 of 2015 in the case of K. Rajalakshmi v. Principal Secretary to Government, School Education Department and two others. Paragraphs 11 & 12 of the said judgment are usefully extracted hereunder:-

"11. On a mere reading of both the clauses viz., (1-HH) and (1-H) would reveal that both are contradictory as clause (1-HH) suggest that a member of service shall not be considered for promotion if he is imposed with any punishment other than Censure within a period of five years and within a period of one year in case of Censure, from the crucial date. Whereas clause (1-H) which is above the insertion (1-HH) suggests that a member of service shall be considered for promotion even though he was imposed with punishment, but for the irregularities that were committed five years prior to the crucial date and the only condition imposed therein being that the member of service should not have been undergoing such

punishment on the crucial date or on the date of consideration for actual promotion.

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."

21. In view of the aforesaid position, there is no embargo for the Corporation to include the name of the first respondent in the panel for promotion on 01.04.2013. Moreover, on the crucial date viz., 01.04.2013, the Government letters dated 28.04.2006 and 11.09.2009 were not in force as the same were already quashed in view of the full bench judgment reported in 2011 (3) CTC 129. Thus, on the crucial date viz., 01.04.2013, there were neither valid Government letters dated 28.04.2006 and 11.09.2009 nor there was the amendment dated 24.02.2014 bringing back the check period.

22. Anticipating that a Rule would be brought by the Government, the Chennai Corporation cannot deny the legal right accrued to the first respondent to be considered for promotion, affecting Articles 14 & 16(1) of the Constitution of India. Therefore, the order of the learned Single Judge, even after the subsequent development, cannot be interfered with.

23. As rightly pointed out by the learned Single Judge, the first respondent was already promoted to the post of Additional City Health Officer and quashed the resolution dated 26.09.2013 in the consequent order dated 05.11.2013 denying promotion to the first respondent and directed passing appropriate orders to promote him as Additional Health Officer, Grade I-B with effect

from 05.11.2013, the date on which the respondents 2 to 4 who are the private respondents in the writ petition were promoted placing the first respondent as senior over respondents 2 to 4 is correct. The subsequent events would in no way affect the finding rendered by the learned Single Judge.

24.The appellant/Corporation is directed to implement the order of this Court by treating the first respondent as senior to respondents 2 to 4, who were promoted on 05.11.2013 to the post of Additional City Health Officer with effect from 05.11.2013 with all consequential service benefits within two weeks from the date of receipt of a copy of this order and file a compliance report before this Court failing which the Commissioner, Corporation of Chennai shall appear before this Court on 29.10.2018.

25.In fine, these writ appeals are dismissed. Consequently, connected miscellaneous petition is closed. No costs.

For reporting compliance, list the matter on 29.10.2018.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary/Commissioner
Corporation of Chennai
Rep by its Commissioner
Ribbon Building
Chennai - 600 003.

2.The Section Officer/CPL
Judicial Department
High Court,Madaras-104
(for Listing under the caption of reporting)

+2cc to Mr.A.Karthika Ashok , Advocate, S.R.No.68817 & 68818
+1cc to Mr.R.Parthasarathy, Advocate, S.R.No.68941
+1cc to Mr.G.Sankaran, Advocate, S.R.No.69076

W.A.Nos.546 & 620 of 2015

GSP (09/10/2018)