

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.2269 of 2012

Dr.D.Ramamoorthy

... Appellant

Vs.

1.The State of Tamilnadu, rep., by its
Special Commissioner and Secretary to Government,
Animal Husbandry, Dairying and Fisheries(AH1)
Department, Chennai-9.

2.The Commissioner and Director of
Veterinary Services,
Chennai-6.

... Respondents

Writ Appeal is preferred under Clause 15 of the Letters
Patent against the order dated 31.10.2011 passed in W.P.No.25601
of 2009.

W.P.No.25601 of 2009

Praying to issue a Writ of Certiorarified Mandamus the
records of the first respondent issued in G.O.(2D) No.25, Animal
Husbandry Dairying and Fisheries (AH1) Department, dated
25.02.2008 and G.O.(2D)No.38, Animal Husbandry Dairying and
Fisheries (AH1) Department, dated 04.06.2009 and quash the same
and direct the respondents to consider the name of the
petitioner for promotion to the post of Assistant Director of
Animal Husbandry for the year 2006 and promote him as Assistant
Director of Animal Husbandry with all benefits.

For Appellant : Mr.G.Elanchezhian
For respondents : Mrs.A.Srijayanthi,
Special Government Pleader

JUDGMENT

(Judgment of the Court was made by M.M.SUNDRESH,J.)

The appellant was holding the post of Veterinary Assistant
Surgeon. He has now reached the age of superannuation. The
following is the charge framed against the appellant.

"That the said Dr.D.Ramamurthi, while working as Veterinary Assistant Surgeon in the Veterinary Hospital, Cuddalore, has received the stocks of medicines without the label "Government supply not for Sale" and distributed the same to dealers during 2001-2002. Thus he failed in his duty by violating the guidelines issued by the Director of Veterinary Services, Chennai."

2. The Enquiry Officer held that the charge is not proved. Not satisfied with the same, further explanation was called for on 04.04.2007 vide letter dated 21.02.2007 by the Disciplinary Authority while differing with the views of the Enquiry Officer. A further representation was given by the appellant. Thereafter, impugned order was passed imposing the punishment of censure.

3. The aforesaid order was challenged primarily on the ground that the representation made has not been considered properly. The learned single Judge has dismissed the writ petition holding that the order being censure, the appellant cannot ask for retrospective promotion. Challenging the same, the present writ appeal has been filed.

4. The learned counsel appearing for the appellant would submit that the order does not indicate any reason. Now, the appellant has reached the age of superannuation. Therefore, the order of the learned single Judge will have to be set aside and the appellant should be given notional promotion for the purpose of fixing pensionary benefits.

5. The learned Special Government Pleader appearing for the respondents submits that due procedure has been followed. The reply given was devoid of material particulars and hence, the appeal will have to be dismissed.

6. Certainly, the order impugned under challenge has got civil consequence. Because of the order of the censure, the appellant Could not be promoted. A perusal of the Government Order and the review would show that absolutely there is no reason assigned nor explanation considered. Notwithstanding the charge framed, it is for the department to substantiate it against the delinquent officer. However, at this point of time, we are not inclined to remit the matter for fresh consideration as the appellant attained the age of superannuation.

7. The learned counsel for the appellant fairly submitted that he is not pressing for any monetary benefits but a notional

promotion may be considered along with the pay scale for the purpose of fixing the retiral benefits. The said submission to be worth consideration. In such view of the matter, while setting aside the order of the learned single Judge, we direct the respondents to notionally promote the appellant if the rules otherwise permit and accordingly, fix the retiral benefits payable to him. Appropriate orders will have to be passed within a period of twelve weeks from the date of receipt of a copy of this order.

8. Accordingly, the writ appeal stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raa

To

1. The Special Commissioner and Secretary to Government, State of Tamilnadu, Animal Husbandry, Dairying and Fisheries(AH1) Department, Chennai-9.
2. The Commissioner and Director of Veterinary Services, Chennai-6.

+lcc to Mr.G.Elanchezhian, Advocate, S.R.No.87174
+lcc to the Government Pleader, S.R.No.87435

W.A.No.2269 of 2012

GJII(CO)
CS/11/02/2019

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