

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.22761 of 2008

and

W.M.P.No.2 of 2008

D.R.B.Gunasekaran

... Petitioner

Vs.

1. Government of Tamil Nadu
rep. by Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai - 600 009.

2. The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to proceedings Roc.No.62115/2006/K3 dated 03.10.2007, quash the same for non-inclusion of the petitioner's name in the said panel of promotion for the year 2007-08 and issue consequential directions to the respondents to include the petitioner's name in the panel for 2007-08 in the appropriate place therein and to promote the petitioner as Assistant, notwithstanding and without reference to the minor penalty of 'Stoppage of increment for two years with cumulative effect' imposed against him by the first respondent in G.O. (D).No.527, Municipal Administration and Water Supply (M.E.II) Department, dated 30.10.2007, with retrospective effect from the date of promotion of the petitioner's immediate junior with consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.N.Inbanathan
Additional Government Pleader

O R D E R

The relief sought for in this writ petition is to call for the records of the second respondent relating to proceedings Roc.No.62115/2006/K3 dated 03.10.2007, and to quash the same for non-inclusion of the petitioner's name in the said panel of promotion for the year 2007-08 and to issue consequential directions to the respondents to include the petitioner's name in the panel for 2007-08 in the appropriate place therein and to promote him as Assistant, notwithstanding and without reference to the minor penalty of 'Stoppage of increment for two years with cumulative effect' imposed against him by the first respondent in G.O.(D).No.527, Municipal Administration and Water Supply (M.E.II) Department, dated 30.10.2007, with retrospective effect from the date of promotion of the petitioner's immediate junior with consequential benefits.

2.The learned counsel appearing on behalf of the petitioner made a submission that the petitioner was appointed as 'Office Assistant' on 07.09.1981, in Arakkonam Municipality and was promoted as 'Junior Assistant' on 16.06.1988 in Tiruvottiyur Municipality.

3.The petitioner was fully qualified and eligible for promotion as 'Assistant' but inclusion of his name in the panel for 2007-08 was overlooked on account of the pendency of the Disciplinary Proceedings under Rule 8(2) of the Tamil Nadu Municipal Services (Discipline & Appeal) Rules (which is akin to Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules), initiated by the second respondent in Roc.No/17262/2005/02 dated 25.06.2005. The panel was preferred on 03.10.2007, the proceedings bearing reference in Roc. No.62115/2006/K3.

4.While, the petitioner was working as a Sanitary Worker in Tiruvottiyur Municipality, in the year 2002, seven charges were framed under Rule 8(2) of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970, vide the Commissioner of Municipal Administration's Charge Memo. Roc.No.7262/2005/C2, dated 25.06.2005. Out of seven charges, only charge Nos.1,3 and 4 had been sustained in the impugned order while the other charges were dropped.

5.In view of the charge Nos.1, 3 and 4 were being proved, the respondents have ordered punishment of stoppage of increment for a period of two years with cumulative effect for the petitioner.

6.Heard Mr.M.Ravi, learned counsel appearing on behalf of the petitioner and Mr.N.Inbanathan, learned Additional Government Pleader appearing on behalf of the respondents.

7.The learned counsel for the petitioner submitted that seven charges were framed under Rule 8(2) of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970, for which penalty for minor offence had been imposed and therefore, non-inclusion of the petitioner's name in the penal for promotion on 03.10.2007, was improper and as per the relevant Rules, the petitioner was entitled for promotion along with his juniors as on 03.10.2007.

8.The learned counsel for the respondents referred to the counter filed by the department, wherein it has been stated that by the impugned order, the petitioner has been awarded punishment by way of penalty of stoppage of increment for a period of two years with cumulative effect as per the order issued in Govt. Lr.(Ms)No.248, P&AR (S) Department, dated 20.10.1997. The pendency of charges prepared under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules, should be held against the officer until the finalization of the disciplinary proceedings. As the charges were pending against the petitioner under Rule 8(2) of the Tamil Nadu Municipal Service (Discipline & Appeal) Rules, 1970, which was similar to Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The respondents were justified in not including the petitioner's name in Class-V Panel for the year 2007-08.

9.The learned counsel for the petitioner relied on the decision of the Division Bench of this Court in The Secretary, Government of Tamilnadu and another Vs. P.Sunder. The learned counsel referred to the operative portion of the order in paragraph No.10 which reads as follows:

"10. We have considered the rival submissions. The guidelines framed by the Government of Tamil Nadu for deciding whether charges may be framed under Rule 17(b) are as follows:

"1. Cases in which there is a reasonable ground to believe that the penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of law, e.g.,

(a) possession of assets disproportionate to known sources of income;

(b) obtaining or attempting to obtain illegal gratification;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing on pecuniary advantage without consideration or for a

consideration which is not adequate,

etc.,

- (2) falsification of Government records.
- (3) irregularity or negligence in discharge of official duties with dishonest motive."

It is the above guidelines which were considered by the Division Bench in W.P.No.3558 of 2004. Considering the guidelines issued by the Government with reference to framing of charges against its employees the Division Bench has observed as follows:

"Therefore, as per the above guidelines also, as stated earlier, the charges framed against the petitioner will not come under Rule 17(b), but only under Rule 17(a) however since the petitioner was imposed punishment on framing charges under rule 17(b) which is a bar for consideration of promotion, he has been deprived of the promotion to the next cadre. We are therefore of the view that the charges should have been framed under rule 17(a) and not in rule 17 (b)."

In Kannan-Vs-State of Tamil Nadu 2009 (8) MLJ 217 the learned single Judge of this Court had followed and reiterated the above dictum of the Division Bench."

10.The Court after considering the above Judgment held that under similar circumstances arising out of Tamil Nadu Civil Service (Discipline & Appeal) Rules, 1970, the denial of promotion to the petitioner therein was not correct and as the disciplinary authority has found that the petitioner therein was punishable only for minor penalty of stoppage of increment that to without cumulative effect. In the present case the penalty imposed is 'Stoppage of increment for two years with cumulative effect'.

11.The learned counsel for the petitioner submits that in para No.9 of the counter affidavit, the respondents have admitted they have imposed only minor penalty and therefore the denial promotion is not justified.

12.Part III of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970, reads as under:

PART III - DISCIPLINE - PENALTIES.

"3. Penalties- The following penalties may, for good and sufficient reason, be imposed on any member of a service, namely :-

- (1) Censure;
- (2) Withholding of increments or promotion ; including stoppage at an efficiency bar;
- (3) Reduction to a lower rank in the

seniority list or to a lower post time scale or to a lower stage in a time-scale ;

(4) Recovery from pay of the whole or part of any pecuniary loss caused to a Municipal Council or to any local body or to the State Government or the Central Government by negligence or breach of orders;

(5) Recovery from pay to the necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to;

(6) Recovery from pay to the necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered, where such an order cannot be given effect to;

Explanation:- In case of stoppage on increment with cumulative effect, the monetary value of three times the amount of increments ordered to be withheld may be recovered.

(7) Compulsory retirement from the Municipal service;

(8) Removal from the Municipal service;

(9) Dismissal from the Municipal service;
and

(10) Suspension, where a person has been suspended under rule 17(e), to the extent considered necessary by the authority imposing the penalty.

Explanation:- The penalties mentioned in items 1, 2, 4 to 6 and 10 will be deemed to minor penalties, and those in 3, 7 to 9 as major penalties."

13.As per Rule 6 of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970 stoppage of increment is a minor penalty. Rule 6 reads as under:

"(6) Recovery from pay to the necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered, where such an order cannot be given effect to;

Explanation:- In case of stoppage on increment with cumulative effect, the monetary value of three times the amount of increments ordered to be withheld may be recovered.

The penalties mentioned in items 1, 2, 4 to 6 and 10 will be deemed to minor penalties, and those in 3, 7 to 9 as major penalties."

14.I have gone through the pleadings and documents and have considered the arguments advanced. The issue is no

longer res integra. The decision of the Division Bench of this Court in Kannan Vs. State of Tamil Nadu reported in 2009 (8) MLJ 217 is applicable to the four corners of the facts of the present case. Though the said decision has been rendered in the context of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, 1970, the provisions in Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970 being pari-materia with each other. I am therefore of the view of that the writ petition deserves to be allowed in the light of the above decision as the petitioner has been imposed with minor penalty.

15. Accordingly, this writ petition stands allowed with consequential benefits. Respondents are therefore directed to comply with the directions contained herein by including the name of the petitioner in the panel for promotion for the year 2007-08 and promote the petitioner as an Assistant with retrospective effect from the date of promotion of the petitioner's immediate junior. No costs. Consequently, connected miscellaneous petition is closed.

Sd/--
Assistant Registrar (CS vi)

//True Copy//

Sub Assistant Registrar

nmm/ia
To:

1. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.

+1 CC TO GOVERNMENT PLEADER SR.NO. 72452

W.P.No.22761 of 2008

ASK(14/12/2018)