

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                                    |                                     |
|------------------------------------|-------------------------------------|
| Orders Reserved on :<br>22.06.2018 | Order Pronounced on :<br>26.07.2018 |
|------------------------------------|-------------------------------------|

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.9189 of 2013  
& M.P.No.2 of 2013

P.Rudrakumar

... Petitioner

Vs.

1. The State of Tamil Nadu,  
Rep. by the Secretary to Government,  
Micro, Small & Medium Enterprises  
(El.1) Department,  
Secretariat,  
Chennai - 9.

2. The Industries Commissioner &  
Director of Industries & Commerce,  
Chepauk,  
Chennai - 5.

3. Tamilnadu Public Service Commission,  
Rep. by the Secretary,  
Greens Road,  
Chennai.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records on the file of the 2<sup>nd</sup> respondent in connection with the order passed in his Proc.Rc.No.61431/EG1/2006-1, dated 22.10.2007 and also on the file of the first respondent in connection with the orders passed by him in G.O.(3D) No.5, Micro, Small and Medium Enterprises Department, dated 13.08.2010 and G.O.(2D) No.2, Micro, Small and Medium Enterprises Department dated 10.01.2013 and quash the same and direct the same to include the name of the petitioner in the panel for promotion to the post of Assistant Director of Industries for the year 2007-2008, the crucial date of which is 15<sup>th</sup> April of every Calender year and consequently include him notionally with effect from the date of promotion given to his junior included in the panel for the year 2007-2008 with all monetary and service benefits.

For Petitioner : Mr.R.Singaravelan,  
Senior Counsel  
for Ms.M.Srividhya

For Respondents : Mr.Ansar, AGP, for R1 and R2  
Ms. C.N.G.Niraimathi for R3

#### O R D E R

This Writ Petition has been filed challenging the order passed in a)G.O.(3D)No.5, Micro Small Medium Enterprise Dept. dated 13.08.2010, b) G.O.(2D)No.2 dated 10.01.2013, and to quash both of them and seeking a direction to the respondents to promote the petitioner to the post of Assistant Director of Industries and Commerce by including his name in the panel for the year 2007-2008 with effect from the date of promotion given to his juniors.

2. In the order dated 13.08.2010, the request of the petitioner to modify the punishment was accepted by the Government and the stoppage of increment for a period of one year without cumulative effect was ordered to be modified as censure.

3. In the order dated 10.01.2013, the request of the petitioner to order cancellation of censure was rejected. Originally, stoppage of increment was ordered for a period of one year without cumulative effect and it was later on modified as censure, that was sought to be cancelled by the representation of the petitioner dated 05.10.2012, which was rejected by the order dated 10.01.2013.

4. Facts leading to the issuance of charge memo:

The petitioner was absent for duty on account of his mother's illness. Even those days during which the petitioner was on leave, he attended the office during late hours and finished his work. However, on the crucial date for promotion, having thrust with a charge memo, he was deprived of his promotion. That charge memo was used as a foundation, based on which subsequent proceedings emanated and culminated in censure, as described above. Some of his colleagues facing similar charges were "warned", whereas the petitioner herein was not so lucky and thus, was slapped with a statutory punishment of "censure", which has no currency as against other forms of punishment in the service jurisprudence. The supposed conduct leading to the charge memo is said to be his failure to attend office regularly, but, the leave obtained on such occasion were regularized, thus, leaving no scope for initiation of any sort of disciplinary proceedings relating to the said periods of leave.

5. Difference between Censure and Warning:

| Sl.No. | Censure                                                                     | Warning                                                                            |
|--------|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| (i)    | Is a penalty                                                                | Is not a penalty and it merely conveys displeasure or disapproval of an authority. |
| (ii)   | must be preceded by an opportunity of showing cause/opportunity of hearing. | need not be preceded by an opportunity of showing cause/opportunity of hearing.    |

6. In respect of one Karthikeyan, now functioning as Assistant Director, the charge was that he was on long leave for duty for more than six months continuously, i.e. from 30.04.1999 and failed to rejoin the duty even after instructions and by the order dated 04.05.2010, he was given warning.

7. In the order dated 07.04.2010, after considering the explanation of 16 employees on the charge of going on leave without prior intimation, warning only has been given.

8. It is found that the respondent has failed to treat the petitioner on the same way as many of his colleagues who were similarly placed and as such, such a discrimination robbed the petitioner further promotional avenues and as such, G.O.(3D)No.5, Micro Small Medium Enterprise Dept. dated 13.08.2010, b) G.O.(2D)No.2 dated 10.01.2013 are liable to be quashed.

9. The very purpose of initiating disciplinary proceedings is to correct the administration and not to punish the erring official though ultimately the punishment would have the impact of correcting himself. This sort of punishment having the impact of correction would happen only if the punishment is just and reasonable. If the punishment is felt to be bias and discriminatory, it would have only a counter productive effect. It would not result in development of human resource, which is essential for the growth of any organization. The grant of leave may depend upon the requirement of the individual, strength of the organization, the necessity for the presence of the individual seeking the leave and so many other factors. Therefore, the absence of the petitioner may also have to be dealt with depending upon the circumstances under which an employee is absent. But, when the majority of the employees who were on leave were given warning and a person similarly placed like that of the petitioner was also given warning then punishing one particular individual alone by censure is discriminatory, bias, and it could not be allowed to stand. Under the circumstances, the impugned order imposing censure deserves to be set aside and, accordingly, the same is set aside.

10. An ideal office atmosphere should have an eclectic

mix of entitlement of the employees and expectations of the employers and a fine blend of both these interest will be a motivator for smooth functioning of any establishment, without being there any derailment of the official routine and expected outputs.

11. In the result, the writ petition is ordered as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,  
Micro, Small & Medium Enterprises  
(El.1) Department,  
Secretariat,  
Chennai - 9.
2. The Industries Commissioner &  
Director of Industries & Commerce,  
Chepauk,  
Chennai - 5.

+1cc to Ms.M.Srividya, Advocate SR.No.50637

Order in  
W.P.No.9189 of 2013

AK(CO)  
SMI/29.08.2018

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