

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.4908 and 4909 /2012 &
M.P.No.1 of 2012

V.Senthil Kumar

... Petitioner
[in both WPs]

/Vs/

1.The Director of School Education,
College Road,
Chennai - 600 006.

2.The Joint Director of School Education,
(Personnel)
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Villupuram District,
Villupuram.

.... Respondents
[in both WPs]

Prayer in W.P.No.4908 of 2012:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents herein to direct the respondents herein to promote the petitioner to the post of Graduate Assistant (Science-Chemistry) as per the panel for the year 2011-2012 without reference to the punishment of censure.

Prayer in W.P.No.4909 of 2012:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records comprised in proceedings of the 2nd respondent in Na.Ka.No.69068/C2/E3/2010 dated 14.09.2011 which was confirmed by the first respondent by his proceedings in Na.Ka.No.94058/C4/E3/2011, dated 21.12.2011 and quash the same.

For Petitioner : M/s J.Selvarajan
[in both WPs]

For Respondents : Mr.R.Govindasamy
[in both WPs] Special Government Pleader

COMMON ORDER

These writ petitions were preferred by the petitioner against the proceedings of the 2nd respondent in Na.Ka.No.69068/C2/E3/2010 dated 14.9.2011 which was confirmed by the 1st respondent by his proceedings in Na.Ka.No.94058/C4/E3/2011 dated 21.12.2011 and quash the same.

2.Brief case of the petitioner:

The facts of the case is that the petitioner working as a B.T.Assistant (Science-Chemistry) at Government Higher Secondary School, Neganur, Gingee Taluk, Villupuram District. The petitioner was originally appointed as a B.T.Assistant Science Teacher through the Teacher Recruitment Board during the year 2003 and thereafter during the year 2006, the Petitioner have completed the Master Degree in Science and also completed Master of Philosophy and in view of the acquisition of the above the said master degree, the petitioner became eligible to be promoted as Post Graduate Assistant (Chemistry) the petitioner applied to the 2nd respondent through the 3rd respondent during June 2010 for inclusion of petitioner's name in the panel for promotion to the post of P.G. Assistant and as per the proceedings of the 2nd respondent, the 3rd respondent included the petitioner's name in the panel for promotion to the post of P.G. Assistant (chemistry) for the year 2011-2012 and in the said panel the petitioner name was found place in serial No.55 and the petitioner was under fond hope that for this academic year petitioner would be considered for promotion.

3.The petitioner was working at Government High school, Devadanampettai, the 2nd respondent by his proceedings dated 21.12.2010 has initiated disciplinary proceedings against petitioner under rule 17(a) of the Tamil Nadu Civil Services Discipline and Appeal) rules against the petitioner and sought for explanation from petitioner. As per the said proceedings the 2nd respondent herein framed three charges against petitioner, the first charge is being the class Teacher petitioner have failed to implement the Government Scheme Buthaka Poongathu scheme' to the students as per the instruction issued by the director of school education, secondly, being 10th standard

science teacher, petitioner have failed to maintain science lab records for the students and thirdly petitioner have failed to maintain notes of lesson properly and also failed to produce the same at the time of inspection . The charge memo was served on petitioner on 12.1.2011 through the Headmaster of the school in which petitioner working.

4.The petitioner have offered his explanation for the said charges and submitted the same to the 2nd respondent through the headmaster of the school on 12.01.2011 by denying all said charges. The 2nd respondent herein without even accepting his explanation, by in his proceedings dated 14.9.2011 imposed a punishment of censure. Therefore, the petitioner was constrained to prefer an appeal before the 1st respondent through the 3rd respondent on 28.10.2011. The 1st respondent also without even considering the appeal in a routine mechanical manner rejected his appeal and confirmed the order of the 2nd respondent by his proceedings dated 21.12.2011. Challenging both the orders, the present writ petitions have been filed.

5.Counter objections by the respondent:

The petitioner was originally appointed as a B.T. Assistant, through the selection of the Teachers Recruitment Board, during the year 2003 and posted to the Government High School, Devadanampatti, Gingee Taluk of Villupuram District. Then the petitioner got transfer to the Government Higher secondary school Neganur in the same taluk, during August 2011 and continuing as such till date.

6.The petitioner was sanctioned the incentive increments for the Higher qualifications possessed by him. The service of the petitioner were regularized in that cadre and had completed the period of probation also.

7.The Headmistress of the Government High school, Devadanampatti had sent a confidential report to the Chief Educational Officer, Villupuram who is the 3rd respondent herein on 31.3.2010 leveling certain charges and irregularities against the petitioner. To make enquiry on the confidential report, the personal assistant to the Chief Educational Officer, Villupuram was appointed as the enquiry officer by the 3rd respondent to conduct discrete enquiry in the matter. According to the orders of the 3rd respondent, the personal assistant to the Chief Educational Officer Villupuram had conducted a discrete personal

enquiry on 19.4.2010 in the school premises. For those irregularities based on the report given by the personal assistant to the Chief Educational Officer after enquiry, and on the report of the Headmistress of the school, necessary disciplinary action was initiated by the 3rd respondent against the petitioner and some other teachers concerned of the school. A charge memo was issued to the petitioner framing charges on the above 3 major irregularities as stated above and his explanation was called for. The explanation given by the petitioner was not satisfactory, it was recommended by the 3rd respondent to the 2nd respondent to take further action on the matter of disciplinary action taken against the petitioner. The matter was examined by the 2nd respondent based on the rules and regulations in detail and final orders were passed in proceedings No.Na.Ka.No.69088/C2/E3/2010, dated 14.9.2011 imposing a penalty of censure.

8.That the panel for the next avenue of promotion for the post of Post Graduate Assistant for the year 2011-2012 was drawn up and the name of the petitioner was placed therein in the appropriate place. At that time of conducting counseling, the name of the petitioner was not considered for promotion even though his name was found a place in the panel, since penalty was imposed to the petitioner prior to the counseling as censure which debar one year for consideration of promotion according to the instructions contained in Government letters No.25165/S/98 P & AR dated 10.8.1998 and No.5271/5/99 dated 1.10.1999. The action of the respondents in not having considered the name of the petitioner for promotion is in accordance with the rules and regulations in force and also based on the orders issued by the Government then and there.

9.That the action of the respondents in not having given promotion to the petitioner as per orders and rules in force and also in consonance with the instructions and guide lines contemplated in the government letters No.25165/S/98, P & A.R. , dated 10.8.1998 and No.5271/5/99 dated 1.10.1999. The orders passed by the 2nd and 1st respondents are legal and valid.

10.Heard the arguments on either side and perused the entire materials available on record.

11.The action of the 1st and 2nd respondents in imposing a punishment of censure on the petitioner without accepting the petitioner's proper explanation. It is the absolute view of this

Court is highly arbitrary and illegal and contrary to law.

12.As per the proceedings of 2nd respondent dated 21.12.2010 disciplinary proceedings under rule 17(a) of the Tamil Nadu Civil Services (discipline and appeal) rules was initiated against the petitioner and sought for explanation from him. As per the proceedings the 2nd respondent framed three charges against the petitioner i) the petitioner being the class teacher failed to implement the Government scheme Buthaka Poongothu scheme to the students as per the instruction issued by the Director of School Education ii) the petitioner being 10th std science teacher, failed to maintain science lab records for the students and iii) the petitioner failed to maintain notes of lesson properly and also failed to produce the same at the time of inspection, and the petitioner has submitted his explanation in categorically explained that at the time of inspection the petitioner is attending 10th std evaluation work and moreover on 19.4.2010 was a last working day, therefore the petitioner could not come and explain the implementation of the government scheme and in so for second charge also the petitioner has explained that the record note books were maintained by the 10th std students and the same could not produced at the time of inspection. In so for third charge is concern the petitioner is having the habit of maintaining proper notes of lesson and the same is revealed from the register maintained by the headmaster and thus all the charges are flimsy one and also explained properly however the 2nd respondent without even considering the said explanation in a proper perspective manner and imposed the penalty of censure which is highly arbitrary and illegal.

13.As per the Government letter No.248, Personnel and administrative reforms department dated 20.10.1997, government have issued guide lines for promotion of government servants. The said government letter and another government order G.O.Ms.No.368, dated 18.10.1993, were tested before the full bench of this Hon'ble court with regard to the legality of the above said government order and government letter, the Hon'ble full bench of this court has categorically held that the said guide lines issued by the government cannot be regarded as statutory force because the said government order has not been issued in exercise of power conferred under proviso to article 309 of Constitution of India and the government order utmost can be correlated to an administrative instructions given by Government under article 162 of Constitution of India and the full bench of this court further held that the prescription of check period for consideration of promotions, the said government letter stipulates employee who has undergone

punishment for period of one year in case of penalty of censure and five years in case of minor penalties cannot be considered for promotion, which has no legal basis at all and prescription of check period in Government letter is bad in law and in cannot supersede statutory rules. Therefore the respondents are not justified in denying promotion to petitioner after having included his name in panel and their action is highly arbitrary and against the full bench decisions of this Court. Therefore, the petitioner had make out his case before this Court and accordingly, the impugned orders are liable to be quashed by allowing the writ petition.

14.In the result:

a) Both the writ petitions are allowed and the impugned proceedings of the 2nd respondent in Na.Ka.No.69068/C2/E3/2010 dated 14.9.2011 which was confirmed by the 1st respondent by in his proceedings in Na.Ka.No.94058/C4/E3/2011 dated 21.12.2011 is quashed;

b) The respondents are directed to promote the petitioner to the post of Post Graduate Assistant (Science -Chemistry) Teacher as per the panel for the year 2011-2012 without reference to the punishment of censure;

c) The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order . No costs. Consequently, connected M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

vs

To

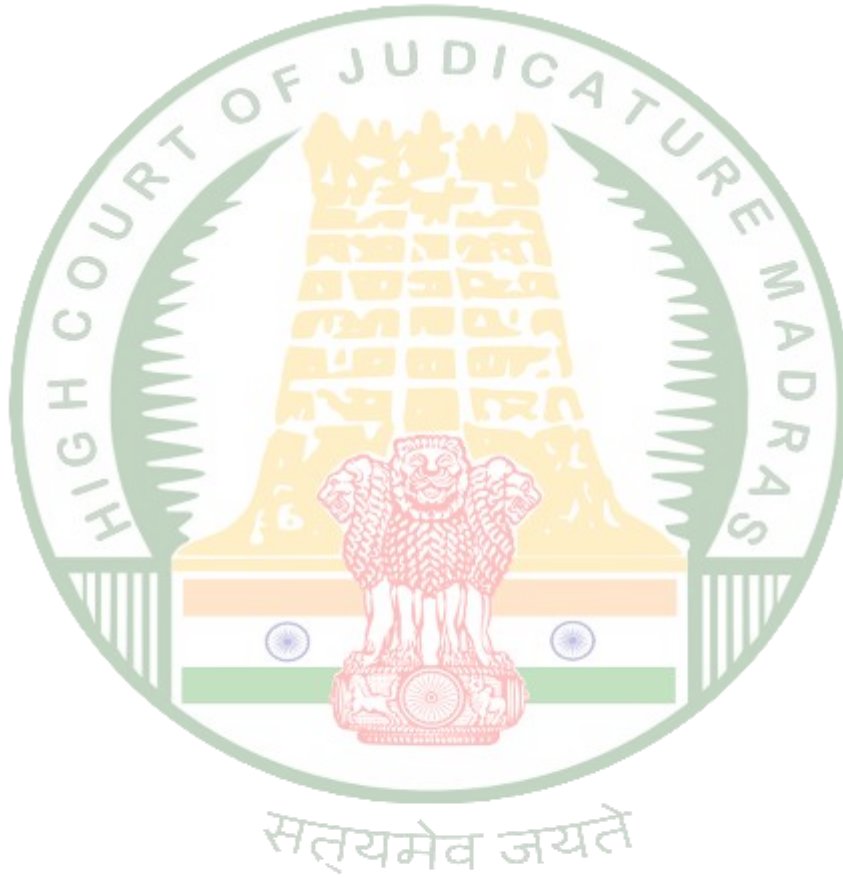
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KAN(CO)
GMV (25/03/2019)



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