

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.22165 of 2008

N.Ponnusamy

... Petitioner

Vs.

1. The Director of Public Health and Preventive Medicine
D.M.S. Compound,
Chennai - 6.

2. The Deputy Director of Health Services
Thiruchirapalli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 1st respondent in proceedings R.No.23968/MP2/S1/2008 dated 17.06.08 and quash the same and consequently, direct the respondent to include the name of the petitioner in the panel of the year 2007 - 2008 for promotion to the post of Block Health Supervisor and promote him in accordance with his seniority with all monetary and other consequential pensionary benefits.

For Petitioner : Mr.Prem Narayan

For Respondents : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

O R D E R

This Writ Petition has been filed to call for the records in pursuant to the impugned order passed by the 1st respondent in proceedings R.No.23968/MP2/S1/2008 dated 17.06.08 and to quash the same, and consequently, to direct the respondent to include the name of the petitioner in the panel of the year 2007 - 2008 for promotion to the post of Block Health Supervisor and to promote him in accordance with his seniority with all monetary and other consequential pensionary benefits.

2. The case of the petitioner is that he was working as Health Inspector Grade-I in Government Primary Health Centre, Uppiliyapuram and retired from service on 31.08.2008. He was fully qualified to obtain promotion to the post of Block Health Supervisor and his seniority number was 3634.

3. The petitioner would contend that the respondent had prepared a panel for promotion to the post of Block Health Supervisor in proceedings dated 11.01.2008. Based on the instructions of the 1st respondent, the 2nd respondent had sent a proposal and service particulars. Accordingly, the petitioner was included in the list of eligible candidates. But, on enquiry, the petitioner was informed that he will not be considered for promotion to the post of Block Health Supervisor, since he was suffering a punishment of stoppage of increment for one year without cumulative effect.

4. The petitioner would further contend that the order of punishment was issued on 11.07.2006 and the period of currency of punishment was from 01.07.2006 to 30.06.2007, and therefore, the currency of punishment was ended on 30.06.2007 itself and further, there was no charges pending against him. Moreover, he would contend that the medical officer also categorically admitted in his proceedings dated 05.03.2008 that the currency of punishment was ended on 30.06.2007.

5. Furthermore, the petitioner would contend that the panel was invited on 11.01.2008 and proposals were sent on 24.01.2008. As on the date of the panel, there was no punishment or charges pending against him. Hence, he is entitled for promotion to the post of Block Health Supervisor.

6. The petitioner would also contend that the Government issued certain guidelines for G.O.Ms.No.368 P & AR Department dated 18.10.1993 in proceeding dated 07.10.2005. As per the same "an officer passed over once, need not be passed over for the 2nd time on account of the same punishment at the time of subsequent consideration for the next panel". Clause 6 of the said guidelines also reads as follows:-

"An order imposing punishment including withholding of increment takes effect from the date on which the said order is communicated to the concerned Government servant". Based on the above guidelines, the non-inclusion of the name of the petitioner for promotion to the post of Block Health Supervisor for the year 2006 - 07 may be right. But, the non-inclusion for the year 2007 - 08 is totally unjustified and in violation of the promotion guidelines issued by the Government.

7. In addition to the above, the petitioner would contend that he filed W.P.No.7776 of 2008 before this Court, for directing the respondents to include his name in the panel for the year 2008 for promotion to the post of Block Health Supervisor and to promote him in accordance with his seniority with all monetary and other consequential service benefits. This Court, by order dated 31.03.2008, directed the respondents to consider the petitioner's representation and pass order within a period of four weeks from the date of receipt of a copy of the order. But, the 1st respondent, without considering the claim made by the petitioner, issued the impugned order in proceeding dated 17.06.2008 and that too only after issuing the contempt notice. Hence, the petitioner, challenging the same, has filed the present Writ Petition.

8. Denying the above contentions of the petitioner, the 1st respondent has filed a counter affidavit, wherein, it has been contended that the petitioner was working as Health Inspector Grade-I in Government Primary Health Centre, Uppiliapuram, Trichy District and retired from service only on 31.05.2008 and not on 31.08.2008 as stated by the petitioner. Further, the respondent would contend that the petitioner, namely, N.Ponnusamy, whose seniority number was 3634 in the confirmed seniority list of Multipurpose of Health Assistant. Hence, while preparing the Block Health Supervisor Panel for the year 2006-2007, particulars were called for from the Subordinate Officers including the name of the petitioner. The crucial date for the above said panel was 15.03.2006. The panel period for the year 2006-2007 was from 01.04.2006 to 31.03.2007, but, it was not drawn in time.

9. The respondent would further contend that due to stay order granted by this Court in W.P.No.25608 of 2006 and on receipt of the final order dated 21.11.2007, and after issuance of G.O.Ms.No.73 Health dated 28.02.2008, the panel for the year 2006-2007 was finally drawn on 29.02.2008. Whereas, the petitioner, who has been placed before the Commissioner of Disciplinary Proceedings, Coimbatore, for having committed some irregularities for the conduct of Family Welfare Operations and since the final orders were not yet delivered by the Commissioner of Disciplinary Proceedings, Coimbatore at that point of time, his name was not included in the panel year 2006-2007 as per Government Letter No.248 P&AR(S) Department dated 20.10.1997, wherein, it says that the enquiries by Tribunal for disciplinary proceedings undertaken by the department is equivalent to the charges framed under 17(b) of the Tamilnadu Civil Services Rules and hence, it should be held against the officer. In view of the same, the petitioner's name was passed over in the said panel year 2006-2007. In the meantime, the

petitioner was awarded a punishment of stoppage of increment for one year without cumulative effect vide proceedings dated 01.07.2006 and the period of punishment was from 01.07.2006 to 30.06.2007. Consequently, the petitioner was again passed over at the time of subsequent consideration for the next panel year 2007-2008, as he was not considered for promotion during the currency of any punishment.

10. Furthermore, the respondent would contend that the next panel year, i.e. 2008-2009 was drawn and published. As per the same, promotions were given on 31.10.2008. In the meantime, since the petitioner had attained the age of superannuation on 31.05.2008, he retired from service on the same day in the afternoon itself, and therefore, his name was not considered for promotion to the post of Block Health Supervisor for the panel year 2007-2008. Hence, sought for dismissal of the above Writ Petition.

11. In addition to the above, the respondent would contend that as per Government Lr.No.25165 P & AR(S) Department dated 10.06.1998, wherever an officer is undergoing any punishment other than 'Censure' on the crucial date or on the date of consideration, then irrespective of the time of occurrence of the irregularity, his name should be passed over in that panel. If the currency of punishment continues at the time of subsequent consideration for the next panel, his name should still be passed over on the grounds that an officer should not be considered for promotion or promoted during the currency period of any punishment.

12. Heard both sides and perused the materials available on record.

13. On perusal of the records, it could be seen that the period of punishment awarded to the petitioner was from 01.07.2006 to 30.06.2007. While preparing panel for the year 2006-2007 for promotion to the post of Block Health Supervisor, the crucial date for the said panel was 15.03.2006, but, it was not drawn in time and it was drawn only on 29.02.2008. At that point of time, the period of punishment awarded to the petitioner was already ended on 30.06.2007 itself, and therefore, the contention of the petitioner that his name has to be considered for promotion for the panel year 2007-2008 is acceptable one.

14. It could be also seen from the records that the panel was invited on 11.01.2008 and proposals were sent on 24.01.2008. As on the date of the panel, there was no punishment or charges pending against the petitioner, hence, he is entitled for promotion to the post of Block Health Supervisor for the panel

year 2007-2008. Therefore, the contention of the respondent that since the petitioner had attained superannuation and retired from service on 31.05.2008, his name was not considered for promotion for the period 2007-2008, cannot be accepted.

15. In view of the above, this Writ Petition is allowed. The impugned order passed by the 1st respondent in R.No.23968/MP2/S1/2008 dated 17.06.2008, is hereby quashed. Accordingly, the respondent is directed to promote the petitioner to the post of Block Health Supervisor in the panel of the year 2007-2008 and provide him all monetary and the pension benefits after revising the same, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

raja

To

1. The Director of Public Health and Preventive Medicine
D.M.S. Compound,
Chennai - 6.

2. The Deputy Director of Health Services
Thiruchirapalli.

+1cc to M/s.Premnarayan, Advocate SR.No.52016

+1cc to Government Pleader SR.No.51900

W.P.No.22165 of 2008

SSV(CO)
GMY(18/02/2019)