

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.1829 of 2013

V.Selvaraju

... Petitioner

vs.

1. State of Tamil Nadu,
rep. By Secretary to Government,
Handlooms, Handicrafts, Textiles &
Khadi Department,
Secretariat,
Chennai 600 009.
 2. The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Personnel and Administrative Reforms (H)
Department, Secretariat,
Chennai 600 009.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in (i) Proceedings No. 109, Handlooms, Handicrafts, Textiles and Khadi Department, dated 25.04.2005 (ii) Proceedings No.37, Handlooms, Handicrafts, Textiles and Khadi Department dated 02.02.2006 and (3) Letter No.6917/A1/2012-1, dated 27.09.2012 and quash the same and direct the respondents to promote the petitioner to the post of Section Officer on par with his juniors i.e. with effect from 03.01.2005 with all monetary and service benefits.

For Petitioner : Mr.Mohanraj
for Mr.M.Vijayakumar

For Respondents : Mr.P.S.Sivashanmuga Sundaram,
Special Government Pleader

O R D E R

Petitioner has come forward with this Writ Petition seeking to quash the (i) proceedings No. 109, Handlooms, Handicrafts, Textiles and Khadi Department, dated 25.04.2005 (ii) Proceedings

No.37, Handlooms, Handicrafts, Textiles and Khadi Department dated 02.02.2006 and (iii) Letter No.6917/A1/2012-1, dated 27.09.2012 and for a consequential direction to the respondents to promote him to the post of Section Officer on par with his juniors i.e. with effect from 03.01.2005 with all monetary and service benefits.

2. According to the Petitioner, he was appointed as an Assistant in the year 1984 and was later promoted as Assistant Section Officer. In the year 2002, charges were framed against him in respect of a criminal case in which, he was acquitted in the year 2003. The petitioner was suspended from service by an order dated 08.02.2002 and subsequently, it was revoked on 29.01.2004. Later, the 1st Respondent, by an order dated 25.04.2005, imposed punishment of stoppage of increment for one year without cumulative effect.

3. It is further stated by the Petitioner that though the promotion list for the post of Section Officer was published much earlier to the above said punishment order, he was not considered for promotion in the said panel, which was published in October 2004 and that due to pendency of charges, his seniority has been overlooked in October 2004 and many of his juniors have been promoted. The next panel was published on 29.09.2006. Though the petitioner's punishment period came to an end earlier to the said panel, he was not considered for promotion.

4. It is the case of the Petitioner that though the period of punishment is only from 25.04.2005 to 24.04.2006, the Respondents, under the wrong presumption, did not promote him in the year 2004 to the post of Section Officer. As the act of the Respondents in not promoting the Petitioner on par with his juniors is illegal and unlawful, he preferred an Appeal against the said punishment order dated 25.04.2005, which stood dismissed on 02.02.2006. Aggrieved by the same, the Petitioner preferred a Revision before the 1st Respondent in August 2011 and the 1st Respondent passed the impugned order dated 27.09.2012. Hence, challenging the above impugned orders, Petitioner has come up with the above Writ Petition.

5. A common counter affidavit is filed on behalf of Respondents 1 and 2, wherein, it is stated that while the Petitioner was holding the post of Assistant Section Officer, he was proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules vide proceedings dated 29.08.2002 and was imposed punishment of stoppage of increment for one year without cumulative effect for the proved charges of not informing his imprisonment in Central Prison, Tiruchirappalli for the period from 16.07.2001 to 31.08.2001 for the alleged

offence under Sections 324 and 302 I.P.C. in connection with Crime No.172 of 2000. It is further stated that the Petitioner has sent false message to his Office that he was sick, seeking sanction of medical leave. However, during the detention period, he received salary from his Office through his wife on the basis of Medical Certificate.

6. In the counter affidavit, it is further stated that though the punishment order was issued by the 1st Respondent vide proceedings dated 25.04.2005, charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules were pending against the petitioner from 29.08.2002. As per the detailed instructions issued in G.O.(Ms) No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 for preparation of panel for appointment by promotion/by recruitment by transfer in Government Departments and the subsequent guidelines issued thereon, the effect of pendency of charges/punishments on inclusion in the panel are as follows:

(a) Effect if pendency of charges on inclusion in a panel for promotion and recruitment by transfer:

S.No	Nature of Charge	Effect
(i)	Pendency of charges framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules.	It should be filed against the Officer and inclusion deferred until finalization of the disciplinary proceedings.
(ii)	Suspension	If the Officer is placed under suspension on the date of consideration, inclusion may be deferred till finalization of disciplinary proceedings.

(b) Effect of punishment on inclusion in the panel:

Any punishment other than "censure" imposed on an Officer within a period of five years prior to the crucial date and a punishment of "Censure" within a period of one year prior to the crucial date (or censure imposed after the crucial date, but before actual promotion) should be held against the Officer. In such a case, the Officer's name should be passed over.

7. As the charges are held to be proved, the 1st Respondent issued proceedings dated 25.04.2005 imposing

punishment of stoppage of increment without cumulative effect and the Petitioner is not entitled to promotion on par with his juniors, he was placed under suspension in public interest with effect from 16.07.2001 itself. The punishment of stoppage of increment was imposed on 25.04.2005 and the same was confirmed by the 1st Respondent vide proceedings dated 27.09.2012.

8. As the Petitioner's punishment was in currency when the panel was drawn, the 1st Respondent has rightly not considered his case for promotion. That apart, the Petitioner will have to thank his stars, as his incarceration was not at all informed to the Respondents when it attracts capital punishment for major misconduct. Even though proceedings have been initiated against the petitioner for major misconduct, minor punishment of stoppage of one increment without cumulative effect has been imposed finally. That apart, the Petitioner retired on 31.05.2013 and he was aged 58 years at the time of filing the Writ Petition in 2013.

9. Though, it is the case of the Petitioner that the criminal case initiated against him for the false statement made to the Department, suppressing about his imprisonment, had ended in acquittal and that the suspension imposed on him on 08.02.2002 was revoked on 29.01.2004, this Court is of the view that the punishment imposed on the Petitioner cannot be interfered with.

In fine, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

(aeb)

To:

1. The Secretary,
State of Tamil Nadu,
Handlooms, Handicrafts, Textiles &
Khadi Department,
Secretariat,
Chennai 600 009.

2. The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Personnel and Administrative Reforms (H)
Department, Secretariat,
Chennai 600 009.

+1cc to the Government pleader Sr.45812
+1cc to Mr.M.Vijayakumar, Advocate Sr.45005

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srg 03/07/2019



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