

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.31672 of 2015

V.R.Rajaraman

... Petitioner

Vs

The Commissioner of Town and
Country Planning,
807, Annasalai,
Chennai-2.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records connected with Na.Ka.No.10681/13K2 dated 8.8.2013 and R.O.C.No.10681/2013/k2 dated 31.1.2014 passed by the respondent and quash the same and direct the respondent to include the name of the petitioner in the panel for promotion to the post of Draughtsman Grade III for the year 1998 and promote the petitioner to the post of Draughtsman Grade III w.e.f. 15.06.1999 along with consequential promotion as Supervisor/Draughtsman Grade II w.e.f. 7.2.2006 with all benefits. (Prayer amended as per order dated 24.08.2017 in W.M.P.No.34997/2016 in W.P.No.31672/2015).

For Petitioner : Mr.G.Elanchezhiyan

For Respondent : Mr.S.N.Parthasarathy,
Government Advocate

O R D E R

The petitioner is aggrieved against the impugned orders of the respondents, wherein and whereby, his request for including his name in the panel for promotion to the post of Draughtsman Grade II for the year 1998 was denied only on the reason that the punishment of stoppage of increment, originally for a period of two years and later reduced to six months, has been imposed within a period of five years prior to the crucial date of the panel year 1997-98. In other words, the simple reason for rejecting the petitioner's request is that the claim of the petitioner for considering the promotion was falling within the check period of five years.

2. While, the petitioner was working as Surveyor cum Draughtsman, a charge memo was issued on 20.02.1997 under Rule 17(a). Though the petitioner gave an explanation, the Disciplinary Authority imposed punishment of stoppage of increment of two years without cumulative effect by order dated 25.08.1997. The petitioner challenged the said order by way of an appeal before the Appellate Authority. By order dated 28.08.2006, the Appellate Authority, modified the punishment of stoppage of increment for a period of six months without cumulative effect. In the meantime, the panel for promotion to the post of Draughtsman Grade II for the year 1998 was drawn on 01.09.1998. Since the petitioner was undergoing the punishment of stoppage of increment for two years at that relevant point of time, his name was not included in the panel of promotion. However, once the Appellate Authority modified the said punishment as that of six months and when such six months period ended on 25.02.1998, the petitioner approached the respondent and sought for giving promotion on par with his junior, who have been promoted in pursuant to the panel drawn on 01.09.1998. The said request was rejected by the respondent only on the reason that the period over which the petitioner made the claim for promotion fall within the check period of five years, as per the instructions given by the Government in the letter dated 07.10.2005.

3. A counter affidavit is filed by the respondent reiterating the above said reason.

4. Learned counsel for the petitioner, by relying on the Full Bench decision of this Court reported in 2011(4) MLJ 1(FB) (Deputy Inspector General of Police & anr. v. V.Rani) submitted that when admittedly, the punishment period was over on the date of drawal of panel, the check period cannot be put against the petitioner, especially, when the Full Bench has found that the impediment in the name of check period should never be imposed on a Government servant to get his due promotion.

5. On the other hand, the learned Government Advocate submitted that even though the punishment was modified by the Appellate Authority in the year 2006, admittedly, as on the date of drawal of panel, namely 01.09.1998, the punishment of two years was in force and therefore, the petitioner was not considered for promotion and thus, he submitted that in pursuant to the order of the Appellate Authority, though the petitioner is entitled for other service benefits, he cannot seek for promotion based on the panel already prepared for the relevant period.

7. The petitioner suffered the order of punishment on 25.08.1997, wherein and whereby, he was awarded a punishment of withholding of increment without cumulative effect for a period of two years. The petitioner challenged the said order by way of an appeal and the Appellate Authority, by order dated 28.08.2006 reduced the punishment from two years to six months of stoppage of increment without cumulative effect. Needless to say that such order of the Appellate Authority shall have the effect of its consequences from the date of the original order of the punishment imposed by the Disciplinary Authority. Hence, it is evident, as rightly pointed out by the learned counsel for the petitioner and also admitted by the respondent in their impugned order dated 13.01.2014 itself, that the punishment period ended on 25.02.1998 itself.

8. It is not in dispute that the panel for promotion was drawn on 01.09.1998. No doubt, it is true that on the date of drawal of such panel, the petitioner was undergoing the punishment of two years of stoppage of increment imposed by original authority. However, it is pertinent to note that such punishment was subsequently modified by the Appellate Authority as stated supra. Consequently, when the period for punishment was over on 29.02.1998, the legal presumption is that on the date of drawal of panel namely, 01.09.1998, the punishment period was already over and thus, the petitioner is entitled to get promotion on par with his junior who got promoted on the crucial period. However, such request was rejected by the respondent by stating that the check period of five years is staring against the petitioner in view of the letter issued by the Government dated 07.10.2005. The said issue was considered by the Full Bench of this Court in the decision rendered and reported in 2011(4) MLJ 1 (FB) (Deputy Inspector General of Police v. V.Rani), wherein at paragraph No.24 and 28, it has been observed as follows:

24. While it is true that the tendency of punishment can be certainly aground for the Government to deny the promotion till the completion of the period of punishment, it can never be said that even after the period of punishment is over, in between the date of crucial date and the date of punishment there must be one year in case of censure and five years in other cases as disqualification period. The above said impediment in the name of 'check period' can never be imposed on a Government servant. Even though it has not been

issued as statutory rules under the proviso to Article 309 of the Constitution of India, the said letter stating the currency of punishment as an embargo for considering for further promotion during the period of punishment cannot be said to be antithesis to the principles of law. The embargo imposed in respect of further period as stated above can never be said to be authorized under the statutory rules. The said Government letter can be treated as a circular issued by the Secretary to Government to all departments. This letter, as correctly submitted by the learned senior counsel Mr. G. Rajagopal, cannot supersede the statutory rules.

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28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

1. During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in *Subramanian v. Government of Tamil Nadu* rep. by its Secretary, Chennai and Ors. [2008 (5) MLJ 350] stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

2. If any benefit has been conferred on the party to the judgment rendered by the Division Bench in *Subramanian v. Government of Tamil Nadu* rep. by its Secretary, Chennai and Ors. [2008 (5) MLJ 350], the same shall not be affected by the judgment of this Bench since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

3. The detailed instructions issued by the Government in G.O. Ms. No. 368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by

the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

4. The Government letter No. 18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexure 1 to 7 and the letter No. 248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period' viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules.

9. In fact, the Full Bench, in the above said order found that the above said communication of the Government dated 07.10.2005 is not the statutory rule framed under the proviso of Article 309 of the Constitution of India and cannot be read with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

10. In view of the above said decision of the Full Bench, which squarely covers the issue involved in this case in favour of the petitioner, I am of the view that the reason stated by the respondent for denying the promotion to the petitioner, cannot be sustained. Accordingly, the Writ petition is allowed and the impugned order is set aside. Consequently, the respondent is directed to consider the claim of the petitioner for promotion to the post of of Draughtsman Grade II and pass appropriate orders in the light of the order passed by

the Full Bench reported in 2011(4) MLJ 1(FB) (Deputy

Inspector General of Police & anr. v. V.Rani). Such exercise shall be done by the respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

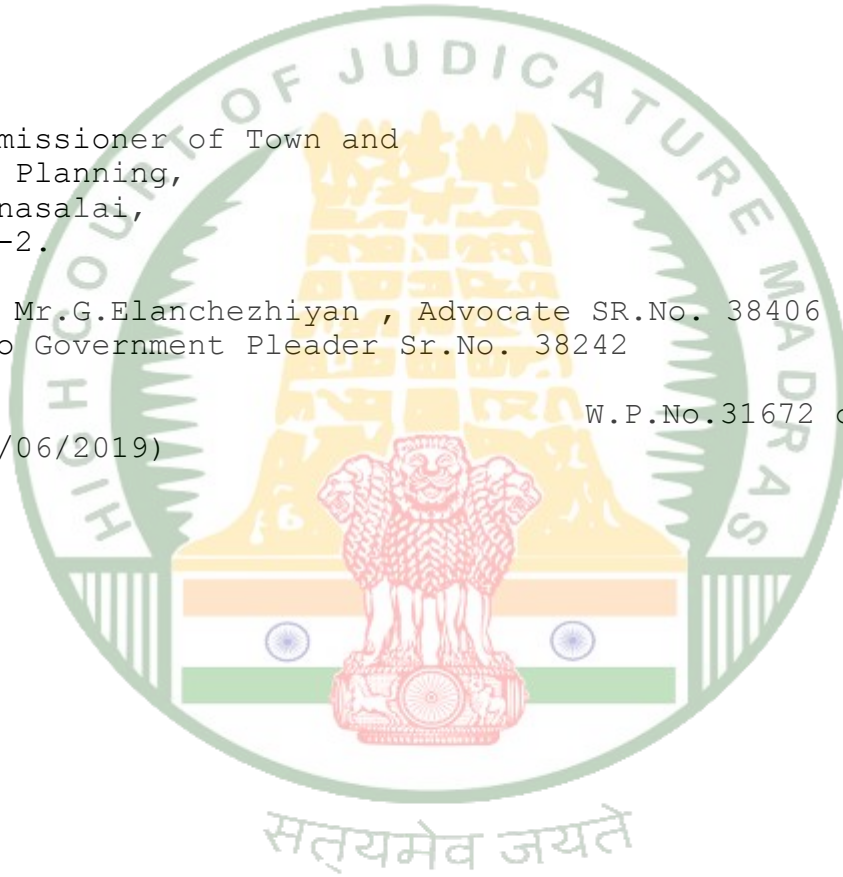
vsi
To

The Commissioner of Town and
Country Planning,
807, Annasalai,
Chennai-2.

+1cc to Mr.G.Elanchezhian , Advocate SR.No. 38406
+1 cc to Government Pleader Sr.No. 38242

A.SK(03/06/2019)

W.P.No.31672 of 2015



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