

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2019

Pronounced on : 29.03.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.4409 of 2013

G.Damodaran

...Petitioner

Vs

1. Agricultural Production Commissioner
and Secretary to Government,
Agriculture (AA1) Department,
Fort St.George, Chennai - 600 009.
 2. The Commissioner of Agriculture,
Chepauk, Chennai 600 005.
 3. A.Mathialagan,
Assistant Director of Seed Certification,
Nagapattinam - 611 001.
- ...Respondents

Prayer:

Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the respondents herein to notionally consider and promote the petitioner to the post of Assistant Director of Agriculture for the year 2007-08 as held in para 28(d) of the Full Bench Judgement reported in 2011(3) CTC 129 with consequential direction to consider his name for promotion to the post of Deputy Director of Agriculture with effect from the date on which the 3rd respondent has been considered for the post of Deputy Director of Agriculture with all consequential service, attendant, concomittant and all monetary benefits accrued thereon and disburse all the arrears within a short date.

For Petitioner : Mr. K.Rajkumar

For Respondents : Mr. Akhil Akbar Ali
Govt. Advocate for R1 & R2

Mr. S.Sounthar for R3

O R D E R

The present writ petition has been filed for directing the respondents herein to notionally consider and promote the petitioner to the post of Assistant Director of Agriculture for the year 2007-08, with consequential direction to consider the petitioner's name for promotion to the post of Deputy Director of Agriculture with effect from the date on which the 3rd respondent has been considered for the post of Deputy Director of Agriculture with all consequential service, attendant, concomitant and all monetary benefits accrued thereon and disburse all the arrears.

2. The petitioner is an Agricultural graduate. He was appointed as Agricultural Officer (Extension) through Tamil Nadu Public Service Commission temporarily on 08.02.1983. He was regularized with effect from the date of his appointment. The petitioner was promoted as Assistant Director of Agriculture on 29.06.2012. It is the case of the petitioner that, he ought to have been promoted to the post of Assistant Director of Agriculture for the year 2007-2008 itself.

3. The petitioner states that immediately on his exclusion, he approached the Commissioner of Agriculture, Chepauk to know about the reason for exclusion of his name for promotion to the post of Assistant Director of Agriculture for the year 2007-2008. The petitioner was informed that he was not considered for the promotion as Assistant Director of Agriculture, because he had been awarded by the punishment of stoppage of increment without cumulative effect for the period of six months. This punishment has been effected on him in the year 2005.

4. The petitioner was informed that, since the punishment fell within 5 years prior to the crucial date namely 01.04.2007, he was not selected to the post of Assistant Director of Agriculture for the year 2007-2008. The petitioner states that he had given a representation but was not considered by the respondent.

5. The petitioner states that the Hon'ble Full Bench of Madras High Court in a batch of matters being W.A.(MD).No.315 of 2010, etc., dated 27.04.2011, in the matter of The Deputy Inspector General of Police, Thanjavur Range, Thanjavur Vs. V.Rani has held as under:-

"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 others [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 others [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 annexures 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 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.

5. The petitioner would state that, as on the crucial date namely 01.04.2007, there was no punishment pending against the petitioner. The currency of the minor punishment was over in the year 2005 itself and thereafter, the petitioner was entitled to be considered for promotion as on 01.04.2007. Under these circumstances, the petitioner is praying that he should be notionally consider for promotion to the post of Assistant Director of Agriculture for the year 2007-2008.

6. It is also stated that the petitioner is about to attain the age of superannuation. It is settled proposition law that the law declared by Court is always declaratory nature and is therefore retrospective in its application. The judgment of the Full Bench of this Court holding that, after the currency of punishment period, in case of minor penalty, the Government servant is entitled to be considered for promotion for next post if otherwise found fit and eligible will be applicable to the petitioner.

7. In view of this, the respondents are directed to consider the case of the writ petitioner for promotion as Assistant Director of Agriculture for the year 2007-2008 if otherwise found eligible. The writ petition is allowed. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. Agricultural Production Commissioner
and Secretary to Government,
Agriculture (AA1) Department,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Agriculture,
Chepauk, Chennai 600 005.

+1cc to M/s.K.Rajkumar, Advocate, S.R.No.30637

WP.No.4409 of 2013

RK(CO)
SSM(01/04/2019)