



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 31.10.2019**

**CORAM:**

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

**W.P. (MD) No.20782 of 2019**

**and**

**W.M.P (MD) .No.17397 of 2019**

P.Manimohan

... Petitioner

-Vs-

The Managing Director  
Tamil Nadu Water Supply and Drainage Board  
Chennai 600 005

....Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent to include the name of the petitioner in the panel for promotion to the post of Superintending Engineer in TWAD Board for the panel year 2019.

For Petitioner : Mr.G.Prabhu Rajadurai  
For Respondent : Ms.Porkodi Karnan

**ORDER**

The writ petition has been filed for a direction to the respondent to include the name of the petitioner in the panel in the year 2019 for promotion to the post of Superintending Engineer in TWAD Board.

2.The petitioner is working as an Executive Engineer in the respondent Corporation. The charge memo dated 16.07.2016, under Regulation 9(b) of TWAD Board Employees (Discipline and Appeal) Regulations, 1972 was issued for the misconduct alleged to have been committed by the petitioner in the year 2010. After enquiry, the respondent, by his proceedings dated 05.02.2018, imposed punishment of stoppage of increment for one year, without cumulative effect. The petitioner filed an appeal before the Appellate Authority on 11.04.2018 and the same is pending. According to the petitioner, he is entitled to be promoted to the post of Superintending Engineer in the respondent Board. The crucial date for preparation of panel is 1<sup>st</sup> July of every year. The petitioner's name was not included in the panel for the year 2018 on the ground that the punishment was imposed on 05.02.2018. The date of increment is in the month of October of every year. The punishment of stoppage of increment without cumulative effect was implemented from October 2018. The petitioner's name has to be included in the panel for promotion to



the post of Superintending Engineer in the year 2019. Subsequently, his name was dropped from the panel. Hence, the petitioner gave a representation dated 19.08.2019 to the respondent and the same was not considered by the respondent. In this circumstance, the petitioner has come up with the present Writ petition.

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3.The learned counsel appearing for the petitioner contended that the punishment of stoppage of increment without cumulative effect was imposed on 05.02.2018 and the same came to an end on 04.02.2019. The respondent did not include the petitioner's name for promotion in the penal for the year 2018, which was prepared on 01.07.2018, on the ground that the punishment was imposed on 05.02.2018 was in-force. Having taken such a stand, it is not open to the respondent to take a stand that the punishment came into force only from October 2018 and on 01.07.2019, the punishment was in force. The learned counsel further contended that the Government, by G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 24.02.2014, made amendments to the General Rules under the Tamil Nadu State and Subordinate Services and inserted 1 (k). The learned counsel for the petitioner relied on the order dated 09.03.2015 made in W.P.No.21774 of 2014, in which, paragraph No.14 reads as follows:

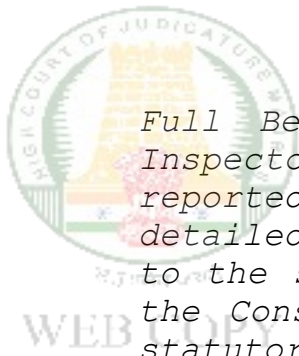
*"14. There is one more aspect to be looked into in this matter, which was overlooked by the first respondent. The Government have issued an order in G.O.Ms.No.22 Personnel and Administrative Reforms (S) Department, dated 24 February 2014, making amendments to the General Rules under the Tamil Nadu State and Subordinate Services.*

*The Government inserted 1(k) which reads thus:-*

*(1-K) Any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the members of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over"*

4.The learned counsel for the petitioner also relied on the Judgment of the Hon'ble Division Bench of this Court, dated 05.10.2018 made in W.A.Nos.546 and 620 of 2015, in which, paragraph Nos. 15 and 16, read as follows:

*"15. As already stated, the learned Single Judge relying on the judgment made in W.P.No.29297 of 2016, passed by a learned Single Judge wherein this Court had deprecated the practice of adoption of postponement of implementation of punishment on the basis of the letter dated 28.04.2006, rightly held that the letter dated 28.04.2006 and 11.09.2009 have no statutory force. The learned Judge has also relied upon the*



Full Bench Judgment of this Court in the case of Deputy Inspector General of Police, Thanjavur Range and another v. Rani reported in 2011(3) CTC 129, wherein it was held that a detailed instruction given by the Government cannot be equated to the statutory rules framed under proviso to Article 309 of the Constitution of India and the Government letters are not statutory in nature and the letters cannot be read either with the Tamil Nadu Government Servants' Conduct Rules or with the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

16. The approach of the learned Single Judge is correct as the Government letters dated 28.04.2006 and 11.09.2009 have not statutory force and the appellant /Corporation should not have postponed and it if is so, the order of punishment dated 15.11.2012 would have taken effect on 16.11.2012 being the date of service of the order and the three months period would have ended on 15.02.2013 and in that event, there would have been no currency of punishment as on 01.04.2013 being crucial date of preparation of panel".

5. The learned counsel appearing for the respondent filed a counter affidavit and contended that for the misconduct committed by the petitioner, the punishment of stoppage of increment was imposed on 05.02.2018. When the promotion panel for the year 2018 was prepared, the said punishment was in-force. The petitioner's name was not considered for the promotion to the post of Superintending Engineer. The punishment of stoppage of increment was implemented from October 2018. His increment fell due in the month of October of every year. When the panel for promotion to the post of Superintending Engineer for the year 2019 was prepared, on 01.07.2019, the punishment imposed by the respondent on the petitioner was still in-force. Therefore, the petitioner's name was not considered for promotion. The learned counsel further contended that the order of punishment withholding the increment took effect from the date on which the said order was communicated to the Government servant and the punishment will continue till the actual period of punishment is completed. In support of his contention, he relied on the letter dated 11.09.2009, in Letter No.13400/S/2007-6 and prayed for dismissal of this Writ petition.

6. Heard G.Prabhu Rajadurai, learned counsel appearing for the petitioner and Ms.Porkodi Karnan, learned counsel appearing for the respondent.

7. From the materials on record, it is seen that the petitioner was imposed punishment of stoppage of increment on 05.02.2018 for one year without cumulative effect. The date of increment falls due in the month of October of every year. The contention of the learned counsel for the respondent that as per Government Letter, dated 11.09.2009, the punishment takes effect



from the date on which the order is communicated to the Government Servant and will continue till the actual period of punishment is completed. She further contended that the punishment imposed will be in-force from 05.02.2018 to 30.09.2019 is without merits. The Full Bench of this Court held that a detailed instruction given by the Government cannot be equated to the Statutory Rules framed under Proviso to Article 309 of the Constitution of India and the Government letters are not statutory in nature and the letters cannot be read either with the Tamil Nadu Government Servants' Conduct Rules or with the Tamil Civil Services (Discipline and Appeal) Rules. If the contention of the learned counsel for the respondent is accepted, the punishment of stoppage of increment for one year without cumulative effect imposed on the petitioner would be more than one year. Whether the punishment of stoppage of increment without cumulative effect imposed will come into force from the date on which the increment falls due or from the date when the order of punishment was communicated to the Government Servant, was considered by this Court in the Judgment relied on by the learned Counsel for the petitioner and this Court has held that the punishment of stoppage of increment takes effect from the date of the order communicated to the Government Servant. In the order dated 09.03.2015 in W.P.No.21774 of 2014, this Court took note of the amendment made by the Government in G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 24.02.2014 made amendments to the General Rules under the Tamil Nadu State and Subordinate Services and inserted 1(k). As per the said rule, the order of punishment imposed takes effect from the date on which the said punishment order is served on the employee. The respondent has failed to consider Rule 1(k) inserted by the Government by amendment and the removal of the petitioner's name from the panel for promotion to the post of Superintending Engineer for the year 2019, is erroneous. In view of the above reason, the petitioner is entitled to be considered for promotion in the panel for the year 2019 to the post of Superintending Engineer. Therefore, the respondent is directed to include the name of the petitioner in the panel for promotion to the post of Superintending Engineer for the year 2019.

8. With the above direction, this Writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



TO

The Managing Director  
Tamil Nadu Water Supply and Drainage Board  
Chennai 600 005.

+1CC TO MR.G.PRABHU RAJADURAI, Advocate Sr. No.95420

+1CC TO MR.POLAXLEGAL SOLUTIONS, Advocate Sr. No. 95764

**W.P. (MD) No.20782 of 2019**

**and**

**W.M.P (MD) .No.17397 of 2019**

**31.10.2019**

NS (CO)

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