

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 24299 of 2013
and
M.P.Nos.1 & 2 of 2013

N.Franklin David

...Petitioner

-Vs-

The Director ,
Tamil Nadu State Health Transport
Department, Guindy,
Chennai 600 032.

...Respondent

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling the records relating to the impugned order of the respondent in R.No.4728/A2/2013 dated 25.07.2013 and quash the same in so far as the entry of "punishment awarded" against the petitioner name at Serial No.8 is concerned and consider the petitioner for promotion to the post of Foreman with reference to his seniority and without reference to the punishment of stoppage of increment for three months without cumulative effect ordered by the respondent in Se.Mu.Na.Ka.No.2867/C.3/2011 dated 2.5.2012 and grant him all consequential benefits.

For Petitioner : M/S.P.Manoj Kumar

For Respondent : Mr.A.N.Thambidurai, Spl.G.P.

ORDER

This Writ Petition has been filed by the petitioner, to call for the records relating to the impugned order of the respondent in R.No.4728/A2/2013 dated 25.07.2013 and quash the same in so far as the entry of "punishment awarded" against the petitioner name at Serial No.8 is concerned and consider the petitioner for promotion to the post of Foreman with reference to his seniority and without reference to the punishment of stoppage of increment for three months without cumulative effect ordered by the respondent in Se.Mu.Na.Ka.No.2867/C.3/2011 dated 2.5.2012 and grant him all consequential benefits.

2.The case of the petitioner is that he was initially appointed as Mechanical Helper and joined duty on 04.12.1985, subsequently his services were regularised in the year 1988, after completion of probation period and thereafter he was promoted as Fitter Grade-I and Special Artisan (Fitter Special) and now he is holding the post of Fitter Special at the Central Store of Tamil Nadu State Health Transport Department, Guindy. While he was in service, in the year 2011, the then General Foreman one G.Durai lodged a complaint against the petitioner, based on which disciplinary proceedings were initiated against the petitioner and charges were framed under Rule 17(b) in Tamil Nadu Civil Services (Discipline & Appeal) Rules, and thereafter enquiry was conducted and final order was passed by the 1st respondent on 2.5.2012, who imposed a punishment of stoppage of increment for a period of three months without cumulative effect. The petitioner did not prefer any appeal against the said order of punishment and the currency of the punishment expired on 30.7.2012 and increment was restored from 1.10.2012. The grievance of the petitioner is that on the crucial date when the panel for promotion to the post of Foreman for the year 2013-14 was prepared, in the said panel though the petitioner's name was found in Sl. No.8, however, remarks was made that punishment was awarded and, therefore the petitioner was not considered for promotion. However, the panel is for the year 2013-2014, and the crucial date being 1.7.2013 and on the date of the said punishment, the petitioner was not suffering any punishment as the said punishment expired on 30.9.2012 itself. As on 1.7.2013, the date of preparation for panel, there being no punishment in currency, the name of the petitioner having not been considered for promotion, the present petition has been filed by the petitioner with the above said prayer.

3.Learned counsel appearing for the petitioner submitted that issue involved is no longer res integra in view of the decision of the Full Bench of this Court in Dy. Inspector General of Police Vs. V.Rani (2011) 4 MLJ 1, and promotion cannot be denied after the expiry of the currency of punishment; therefore in the present case since punishment was not in currency as on the crucial date the petitioner is entitled to be promoted.

4. Per contra, learned Special Government Pleader, referring to the counter affidavit filed by the 2nd respondent, contented that the normal date of increment of the petitioner is on 1st July every year, however on account of the punishment imposed, his regular increment for the year 2012, was sanctioned on 1.10.2012, hence the currency of punishment begins from 07.03.2011 to 06.03.2016 (five Years) as per G.O.Ms.NO.22. As per the Government Letter 18824/S/2005-2, Personnel and Administrative Reforms Department, dated

7.10.2005, 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 passed over. Accordingly he prays for dismissal of the petition.

5.This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6.The facts in issue are not in dispute. The legal position brought to the notice of this Court is not in dispute. The petitioner having suffered punishment and the same having been in currency on the crucial date when the panel was prepared, the petitioner is entitled for being considered for inclusion in the panel. The decision of the Full Bench relied on by the learned counsel for the petitioner will not come to the aid of the petitioner as the Government, subsequent to the said decision, had passed the Act, and therefore, the petitioner cannot derive any benefit from the decision noted above. Therefore, in the fact of the present case, the prayer as sought for by by the petitioner cannot be granted.

7. For the reasons stated above, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

The Director ,
Tamil Nadu State Health Transport
Department,
Guindy,
Chennai 600 032.

+1cc to The Government Pleader, Madras High Court, SR.No.27503

W.P. NO.24299 OF 2013

AJS (CO)
RN(19/10/2020)