

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.26393 of 2012

and

MP.No.1 of 2012

S.Vengatesan

... Petitioner

Vs.

1.The Agricultural Production
Commissioner and the Secretary
to Government of Tamil Nadu,
Agriculture (A.A.1) Department,
Chennai - 600 009.

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

3.A.Albert Robinson.

... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing the respondents 1 and 2 herein to include name of the petitioner in the approved panel of Assistant Director of Agriculture for the year 2010-2011 issued in G.O.Ms.No.22, Agriculture (AA1) Department dated 27.01.2012 above his immediate junior namely the third respondent herein and consequently promote the petitioner to the post of Assistant Director of Agriculture (Extension) with effect from the date on which the third respondent herein has been promoted with all consequential attendant service and monetary benefits with due seniority and disburse all the arrears accrued thereon within a short date that may be fixed by the Court.

For Petitioner

: Mr.K.Rajkumar

For Respondents

: Mr.R.Janaki

Additional Government Pleader

[for RR1 & 2]

No Appearance

O R D E R

The petitioner was appointed as an Agricultural Officer on 26.11.1987. He has passed all the departmental examination and fully qualified for promotion to the post of Assistant Director of Agricultural Officer. While, he was working as a Seed Inspector, Attur, during the year 2007 he purchased 1200 sq.ft of land on 13.09.2007 without obtaining prior permission from the concerned authority. A charge Memo under Rule 17 (a) of the Tamil Nadu Civil Service (D and A Rules) was issued to him. In Letter No.A2/28330/2007 dated 26.03.2008, which culminated in the punishment of stoppage of increment for a period of three months without cumulative effect in Proceedings No.A3/28330/2007 dated 17.03.2009 and it was communicated to the petitioner with effect from 01.10.2009 and ended on 01.12.2009. The petitioner made an appeal against that punishment order and the same was pending. Insofar as promotion to the post of Assistant Director of Agriculture is concerned, the crucial date for consideration is 01.04.2010 for the panel of the year 2010-2011. Since the punishment period was over by January 2010 itself, the petitioner was eligible to be considered for promotion and to be included in the panel for Assistant Director of Agriculture on 01.04.2010 itself. However, in view of the G.O.Ms.No.248 of Agriculture, Personnel and Administrative Reforms Department dated 20.10.1997, the punishment period fall within a check period of the panel between 01.04.2005 to 31.03.2010. Hence, the respondents have not included his name. Subsequently, by G.O.Ms.22 Agriculture (AA1) Department, dated 27.01.2012 his Junior one A.Albert Robinson was promoted as Assistant Director of Agriculture. Thereafter, in the year 2019, the punishment of with holding of cumulative effect of three months was modified one of Censure in Proceedings No.Ku/mau/2/54692/2018 dated 11.06.2019, of the Director of Agriculture.

2. Now, the contention of the petitioner is that the Censure is not a bar for promotion. In view of the judgment of Full Bench of this Court in Deputy Inspector General of Police Vs. V.Rani reported in 2011 (3) CTC 129, the Administrative instructions cannot have a statute report and therefore, the check period enforced in G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 is ultra vires.

3. In the judgment of Full Bench of this Court reported 2011 (3) CTC 129 [Deputy Inspector General of Police Vs. V.Rani reported], Para 28 (f) of the judgment reads as under:-

“(f) W.P.Nos.22234 and 22235 of 2010 have been filed to declare the Government Order in G.O.Ms.No.248 dated 20.10.1997 as amended by the Government Letter dated 27.08.2003 as illegal, by which the principle of check period has been innovated imposing an embargo on a person who has suffered punishment for being considered for promotion for a period of five years after the currency of punishment period and prior to the date of crucial date. The challenge is also made against the impugned order of the Tamil Nadu Slum Clearance Board dated 25.05.2010, refusing to include the name of petitioner concerned in the panel of Executive Engineers in the Slum Clearance Board on the basis of G.O.No.248 dated 20.10.1997, wherein the concept of check period was innovated. Since we have held that the principle of check period is not known to the Statutory Rules, the Writ Petitions stand allowed and the impugned orders are set aside with direction to the respective respondents to consider the case of the petitioners concerned for promotion after the currency of punishment period was over, subject to eligibility of the petitioners as per law and pass appropriate orders.”

4. Learned counsel for the petitioner further contended that the petitioner should have been promoted on par with this junior and should have been considered for further promotions. Therefore, the present writ petition is filed for a writ of mandamus to include his name in the approved panel of Assistant Director of Agriculture for the year 2011 and to consider for further promotion and consequently, to disburse all the arrears accrued thereon.

5. Per contra, learned Additional Government Pleader appearing for the official respondents relying on the counter affidavit filed by them would contend that as per G.O.Ms.No.248, Personnel and Administrative Reforms Department, dated 20.10.1997, any punishment, other than 'Censure' imposed on an Officer within a period of 5 years prior to the crucial date will exclude him from considering for inclusion in the panel for promotion. In the instant case, the crucial date is 01.04.2010 and the check period was from 01.04.2005 to 31.03.2010. Since he was imposed with the punishment of withholding of increment from 01.10.2009 and ended on 21.03.2009 which falls within the crucial date. The petitioner even assuming the modified

punishment of Censure is taken into consideration, the check period is one year i.e., between 01.04.2009 to 31.03.2010, the petitioner suffered this punishment on 17.03.2009, the punishment of Censure was a bar for inclusion of his name in the Panel for promotion. Therefore, the petitioner is not entitled to any promotion and prayed for dismissal of the writ petition.

6. I have considered the rival submissions.

7. Admittedly, the petitioner was issued with the show cause notice on 26.03.2008 for certain lapses under Rule 17 (a) of the Tamil Nadu Civil Service (Disciplinary and Appeal Rules). However, the punishment was imposed almost after one year and had it been considered in time, the petitioner would not have fallen under the disqualification within the check period. It would have been over by 2008 itself.

8. Be that as it may, the Full Bench of this Hon'ble Court, in the case reported in 2011 (3) CTC 129 (The Deputy Inspector of Police, Tanjore Range Vs. Rani) has categorically held by imposing all the check period of non consideration of the persons on the basis of currency of punishment, in the light of the G.O.Ms.No.248 P & AR Department dated 20.10.1997 is illegal. Therefore, it cannot be a bar for considering the Government servants for promotion. As discussed above, the crucial date of consideration for inclusion in the panel was 01.04.2010 and in view of the judgment of the Hon'ble Full Bench dated 27.04.2011, in the considered opinion of this Court, there cannot be any check period for considering the Government employee for inclusion the panel at the relevant point of time. Thus, the contention raised by the respondents that the punishment period falls within the check period is not tenable. Even otherwise, 17.03.2009 the date on which the penalty of imposing shortage of increment with cumulative effect for the period of three months it would have got over by 17.06.2009. In that case, even this administrative instructions followed by the respondents is complied, the check period gets over by 17.03.2010 which is stated in the Government Letter No.28790/S/2001-1 dated 06.07.2001, para 3 reads as under:

"3. I am to clarify that an order imposing any punishment including withholding of increment takes effect from the date on which the said order is communicated to the concerned Government Servant."

9. In that view of the matter, the punishment period expired by 25.06.2009 and on the crucial date on 01.04.2010 nothing was pending against the petitioner. It is well settled by very many judgment of this Court and Hon'ble Supreme Court, the punishment of censure is not a bar for considering an employee for inclusion in the panel for promotion. Therefore, the petitioner should have been included in the panel for promotion.

10. The contention raised by the learned Additional Government Pleader that after the Full Bench judgment, the Government has enacted Tamil Nadu Government Servant (Condition of Service) Act 1 of 2016 para II (16) contemplates that the punishment of censure imposed within a period of one year prior to the crucial date shall be held against the member of service in the matter of earning promotion. In the considered opinion of this Court, any enactment which engaged in the service rules shall apply prospectively and not retrospectively. The Hon'ble Supreme Court reported in (1997) 6 SCC 623 [Chairman, Railway Board and others Vs. C.R.Rangadhamaiah and others], wherein it is held as under:-

"20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violates of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

11. As per the above judgment any Rule should take effect in future. Para 24 of the judgment reads as under:-

" 24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a

benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra), B.S. Yadav (supra) and Raman Lal Keshav Lal Soni & Ors., (supra)."

12. The Government Employee should not be deprived by this amendment. The Act came into force with effect from 14.09.2016 and amendment came into force on 20.07.2014 in that view of the matter by any chance the petitioner has got accrued right as on 01.04.2010. Therefore, either way by lapse of punishment before the crucial date and vested right created by him by absence of rules at the relevant point of time, will entitle the petitioner for consideration of inclusion in the panel for promotion from the date on which his immediate junior was promoted. Therefore in my considered view, the petitioner is entitled to promotion from the date on which his junior was promoted.

13. The Hon'ble Supreme Court in the case of C.O.Arumugam and others Vs. State of Tamil Nadu and others [1991 SUPP (2) SCC 199] has categorically held that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution of India. If his promotion is deferred due to pendency of the disciplinary proceedings, on exoneration of charges he shall be given promotion with retrospective effect from the date on which the junior his promoted.

14. In the above said judgment, the Hon'ble Supreme Court has observed as under:-

"5. As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Article 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their

juniors were promoted.

8. Thiru L.V. Srinivasan, respondent 4, was not included in the panel for promotion since there were disciplinary proceedings then pending against him. But when the panel was prepared and approved, there was no charge framed against him. It is, therefore, not proper to have overlooked his case for promotion. We therefore, direct that his case be considered for promotion on the date on which his junior was promoted and if he is found suitable he must also be promoted with all consequential benefits."

15. Therefore, in the instant case, the petitioner's junior was promoted to the post of Assistant Director of Agriculture on 27.01.2012. Accordingly, the petitioner is entitled to get promotion as Assistant Director of Agriculture on 27.01.2012. The learned counsel for the petitioner would submit that his next promotion in the promotional post of Agriculture is Deputy Director, which is given by following the seniority. His Junior was further promoted to the post of Deputy Director by G.O.(Rt).No.376 Agriculture (AAI) Department dated 23.10.2019. Therefore, considering the totality of circumstances that the petitioner should be deemed to have been promoted to the post of Assistant Director of Agriculture with effect from 27.01.2012 from the date on which the junior was promoted and to the post of Deputy Director of Agriculture with effect from 23.10.2019.

16. The judgment reported in (2015) 2 SCC 610, [Union of India and others Vs. P.Gunasekaran], has held that any punishment which is modified will take effect from the original order of the punishment, the date on which it is originally imposed. Para 20 of the judgment reads as under:-

"20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness,

immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

17. The Hon'ble Division Bench of this Court in Writ Appeal No.115 of 2008 dated 10.04.2008 has considered the case in similar circumstances and held that the Government employee is entitled to all the consequential benefits including salary from the date of deemed promotion. I too follow the said judgment and hereby direct the respondents to sanction the consequential, monetary and all attendant benefits to the petitioner with effect from the date on which the petitioner deemed to have been promoted.

18. Accordingly, the writ petition is ordered. The respondents shall complete the said exercise within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The Agricultural Production
Commissioner and the Secretary
to Government of Tamil Nadu,
Agriculture (A.A.1) Department,
Chennai - 600 009.

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

+1 cc to Mr.K.Rajkumar Advocate sr7441

+1 cc to Government Pleader High Court Madras sr8587

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