

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.2818 of 2013

S.Venkateswara Prabu

... Petitioner

vs.

1. The Pondicherry Institute of Post Matric Technical Education, rep. by its Chairman cum Secretary to Government of Puducherry, Department of Education, Puducherry.
 2. The Member Secretary, The Pondicherry Institute of Post Matric Technical Education, Lawspet, Puducherry - 605 008.
 3. The Principal, Women's Polytechnic College, The Pondicherry Institute of Post Matric Technical Education, Lawspet, Puducherry 605 008.
 4. V.Kalaichelvan, Lecturer in Architectural Assistantship, Women's Polytechnic College, The Pondicherry Institute of Post Matric Technical Education, Lawspet, Puducherry 605 008.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 23.07.2012 passed by the 2nd Respondent in proceedings No.A/13/1/4/PIPMATE/2007/A1/633 and the order dated 23.07.2012 passed by the 3rd Respondent in proceedings No.A/13/1/WPTC/2009/A/633, quash the same and consequently direct the Respondents 1 to 3 to promote the Petitioner as Senior Lecturer on regular basis with effect from 17.11.2007 and also to promote him as Head of the Department of Architecture/Architectural Assistantship with all consequential benefits.

For Petitioner	:	Mr.V.Ajoy Khose
For Respondents 1 to 3	:	Mr.T.M.Naveen
For 4 th Respondent	:	Ms.Gopika Nambiar

ORDER

Petitioner has come up with this Writ Petition challenging the order dated 23.07.2012 passed by the 2nd Respondent and the consequential order dated 23.07.2012 passed by the 3rd Respondent, and for a direction to Respondents 1 to 3 to promote him as Senior Lecturer on regular basis with effect from 17.11.2007 and also to promote him as Head of the Department of Architecture/Architectural Assistantship, with all consequential benefits.

2. According to the Petitioner, he was appointed as Lecturer in the 3rd Respondent/Institute by an order dated 30.05.1996 and he joined duty on 07.06.1996. As per the Recruitment Rules, the next higher post to the post of Lecturer in the Department of Architecture/Architectural Assistantship, is Senior Lecturer, and Lecturers who have completed five years of service are entitled to promotion to the post of Senior Lecturer based on selection through Departmental Promotion Committee (in short 'DPC').

3. Only in the year 2007, the 1st Respondent took steps to fill up the post of Senior Lecturer in Architecture/Architectural Assistantship. At that time, the Petitioner, the 4th Respondent herein and one S.Chandrasekaran were all eligible for promotion to the post of Senior Lecturer. The DPC, instead of considering the claim of all the three, by circulation, selected the 4th Respondent for promotion to the post of Senior Lecturer in Architecture/Architectural Assistantship. However, since the 4th Respondent was issued with a charge sheet on 05.06.2007 for a minor penalty, the DPC put his promotion in a sealed cover on 17.11.2007. Further, as the Department intended to hold an enquiry, a charge sheet was once again issued to the 4th Respondent under Rule 16 on 01.07.2008.

4. As enquiry was contemplated against the 4th Respondent and since it was not known as to when the enquiry would be over, the Petitioner made a request to the 1st Respondent to promote him as Senior Lecturer in Architecture/Architectural Assistantship, on adhoc basis. Accordingly, the 1st Respondent convened a DPC to consider his request and after selection by the DPC, the Petitioner was given adhoc promotion as Senior Lecturer in Architecture/Architectural Assistantship by the 2nd Respondent vide order dated 15.10.2008.

5. It is further stated by the Petitioner that, since he was already given the scale of pay of Senior Lecturer under the Career Advancement Scheme on completion of six years even prior to the above adhoc promotion, in the Promotion order itself, it was stated that, the Petitioner was not entitled for any pay fixation upon his promotion to the post of Senior Lecturer. The 3rd Respondent issued a consequential posting order on 11.11.2008 and from then onwards, the Petitioner has

been discharging the duties of a Senior Lecturer. While so, the 4th Respondent was found guilty of the charges and he was imposed with the punishment of censure on 12.05.2010. As the 4th Respondent has been found guilty and not exonerated from the charges, he has become ineligible for promotion.

6. The further case of the Petitioner is that, when the 4th Respondent has become ineligible for promotion as on the date of the original DPC conducted during the year 2007, he should have been given regular promotion either from the date on which the 4th Respondent's promotion was put in a sealed cover, by holding a Review DPC for the year 2007 or at least from the date on which he was given adhoc promotion.

7. While so, the 2nd Respondent issued the impugned order dated 23.07.2012, wherein, it has been stated that, the Departmental Promotion Committee, in its meeting held on 09.07.2012, considered the issue regarding promotion to the 4th Respondent and after detailed discussion, recommended to give promotion to the 4th Respondent to the post of Senior Lecturer with effect from 16.10.2008. Further, based on the recommendation of the DPC, the order of adhoc promotion of Senior Lecturer in Architectural Assistantship granted to the Petitioner was revoked. By another impugned order dated 23.07.2012 passed by the 3rd Respondent, the Petitioner was reverted to his original post of Lecturer with effect from the forenoon of 23.07.2012. Challenging the said orders, the Petitioner is before this Court.

8. Learned counsel for the Petitioner contended that, when the 4th Respondent has been found guilty and imposed with the punishment of censure on 12.05.2010 and when he has not been exonerated from the charges, automatically, the Petitioner ought to have been given regular promotion to the post of Senior Lecturer with effect from 17.11.2007. It is his further contention that, eligibility for promotion to the post of Senior Lecturer would arise for the 4th Respondent only after 12.05.2010, and he cannot be given retrospective promotion from 16.10.2008, when, as on the said date, he was facing disciplinary action. According to the learned counsel, the impugned order is contrary to the Rules and against the settled legal procedures and principles.

9. In support of his case, learned counsel for the Petitioner has relied on the following:

(i) an Apex Court decision in the case of State of M.P. vs. I.A.Qureshi reported in (1998) 9 SCC 261

"7. The submission of Shri Khanduja is that "censure" is only a recorded warning and does not constitute punishment and, therefore, the directions contained in the circular in relation to imposition of minor penalty would not apply and the Tribunal was

justified in giving the directions for opening of the sealed cover and for giving effect to the recommendations of the DPC.

8. We are unable to accept the said contention of Shri Khanduja. "Censure" cannot be equated with a warning since under Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, "censure" is one of the minor penalties that can be imposed on a government servant. It cannot, therefore, be said that the penalty of censure which was imposed on the respondent in the departmental proceedings was not a penalty as contemplated in the circular dated 2-5-1990. Once it is held that a minor penalty has been imposed on the respondent in the departmental proceedings, the direction given in the said circular would be applicable and the sealed cover containing recommendations of the DPC could not be opened and the recommendations of the DPC could not be given effect because the respondent has not been fully exonerated and a minor penalty has been imposed. The respondent can only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings."

(ii) another Apex Court decision in the case of Union of India vs. A.N.Mohanan reported in (2007) 5 SCC 425

"7. Learned counsel for the respondent on the other hand submitted that the awarding of penalty i.e. censure was not the sole ground for seeking promotion with effect from 1-11-1999, and it was because of the conclusion that the validity of previous panel had been exhausted.

9. Paras 3 and 3.1 read as follows:

"3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the government servant, the sealed cover or covers shall be opened. In case the government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position.

government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the finding of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

11. Awarding of censure, therefore, is a blameworthy factor. A bare reading of Para 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course."

(iii) yet another Apex Court decision in the case of Union of India vs. Mihir Kumar Bandopadhyay reported in (2009) 16 SCC 329

"9. Since the fact of the respondent having been punished was already on record, the appellants filed yet another application before the Tribunal stating that there was no question whatsoever of opening the sealed cover and that in terms of the instructions issued by the Department of Personnel and Training, the Tribunal should only direct that the respondent be considered by the next DPC to be held immediately after the imposition of the penalty in the normal course. The Tribunal rejected the application on the ground that the appellants had in fact taken up a different stand than the one taken in the first review application.

10. Having considered the arguments advanced on behalf of the appellants although the respondent is not represented by counsel, there can be no doubt that the Tribunal erred in persisting with its direction to the appellants to open the sealed cover contrary to the express language of the unchallenged departmental instructions in this regard quoted earlier and the settled law on the subject. Accordingly, the appeals are allowed and the order of the Tribunal is set aside."

(iv) a Division Bench decision of this Court in the case of the Chief Commissioner of Central Excise, Chennai Zone vs. S. Palanichamy, reported in 2009 SCC Online Mad. 105

"6. It is apparent that the sealed cover procedure was adopted because of the pendency of the disciplinary proceedings. Though ultimately a punishment of stoppage of increment for two years was imposed on the first respondent, subsequently, it was modified to one of censure. The procedure, which is required to be followed, when a sealed cover procedure is adopted, is highlighted in paragraph 3.1. Paragraph 3.1, which is to the following effect:

"If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

7. A perusal of the above procedure clearly indicates that if on the completion of the disciplinary proceedings, a punishment is imposed, the findings of the sealed cover procedure shall not be acted upon and his case for promotion is to be considered by the next DPC in the normal course and having regard to the punishment imposed on him. This aspect has also been clarified in the unreported decision of the Supreme Court dated 18.04.2007. The contention of the first respondent that the Memorandum issued by C & AG in the year 1990 was not considered by the Supreme Court in the decision of Union of India v. K.V. Jankiram (AIR 1991 SC 2010) is of no consequence, as the subsequent decision has considered all the relevant aspects and come to a conclusion that the procedure adopted in Rule 3.1 is to be followed. It has been highlighted in the same decision that even Censure is also a punishment and therefore, Rule 3.1 is to be followed."

10. In reply, learned counsel appearing for Respondents 1 to 3 submitted that, in its opinion to the clarification sought by the Pondicherry Institute of Post Matric Technical Education (PIPMATE), the Law Department, Government of Puducherry has stated that, in view of Rule 9 of the CCS

(Pension) Rules, 1972, disciplinary proceedings are deemed to have been initiated only on the date of issuance of charge sheet on the delinquent and as PIPMATE has issued charge sheet to the 4th Respondent only on 01.03.2008, the Disciplinary proceedings can be deemed to have been initiated only on 01.03.2008 and not earlier, i.e. during the DPC meeting held on 17.10.2007.

11. It is further stated by the learned counsel appearing for Respondents 1 to 3 that, as per the AICTE Regulations, on and from 18.11.2013, there is no post of Senior Lecturer in PIPMATE and that, on 24.06.2015, after acquiring the eligibility and qualification for promotion to the single post of Head of Department of Architectural Assistantship, PIPMATE has promoted the 4th Respondent as Head of Department of Architectural Assistantship, and he is working in the said post till date. Hence, there is no vacancy in the next promotional post from the post of Lecturer.

12. While so, learned counsel appearing for the 4th Respondent submitted that, the Petitioner is junior to the 4th Respondent in service and that, the promotion granted to the Petitioner is on adhoc basis and the same will not vest any right in him. In support of his stand, he relied on a decision rendered by the Apex Court in the case of Union of India vs. K.V.Jankiraman reported in (1991) 4 SCC 109, relevant portion of which, reads thus:

"23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. ..."

13. Heard the learned counsel on either side and perused the material documents available on record.

14. Admittedly, the 4th Respondent herein was issued a Charge Sheet for a minor penalty on 05.06.2007 and the DPC put his promotion in a sealed cover on 17.11.2007. Thereafter, an enquiry was contemplated against the 4th Respondent and he was imposed with a punishment of censure on 12.05.2010. In the meanwhile, based on his request, the Petitioner was promoted as Senior Lecturer in the Department of Architecture/Architectural Assistantship on adhoc basis vide order dated 15.10.2008 passed by the 2nd Respondent.

15. While so, the impugned order dated 23.07.2012 was passed by the 2nd Respondent, promoting the 4th Respondent to the post of Senior Lecturer in the Department of Architecture/Architectural Assistantship with retrospective effect from 16.10.2008 and revoking the order of adhoc promotion granted to the Petitioner. Also, vide another order dated 23.07.2012, the 3rd Respondent reverted the Petitioner to his original post of Lecturer with effect from 23.07.2012.

16. Though the 4th Respondent was issued a Charge Sheet on 05.06.2007 and his promotion was put in a sealed cover by the DPC on 17.11.2007, however detailed charge memorandum was issued against the 4th Respondent on 01.03.2008. The DPC meeting held on 17.10.2007. Hence, on the date of the DPC, disciplinary proceedings were pending against the Petitioner. In such circumstances, the decision rendered by the Apex Court in the case of I.A. Qureshi (cited supra) is squarely applicable to the facts of this case, as it has been clearly laid down that, once a minor penalty has been imposed on the Respondent in the departmental proceedings, the direction given in the said circular would be applicable and the sealed cover containing recommendations of the DPC could not be opened and the recommendations of the DPC could not be given effect because the Respondent has not been fully exonerated and a minor penalty has been imposed and that, the respondent can only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings.

17. Applying the said ratio to the case on hand, orders impugned in this Writ Petition are set aside and the Respondents 1 to 3 are directed to promote the Petitioner as Senior Lecturer in the Department of Architecture/Architectural Assistantship on regular basis with effect from 17.11.2007, with all consequential benefits.

The Writ Petition is allowed to the extent indicated above. No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Chairman cum Secretary
to Government of Puducherry,
Pondicherry Institute of
Post Matric Technical Education,
Department of Education,
Puducherry.

2. The Member Secretary,
The Pondicherry Institute of
Post Matric Technical Education,
Lawspet, Puducherry - 605 008.
3. The Principal,
Women's Polytechnic College,
The Pondicherry Institute of
Post Matric Technical Education,
Lawspet, Puducherry 605 008.

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SDR 17/12/2020



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