

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.32269 of 2012

V.Kandaswami

... Petitioner

vs.

1.The Principal Secretary to Government Handlooms, Handicrafts, Textiles and Khadi(G1) Department Secretariat, Chennai-9

2.The Director of Sericulture Salem-636 001

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to Government Order in G.O.Ms.No.235 (Handlooms, Handicrafts, Textiles and Khadi (G1) Department) dated 09.11.2012 issued by the 1st respondent, the Principal Secretary to Government Handlooms Handicrafts Textiles and Khadi (G1) Department, Secretariat, Chennai-9 in rejecting the representation of the petitioner to consider for promotion to the post of Assistant Director of Sericulture, quash the same and direct the 1st respondent to notionally promote the petitioner in the post of Asst. Director of Sericulture and disburse all the consequential benefits by refixing his service and attended benefits.

For Petitioner : Ms.G.Sridevi

For Respondents : M.D.Ilayaraja, Govt.Advocate

O R D E R

Petitioner was appointed as Assistant Inspector of Sericulture, and joined duty on 02.05.1980 and promoted as Inspector of Sericulture with effect from 07.02.1986. During 2001, while he was discharging his duties as Senior Inspector of Sericulture an auction was conducted on 17.04.2001 to dispose of 66 numbers of dried out trees, whereas the contractor while cutting down the auctioned dried out trees illegally cut down ten numbers of green living trees also. Since the petitioner was 2nd level supervisory officer, he was

issued with the charge memo dated 27.11.2001 for the above said irregularity. He received the charge memo on 13.12.2001 and submitted his reply on 22.12.2001.

An enquiry was conducted and the charges were held proved. The enquiry report was submitted to Government on 29.11.2005 for passing final orders. On 30.03.2008, the enquiry report was communicated to the petitioner and he made a further representation on 10.04.2008. Thereafter, after affording personal hearing to the petitioner on 25.11.2010, the order of punishment was issued in G.O.Ms.No.48, Handlooms, Handicrafts, Textiles and Khadi Department dated 06.04.2011 awarding punishment of stoppage of increment for six months with cumulative effect.

3. While this being so, the next promotional post from that of Inspector of Sericulture is Assistant Director of Sericulture. The crucial date for preparing the panel for every year is 1st April of that year. Since the petitioner was undergoing currency of punishment he was not included in the panel for the year 2010-11 and 2011-12. Thereafter, on attaining the age of superannuation the petitioner retired from service on 31.01.2012. In the meanwhile petitioner made a representation on 17.12.2011 for including his name in the panel for promotion to the post of Assistant Director of Sericulture. However, to his dismay his name was not included, but his junior viz., T.A.Kathirvel was promoted as Assistant Director of Sericulture on 04.10.2010. Aggrieved over the non inclusion in the panel, the petitioner has challenged the rejection letter G.O.Ms.No.235 (H,HH,T & K (G1) Dept dated 09.11.2012 issued by the 1st respondent and seek for grant of notional promotion from the date on which his immediate junior was promoted.

4. The 2nd respondent filed elaborate counter on behalf of the 1st respondent setting out that during the currency of punishment the petitioner is not entitled to get included in the panel for promotion. Learned Government Advocate appearing for the respondents would vehemently argue that the petitioner having suffered the punishment is not entitled to get promotion during the currency of the punishment and therefore the rejection order is valid.

5. I have considered the submissions.

6. It is pertinent to note that a charge memo dated 27.11.2001 was issued for an irregularity that happened on 07.09.2001. The petitioner has submitted his reply on 22.12.2001 i.e within one month from the date of receipt of charge memo. It is expected that enquiry into the charge memo should be conducted and completed within a reasonable period. For irregularity involving officers like Assistant Director, 3 Junior Inspector of Sericulture would reach its logical conclusion within 6 months or at the most one year. Again it

is pertinent to note that this petitioner joined the service between 18.04.2001 and 26.09.2001 at that particular station where the irregularity said to have taken place on 07.09.2001. Therefore, it is clear that the incident had taken place within few months of his joining in the new station. Be that as it may, had the disciplinary proceedings ended in time and award of punishment of stoppage of increment for 6 months with cumulative effect was imposed within a reasonable time, the petitioner would have undergone punishment within 6 months thereafter i.e before 2002 or 2003. In that event, could have been included after the lapse of five years check period, in the panel for the post of Assistant Director of Sericulture in the year 2009-10, 2010-11 and 2011-12. The punishment was imposed on 06.04.2011 after a period of 10 years and after the crucial date for considering the name for inclusion in the panel for the year 2011-12.

7. As contended by the learned counsel for the petitioner that as per the judgment of the Full Bench of this court in The Deputy Inspector General of Police, thanjavur Range vs. V.Rani, 2011 (3) CTC 129, after the currency of punishment the Government servant is entitled to be considered for promotion to the next post if otherwise eligible. It is observed as under:

".....
28.(1) 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."

8. It is also found by the Hon'ble Full Bench that the 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. Therefore the embargo put on the right of the Government servant being considered for promotion during the pendency of minor punishment is impermissible.

"28.....

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 "check period" 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."

9. By way of administrative instructions, G.O.Ms.No.248. Personnel and Administrative Reforms (S) Department dated 20.10.1997, it is categorically provided that effect of punishment on inclusion in the panel will not affect the delinquencies which occurred five years prior to the crucial date of such punishment.

" II. Effect of punishments on inclusion in the panel.

.....
2. Any punishment other than "Censure" imposed on an officer within a period of five years prior to the crucial date should be held against officer. In such a case the officer's name should be passed over.

Provided that if the officer was imposed with any of the punishments within the check period as mentioned above for irregularities/delinquencies which occurred five years prior to the crucial date such punishment need not be held against him if such punishment is not in currency on the crucial date and on the date of consideration of the panel"

10. After the judgment of the Full Bench, the Government has enacted Tamil Nadu Government Servants (Conditions of Service) Act, 2016 Sec.7(1) Schedule XI under Annex Sec.7(1) of the Act provides for consideration of members for inclusion in the approved list, which reads as under:

"II. Consideration of members for inclusion in the approved list.

.....
13. If a member of service is imposed with punishment for irregularities or

delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion."

11. From the reading of the proviso, it is made clear that the punishment imposed for a delinquency or irregularity committed before 5 years prior to the crucial date, his name shall be considered for promotion, if the member was not undergoing such punishment on the crucial date. In that view of the matter, the irregularity that had happened in the year 2001, and the punishment was imposed only on 06.04.2011. The petitioner's junior one T.A.Kathirvel was considered for the panel for the year 2009-10. As already discussed the crucial date for inclusion in the panel is 1st April of every year. The punishment was imposed in on 6th April 2011. i.e on the crucial dates of the respective years viz., 01.04.2009, 01.04.2010 and 01.04.2011, the petitioner was eligible to be included in the panel for promotion. Apart from this punishment the respondents do not come out with any disqualification against the petitioner. In those circumstances, it should be construed that the petitioner was otherwise eligible to be considered for inclusion in the panel for promotion to the post Assistant Director of Sericulture with effect from 2009-10 onwards. He should have been considered from 2009-10 to 2010-11, for, the alleged irregularity happened in the year 2001 which is 8 years prior to the date of consideration. His junior T.A. Kathirvel was included and promoted to the post of Assistant Director of Sericulture on 04.10.2010. Therefore, the rejection order impugned in the writ petition passed by the 1st respondent on the pretext that during the pendency of charges under 17(b) and during the currency of punishment the petitioner cannot be included in the panel for promotion cannot be accepted. The delay caused due to the administrative lethargy in completing the major penalty disciplinary proceedings initiated in the year 2001, and imposing a minor penalty after a decade shall not deprive of the petitioner his invaluable right to be considered for promotion.

12. Therefore, the impugned order in G.O.Ms.No.235 (Handlooms, Handicrafts, Textiles and Khadi(G1) Department) dated 09.11.2012 is set aside and a consequential direction is issued to the respondents to consider the inclusion of the name of the petitioner for notional promotion with effect from 04.10.2010 the date on which is immediate junior was promoted and pass orders in the light of clause 13 of part II of Schedule XI of Tamil Nadu Government Servants (Conditions of service) Act 2016 within a period of 12 weeks from the date of receipt of a copy of this order. Petitioner is entitled to all consequential monetary and attendant benefits attached with the notional promotion.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

To

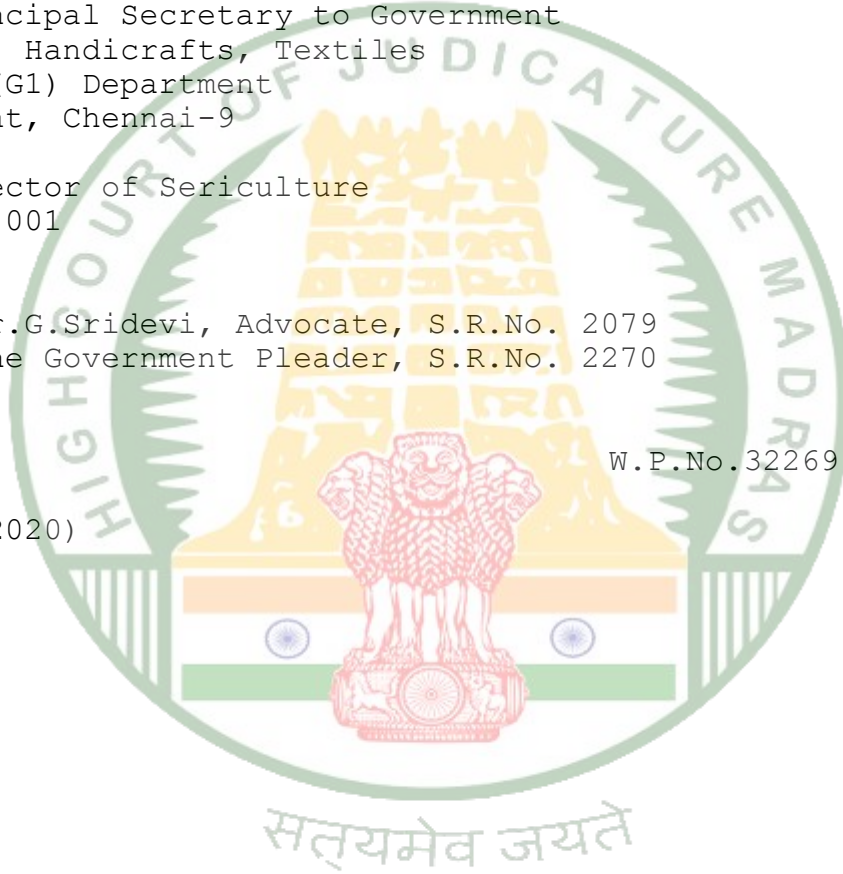
1.The Principal Secretary to Government
Handlooms, Handicrafts, Textiles
and Khadi(G1) Department
Secretariat, Chennai-9

2.The Director of Sericulture
Salem-636 001

+1cc to Mr.G.Sridevi, Advocate, S.R.No. 2079
+1cc to the Government Pleader, S.R.No. 2270

W.P.No.32269 of 2012

GJ(CO)
GN(26/02/2020)



WEB COPY