

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.30169 of 2013

S.M.Abdullah

..Petitioner

- Vs -

1. The Secretary of Government,
Backward Classes, Most Backward Classes
and Minorities Welfare Department,
Secretariat, Chennai 600 009.

2. The Commissioner of Backward
Classes Welfare Department,
Chepauk, Chennai 600005.

..Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling for the records relating to the Impugned Letter issued by the 2nd respondent in Letter No.A2/7065/2012 dated 29.08.2012 and quash the same and to direct the respondents to consider the name of the petitioner for the post of District Backward Class Officer prepared for the year 2011-2012 as on the crucial date 1.9.2010 on par with his junior Thiru R.Rajendran with all monetary benefits.

For Petitioner : M/S.T.Ranganathan

For Respondents: Mr. S.Thangavel, Spl. GP

ORDER

This Writ petition was filed by the petitioner, to call for the records relating to the Impugned Letter issued by the 2nd respondent in Letter No.A2/7065/2012 dated 29.08.2012 and quash the same and to direct the respondents to consider the name of the petitioner for the post of District Backward Class Officer prepared for the year 2011-2012 as on the crucial date 1.9.2010 on par with his junior Thiru R.Rajendran with all monetary benefits.

2. It is the case of the petitioner that he was appointed as Junior Assistant through Tamil Nadu Public service Commission and his services were regularised and upon regularisation, the petitioner was given various promotions and as in the year 2002, the petitioner was functioning as Superintendent. The petitioner was visited with a charge memo for certain delinquencies and after receiving explanation and conducting enquiry, the petitioner imposed with punishment of stoppage of increment for two years without cumulative effect vide proceedings dated 08.10.2009. On appeal being filed by the petitioner, the same was modified by the 1st respondent to one of Censure. It is the further case of the petitioner that on and from 08.10.2009, he became entitled for promotion to the next higher post of District Backward Class and Minority Welfare Officer and there was no legal impediment to consider his name in the panel for promotion for the year 2011-12.

3. It is the averment made by the petitioner that in the meanwhile, a panel for promotion to the post of District Backward Class and Minority Welfare Officer for the year 2011-12 was prepared as on 01.06.2010, wherein the name of the petitioner was deferred due to the punishment imposed on him. However, the said punishment having been modified by the 1st respondent, the petitioner was eligible for promotion to the post of District Backward Class and Minority Welfare Officer on par with his junior one Thiru.R.Rajendran who was promoted in G.O.Ms.NO.32 BC, MBC and MW Department dated 20.03.2012. However, the name of the petitioner was not considered for promotion on par with his junior, which resulted in the filing of the present writ petition.

4. Learned counsel appearing for the petitioner submits that though the petitioner was initially imposed with a punishment, however, on appeal the same has been modified to one of censure and, therefore, the petitioner is deemed to have been eligible for promotion on the crucial date when panel was drawn for the year 2011-2012. Though juniors to the petitioner have been promoted, however, the petitioner was not granted promotion on and from the date on which he became eligible. Learned counsel for the petitioner drew the attention of this Court to the decision of the Full Bench of this Court in V.Rani Vs. D.I.G. Of Police, Thanjavur (2011 (4) MLJ 1), and submits that there being no rule punishment on the crucial date, the petitioner ought to have been given promotion by restoring his seniority and, accordingly, prays for allowing the present writ petition.

5. On the above contention, this Court heard the learned counsel appearing for the respondents, who has filed a counter affidavit on behalf of respondent, denying the averments made by

the petitioner. It is the further submissions of the learned Special Government Pleader that the punishment of censure was subsisting on the date when the names were considered for promotion by drawing a panel and, therefore, the name of the petitioner was not considered. The petitioner on crucial date 01.09.2010, was undergoing the punishment of censure and, therefore, he was not eligible for promotion and, therefore, prays for dismissal of the petition.

6. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record and also the decisions to which reference was drawn by the learned counsel on either side.

7. The facts in issue are not in dispute. Though initially punishment of stoppage of increment was imposed on the petitioner from 8.10.2009, however the same stood modified to one of censure vide proceedings dated 05.10.2012. It is not in dispute that the 'Censure' is not a punishment within the meaning of punishment for being denied promotion. In that scenario, the petitioner having suffered only censure, is deemed to have not suffered any punishment for the purpose of considering his name for promotion. Therefore, once the punishment stood modified to one of censure, the petitioner ought to have had his name considered for promotion in the panel for the year 2011-2012 and his seniority fixed and promotion awarded on the date his immediate junior was granted promotion. However, the petitioner not having been considered for promotion, definitely this Court is of the view that the act of the respondents in not granting promotion to the petitioner from 08.10.2009 by inclusion of his name in the panel and restoring his seniority requires to be considered favourably.

8. The decision of the Full Bench of this Court in Rani's case (supra) clearly spelt out that check period is not valid as it does not have a statutory force. In that scenario, the punishment suffered by the petitioner is only that of censure, and no check period is permissible in view of the quashment of the Government Order by the Full Bench of this Court in Rani's case (supra), the petitioner is entitled for his due share of promotion on and from the initial date, as the punishment of censure is not a punishment for the purpose of stoppage of promotion. For reasons best known to the respondents, the name of the petitioner was not included in the panel, while drawing the proceedings dated 08.10.2009, which is nothing but injustice committed to the petitioner and the panel drawn by the respondents, which is impugned herein, definitely warrants interference at the hands of this Court. Therefore, the prayer as sought for by the petitioner deserves to be allowed.

9. For the reasons aforesaid, this writ petition is allowed and the respondents are directed to include the name of the petitioner above his immediate junior one Thiru. R.Rajendran by restoring his original seniority by including his name in the panel for the year 2011-12 and grant promotion to the petitioner with all consequential service and monetary other benefits, including further promotional benefits to which the petitioner is duly entitled to as per his seniority. The said exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary of Government,
Backward Classes, Most Backward Classes
and Minorities Welfare Department,
Secretariat, Chennai 600 009.

2. The Commissioner of Backward
Classes Welfare Department,
Chepauk, Chennai 600005.

+1cc to the Government Pleader, S.R.No.33081

W.P. NO.30169 of 2013

KK(CO)
RV(07/12/2020)