

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.01.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.10244 of 2019

C.Vijayakumar

Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to promote the petitioner with effect from 18.08.2012 the date of promotion of his junior and fix his pay in the category of Joint Director of Municipal Administration notionally and grant monetary and other benefits with effect from 11.01.2018 and to restore the petitioner's original seniority and place the petitioner above his immediate juniors in Joint Director Post as in annexure I of G.O.(Ms)No.221, Municipal Administration and Water Supply Department, dated 28.09.1999 in accordance with the order dated 29.09.2018 in CMP.No.14442 of 2018 in W.A.No.576 of 2017.

For Petitioner : Mr.N.G.R.Prasad for
M/s.M.Gnanasekar

For Respondents: Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

O R D E R

This writ petition has been filed for issuance of writ of mandamus directing the 1st respondent to promote the petitioner w.e.f 18.08.2012 in the category of Joint Director, Municipal Administration notionally and for granting monetary benefits w.e.f. 11.01.2018 and consequently to restore the seniority of the petitioner above his immediate juniors.

2.The case of the petitioner is that he was initially appointed as Municipal Commissioner Grade-III in the year 1996 after the petitioner cleared the Group II Examination conducted by TNPSC. The post of Municipal Commissioner Grade-III was converted/re-designated as Municipal Commissioner Grade-II and the petitioner services were regularised from 23.09.1999. Subsequently, the petitioner was also promoted to the post of Grade-I Municipal Commissioner in the year 2001. The petitioner was conferred with Selection Grade in the year 2004 and Special Grade in the year 2008 based on his seniority and eligibility.

3.The petitioner was issued with a charge memo in the year 2010 and the petitioner gave his explanation for the same. An enquiry officer came to be appointed and report was also filed. After considering the enquiry report and the explanation given by the petitioner, a punishment was imposed against the petitioner for stoppage of three increments with cumulative effect. Aggrieved by the same, the petitioner filed writ petition before this Court. Ultimately, the case reached the Division Bench of this Court in W.A.No.576 of 2017. The Division Bench of this Court by an order dated 11.07.2017 was pleased to modify the punishment imposed against the petitioner from three increments with cumulative effect to that of censure. The relevant portion of the order is extracted hereunder:

21.Thus, we are of the considered view that both the appellants and the respondent must be equally held accountable for the lapses on their part, namely that the lethargic attitude on the part of the appellants in initiating the disciplinary proceedings and concluding the same, resulting in the inordinate delay and that the act of the respondent, through unintentional and out of anxiety, is in violation of Rule 109 of the Rules. Therefore, in our considered opinion, the punishment imposed by the appellants, namely stoppage of three increments with cumulative effect, is a major one and that the negligence on the part of the appellants resulting in inordinate delay, thereby causing unbearable mental agony and distress to the respondent, which is much more than the punishment, would substantially mitigate the punishment imposed by the appellants. At the same time, we cannot let the respondent go scot free.

22.In view of the above and considering the fact situation, the punishment of stoppage of three increments with cumulative effect imposed on the respondent is modified to the one of Censure. Thus, during the currency of Censure, namely one year from 10.04.2014, the respondent cannot be considered for promotion, namely from 10.04.2014 till 09.04.2015,

namely the currency of one year period of Censure. Thereafter, the appellants shall give promotion to the respondent, if due, and shall maintain seniority as per law, within a period of three months from the date of receipt of a copy of this order. The respondent is hereby warned to be very careful while discharging his duties, in future. We make it clear that the above order which has been passed taking into consideration the fact situation of the case, shall not be taken as precedent.

4.Subsequent to the orders passed by the Division Bench, the Principal Secretary to Government, by G.O.Ms.No.9, dated 05.01.2018, temporarily promoted the petitioner as a Joint Director of Municipal Administration. By virtue of this Government order, the seniority and the pay fixation was not made. The petitioner made a representation to the Principal Secretary to Government and also to the Commissioner of Municipal Administration to fix his seniority by taking into consideration the immediate juniors and consequently to fix his pay in the post of Joint Director.

5.The petitioner filed CMP.14442 of 2018 in the writ appeal and sought for a clarification of the earlier order passed by the Division Bench.

6.The Division Bench of this Court on considering the clarification petition filed by the petitioner and after hearing both sides, clarified the earlier order passed to the effect that the petitioner will be entitled for fixation of seniority as per the date of the entitlement and on par with his juniors. The Division Bench also made it clear that insofar as the payment of arrears and other monetary benefits are concerned, the petitioner will not be entitled for the same. Therefore, this order of clarification protected the seniority of the petitioner.

7.Subsequent to the clarification order passed by the Division Bench, the petitioner made several representations to the respondents seeking for fixing his seniority. Since, there was no response from the respondents, the present writ petition has been filed before this Court seeking for appropriate directions.

8.Mr.N.G.R.Prasad, learned counsel appearing on behalf of the petitioner submitted that the Division Bench of this Court while passing the orders in W.A.No.576 of 2017 has categorically held that the petitioner cannot be considered for promotion during the currency of the punishment of Censure i.e., from 10.04.2014 till 09.04.2015 and thereafter, the petitioner is entitled for promotion and fixation of seniority. The learned counsel submitted that this order was further clarified by the Division Bench by an order dated 29.09.2018, wherein, the Division Bench had held that the

promotion of the petitioner should be considered as per the entitlement as against his juniors and the petitioner will be entitled for fixation of seniority from the date of his entitlement. The learned counsel further submitted that the Division Bench had only held that the petitioner is not entitled for any payment of arrears or monetary benefits for the period wherein he has not worked. Therefore, the learned counsel submitted that the respondents ought to have passed an order by fixing the seniority of the petitioner in relation to his immediate juniors and should have granted the monetary benefits w.e.f. 2018 onwards.

9.Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the petitioner was only temporarily promoted by invoking Section 41(1) of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016. The learned counsel submitted that, while passing the Government order in G.O.Ms.No.9, dated 05.01.2018, the Government has not fixed the seniority or the monetary benefits to the petitioner. The learned counsel further submitted that the respondents have already received the representations made by the petitioner and appropriate orders will be passed in line with the judgment of the Division Bench and the subsequent clarification that was given by the Division Bench. The learned counsel submitted that some time can be fixed by this Court in order to enable the respondents to consider the case of the petitioner and pass appropriate orders.

10.This Court has carefully considered the submissions made on either side and also the materials available on record.

11.The order of the Division Bench that has been extracted supra has modified the punishment imposed against the petitioner to one of Censure for the period from 10.04.2014 till 09.04.2015. The Division Bench has held that the petitioner cannot be considered for promotion during this period. The Division Bench has also made it clear that the petitioner will be entitled for promotion subsequent to the period of Censure. While passing the clarification order, the Division Bench has further clarified that the promotion of the petitioner shall be as per his entitlement to the seniority as against his juniors. The Division Bench has said that the petitioner will not be entitled for any arrears or other monetary benefits for the period he has not worked.

12.The grievance of the petitioner is that the respondents have not fixed the seniority of the petitioner and the respondents have not given the monetary benefits in spite of the orders passed by the Division Bench. The 1st respondent has only passed an order giving temporary promotion to the petitioner without fixing the seniority or pay.

13.The petitioner is seeking to get his seniority fixed immediately above his juniors and for this purpose, the petitioner is relying upon the proceedings dated 28.09.1999, wherein, the name of the petitioner is found at Serial No.75 in the post as Municipal Commissioner Grade-II. The petitioner is placed just above one P.Janaki. This P.Janaki was subsequently transferred and posted as the Commissioner of Vellore Corporation by proceedings dated 18.08.2012. The petitioner is seeking to fix the seniority just above P.Janaki as per the original seniority list.

14.The Division Bench has categorically held that the petitioner is entitled for fixation of seniority as per his entitlement above his juniors. The Division Bench only held that the petitioner will not be entitled for consideration of promotion during the period from 10.04.2014 till 09.04.2015 and the petitioner will not be entitled for any monetary benefits for the period he did not work. In view of the fact that the seniority of the petitioner has been recognized by the Division Bench, the respondents will have to necessarily pass orders by fixing the seniority of the petitioner and also by providing him with the monetary benefits from the year 2018 onwards.

15.In view of the above discussion, there shall be a direction to the 1st respondent to consider the representations made by the petitioner on 30.10.2018 and 24.12.2018 and fix the seniority of the petitioner in line with the judgment of the Division Bench in W.A.No.576 of 2017, dated 11.07.2017 and the further clarification order passed by the Division Bench dated 29.09.2018 and pass orders of promotion from the date of his entitlement after 09.04.2015 and also grant all the consequential monetary benefits. The 1st respondent shall keep in mind the orders passed by the Division Bench of this Court and appropriate orders shall be passed within a period of eight weeks from the date of receipt of copy of this order.

16.This writ petition is disposed of with the above directions. No Costs.

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Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

ssr

To

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.M.Gnanasekar, Advocate SR.No.3018

+1cc to Government Pleader SR.No.3482

W.P No.10244 of 2019

GMV (31/01/2020)



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