

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.6783 OF 2014

AND

MP NO.2 OF 2014

K.Sait Mohammed

.... Petitioner

Vs.

1. The Agriculture Protection Commissioner
and Principal Secretary to the Government
Agriculture Department
Fort St. George
Chennai - 600 009.

2. The Director fo Agriculture,
Fort. St. George,
Chennai - 600 009.

3. The Director of Agriculture,
Tiruchirapalli.

... Respondents

Writ Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent and quash the letter No.3505/AA4 (2)/2013-2, dated 22.08.2013 and quash the same and further directing the respondents to give all monetary benefits and other service benefits from 01.01.1994.

For petitioner :Mr.Vijayakumar
for Mr.T.Suresh

For respondents :Mr.S.Thangavel,
Special Government Pleader

O R D E R

This writ petition has been filed to quash the letter No.3505/AA4(2)/2013-2, dated 22.08.2013 and further direct the respondents to give all monetary benefits and other service benefits to the petitioner from 01.01.1994.

2. It is the case of the petitioner that he was appointed in the Agricultural Department as Agricultural Officer on 14.10.1983 and subsequently on completion of 10 years of service from the date of appointment, i.e., on 14.10.1983, he is eligible to get selection grade pay in the said post. While so, the petitioner was visited with a charge memo u/r 17 (a) and another charge memo u/r 17 (b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules and after issuance of show cause notice and upon receipt of explanation from the petitioner, enquiry was initiated, in which the charges against the delinquent was held to have been proved resulting in calling upon the petitioner for further explanation ultimately culminating in imposition of punishment of stoppage of increment for a period of six months for the charge u/r 17 (a) and stoppage of increment for a period of two years with cumulative effect for the charge u/r 17 (b). Against the said punishment, the petitioner preferred writ petition in W.P. No.24114 of 2006, which was allowed partly in favour of the petitioner to the extent of confirming the punishment, however with a direction to give annual increments after completion of the period of punishment and the petitioner was directed to give a representation in this regard. Accordingly, the petitioner, quoting the Full Bench decision of this Court in the case of The Deputy Inspector General of Police, Thanjavur Range & Anr. - Vs - V.Rani (W.A. No.315 of 2010, etc.), and other decisions of this Court, submitted a representation for grant of Selection Grade scale of pay from the year 1997. However, vide the impugned order, the said request having been rejected, the present petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the currency of the punishment had come to a close in the year 1997. Since the punishment imposed is not with cumulative effect, the petitioner ought to have been granted selection grade scale of pay on and from the year 1994. It is alternatively submitted that even if the currency of punishment is taken into consideration, the petitioner ought to have been granted selection grade scale of pay from the year 1997 on the closure of currency of punishment, as the concept of check in period mandated vide the G.O. Ms. No.368, P&AR Department, dated 18.10.1993 having been struck down, the petitioner is entitled for his case being granted selection grade scale of pay. However, the decisions of this Court have not been properly perceived by the respondents resulting in rejection of the representation of the petitioner, which requires interference at the hands of this Court.

4. Per contra, learned Special Government Pleader appearing for the respondents submitted that the petitioner having been visited with punishment, the currency of which ended only in the

year 1996, and check period having been in force as on that date, the petitioner was rightly granted selection grade from the year 2001. Further, it is the stand of the learned Special Government Pleader that the decision of the Full Bench in Rani-s case (supra) will not have retrospective operation and it is only prospective in nature and, therefore, the grant of selection grade scale of pay to the petitioner in the year 2001 is right. It is the further stand of the learned Special Government Pleader for the respondents that though the Full Bench struck down G.O. Ms. No.368, vide order dated 27.4.2011, however, thereafter, the concept of check period has been incorporated by way of amendment into the Rules, the vires of which is under test before this Court and, therefore, pressing the Full Bench decision into service to entail benefit in favour of the petitioner would not be justifiable. Further, the selection grade scale of pay is given to persons, who have not received any promotion, on their satisfactory completion of 10 years of service and in the case of the petitioner, the satisfactory completion of service of 10 years having been completed only in the year 2001, the petitioner was provided with selection grade scale of pay from the year 2001, which reflects in the order passed in the earlier round of litigation and, therefore, the petitioner is estopped from agitating his rights once over on the same issue and, therefore, prays for dismissal of the present petition.

5. This Court paid its best attention to the contentions put forth by the learned counsel on either side and also perused the materials available on record, as also the decisions, which have been brought to the attention of this Court.

6. The facts in issue relating to the service of the petitioner, the sufferance of punishment by the petitioner and the currency of the punishment are not in dispute. Equally it is not in dispute that the check in period mandated vide G.O. Ms. No.368 has been struck down by the Full Bench of this Court in Rani-s case (supra), which has led to the amendment of the Rule since then and which is put in issue before this Court and is pending. It is to be pointed out that the decision of the Courts, generally operate prospectively and not retrospectively and such being the case, the decision in Rani-s case (supra) having been rendered in the year 2011, will have operation only from 2011. Giving retrospectivity to decision, more so in service jurisprudence, is wholly impermissible, as the same would open a pandora-s box leading to chaos and confusion in the whole administrative setup.

7. Further, it is also not disputed that since the striking down of the Government Order, the concept of check period has been incorporated in the Rules by way of amendment, which has

received statutory force and unless it is tested on the touchstone of the constitutional provisions before this Court, it would be unsafe to act on the said decisions to render a finding on the above aspect. In such a backdrop, this Court is not inclined to dwell on the decisions relating to check period to test the issue before this Court in the present case.

8. Be that as it may. Before proceeding to analyze the case of the petitioner herein, it is to be pointed out that the affidavit filed by the petitioner is bereft of any relevant particulars pertaining to the date of initiation of proceedings and the punishment imposed and the currency of the punishment. The whole of the affidavit filed by the petitioner is vague and not clear except for harping upon the decision of the Full Bench in Rani-s case (supra). In the above scenario, this Court is left with no other alternative but to turn back to the earlier writ petition, which has been filed so as to ascertain the particulars relating to the petitioner so as to decide the issue before this Court.

9. It is borne out by record that the charge memo was issued in the year 1991 culminating in the punishment being inflicted on the petitioner in the year 1995. Further, the currency of the punishment ended in the year 1997 and pressing into service the check period, as was in vogue then, the petitioner has been provided with selection grade scale of pay on completion of satisfactory service of ten years. It is evident that selection grade scale of pay is given to persons, who were not the recipient of any promotion over a period of ten years on satisfactory completion of service. However, in the case of the petitioner, the petitioner having joined the service in the year 1983, having been visited with charge memo in the year 1991 and, thereafter, visited with punishments, the currency of which came to a close in the year 1997, ten years of satisfactory service should be reckoned from the year 1991, which gets over in 2001. Even otherwise, the petitioner having put in a service from 1983 to 1991 and after 1991, the currency of the punishment and completion of the check period gets over only in the year 2001, the petitioner was duly awarded selection grade scale of pay on 1.1.2001, which cannot be found fault with. Moreover, it is to be pointed out that the above issue has been agitated by the petitioner before this Court in the earlier round of litigation and has been negatived against the petitioner and, therefore, the petitioner is estopped from once again agitating the same issue before this Court.

10. The respondents have considered the case of the petitioner with regard to award of selection grade scale of pay in proper perspective and have rejected the case of the petitioner which does not warrant any interference. However,

insofar as annual increments which the petitioner should have received on completion of punishment, if the petitioner has not been granted the same, direction has already been issued by this Court in the earlier round of litigation, and this Court makes it clear that the petitioner would be entitled to receive the annual increments after the currency of the punishment. In such a backdrop, the respondents are directed to grant the annual increments to the petitioner after the currency of punishment, if not already granted to the petitioner, in consonance with the order passed in W.P. No.24114 of 2006.

11. For the reasons aforesaid, this writ petition is dismissed with the aforesaid observations and directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Agriculture Protection Commissioner
and Principal Secretary to the Government
Agriculture Department
Fort St. George
Chennai - 600 009.
2. The Director fo Agriculture,
Fort. St. George,
Chennai - 600 009.
3. The Director of Agriculture,
Tiruchirapalli.

+2cc to Mr.T.Suresh, Advocate, S.R.No.41592
+1cc to the Government Pleader, S.R.No. 41970

W.P.No.6783 of 2014

GP(CO)
CS/08/04/2021