



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.21969 of 2015

S.Shanmugashundaram

... Petitioner

-Vs-

1.The Principal Secretary
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.

2.The Additional Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.

... 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 pertaining to the impugned (a) letter No.14485/A2/2010-4 dated 12.11.2010 on the file of the first respondent (b) letter No.4806/A2/2011-1, dated 15.03.2011 on the file of the second respondent and quash the same and consequently, direct the first respondent to retrospectively promote the petitioner as Senior Civil Surgeon with all monetary benefits and pensionary benefits.

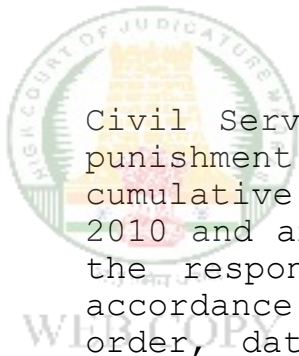
For Petitioner	: Mr.S.Muthalraj
For Respondents	: Mr.V.Anand
	Government Advocate

ORDER

The order declining the request of the petitioner for grant of promotion to the post of Senior Civil Surgeon with retrospective effect, is under challenge in the present writ petition.

2.The petitioner joined as a Medical Officer on 14.08.1981. He retired from service on 31.07.2007. However, the writ petition itself is filed after a lapse of about eight years from the date of retirement in the year 2015. The grievance of the writ petitioner is that though he is fully qualified for promotion to the post of Senior Civil Surgeon, he was not promoted along with his juniors. Thus, he is constrained to move the present writ petition.

3.The petitioner states that he was served a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the disciplinary proceedings, ended with a punishment of stoppage of increment without cumulative effect. Another charge memo was issued under Rule 17(b) of the Tamil Nadu



Civil Services (Discipline and Appeal) Rules and it ended with a punishment of stoppage of increment for three years without cumulative effect. Earlier, the petitioner filed W.P.(MD)No.9915 of 2010 and an order was passed by this Court on 02.08.2010, directing the respondent to consider his representation on merits and in accordance with law. Pursuant to the said direction, the impugned order, dated 12.11.2010 was passed. However, the said order is under challenge in the present writ petition, which is filed in the year 2015 after a lapse of about five years from the date of passing of the impugned order. Thus, the writ petition is liable to be dismissed on the ground of laches.

4. Even on merits, the learned Government Advocate appearing for the respondents contended that the name of the writ petitioner was deferred on account of the pendency of the disciplinary proceedings as well as on the ground of currency of punishments. The details of the punishment imposed as well as the currency of punishments are enumerated in paragraph No.12 of the counter affidavit which is extracted hereunder:-

"...12. It is submitted that, as per the panel guidelines, whenever an officer is undergoing any punishment, other than Censure on the crucial date or on the date of consideration, then irrespective of the time of occurrence of the irregularity, his name should be passed over for that panel. If the currency of the punishment continues at the time of subsequent consideration for the next panel(s), he should still be passed over on the grounds that an officer should not be considered for inclusion in a panel or for promotion or promoted during the currency of any punishment. In the instant case, pendency of disciplinary actions under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules was initiated against the petitioner herein for one case and punishment of stoppage of increment for three years without cumulative effect was imposed on him vide G.O.(D)No.1254, Health and Family Welfare Department, dated 31.08.2001 and the said punishment concluded on 30.06.2005, overlapping the date of approval of the panel year 2001-2002. In another case, punishment of stoppage of increment for two years without cumulative effect was imposed on him vide G.O.(D)No.183, Health and Family Welfare Department, dated 07.03.2005 and the said punishment concluded on 30.06.2007. In view of that, the petitioner herein was not eligible for inclusion of his name in the panel approved for the post of Additional Civil Surgeon drawn for the year 1998-99 and for the post of Senior Civil Surgeon drawn for the year 2001-02 due to pendency of two disciplinary cases/currency of punishments.



5.The pendency of the disciplinary proceedings under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or the currency of punishment is a bar for promotion. The petitioner retired from service in the year 2007 itself. His representation, pursuant to the directions of this Court, was considered and an order was passed on 12.11.2010. The present writ petition is filed after a lapse of five years. During the relevant point of time, when the name of the petitioner was considered, he was facing departmental disciplinary proceedings as well as the currency of punishment as detailed above.

6.This being the factum, there is no infirmity as such in respect of the order of rejection passed by the respondents regarding the claim of the writ petitioner for retrospective promotion.

7.Under these circumstances, this Court do not find any acceptable ground for the purpose of considering the relief as such sought for and accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sjj

To

1.The Principal Secretary
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.

2.The Additional Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.

+1 CC to M/s.SPL GP (SR-25769[F] dated 16/12/2020)

W.P. (MD).No.21969 of 2015
14.12.2020

MJ(CO)
KB(28.12.2020) 3P 4C