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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WRIT APPEAL NO.2121 OF 2021

1. Government of Tamil Nadu,
rep. by Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai 600 009.
 2. The Commissioner of Municipal Administration,
MRC Nagar,
Chennai 600 028. ... Appellants
- vs.
- D.R.B.Gunasekaran ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 22.10.2018 passed by this Court in W.P.No.22761 of 2008.

W.P.No.22761 of 2008:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified mandamus calling for the records of the 2nd respondent relating to proceedings Roc.No.62115/2006/K3 dated 03.10.2007, quash the non-inclusion of the petitioners name in the said panel of promotion for the year 2007-08 and issue consequential directions to the respondents to include the petitioner's name in the panel for 2007-08 in the appropriate place therein and to promote him as Assistant, notwithstanding and without reference to the minor penalty of Stoppage of increment for two years with cumulative effect imposed against him by the 1st respondent in G.O.(D)No.527, Municipal Administration and Water Supply (M.E.II) Department, dated 30.10.2007 with retrospective effect from the date of promotion of the petitioner's immediate junior with consequential benefits.



For Appellants : Mr.P.V.Sajeev Kumar,
Government Advocate

For Respondent : Mr.M.Ravi

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J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN, J.)

The present Appeal has been preferred by the Government challenging the order dated 22.10.2018 passed by the learned Single Judge in W.P.No.22761 of 2008, in holding that, the punishment imposed on the Respondent/Writ Petitioner will not deprive him to be considered for inclusion to the panel for promotion for the year 2007-08.

2. Learned Government Advocate appearing for the Appellants submitted that, charges have been framed against the Respondent/Writ Petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules (hereinafter referred to as 'Rules') and after due enquiry, punishment of 'stoppage of increment for two years with cumulative effect' was imposed. It is his contention that, though the Respondent/Writ Petitioner has committed serious misconduct, only a lesser punishment has been imposed on him and hence, he is not entitled to the relief sought for by him.

3. It is further contended by the learned Government Advocate that, the crucial date for considering the candidature is 15.03.2007 and the Enquiry Officer submitted a Report on 01.12.2006 and the punishment order has been issued on 30.10.2007. Totally, seven charges were framed against the Respondent/Writ Petitioner, out of which, only three charges viz. charge Nos.1, 3 and 4 alone have been held to be proved and the remaining charges were not proved. According to the learned Government Advocate, in view of the fact that, the punishment imposed on the Respondent/Writ Petitioner falls under the caption 'Major Penalty', the order of the learned Single Judge in directing the Government to include the name of the Writ Petitioner in the panel for promotion as an Assistant with retrospective effect, needs to be interfered with.

4. On the other hand, learned counsel appearing for the Respondent/Writ Petitioner submitted that, the charges framed against the Respondent/Writ Petitioner itself are minor in nature and instead of framing the charges under Rule 17(a) of the Rules, the Authority has framed the charges under Rule 17(b) of the Rules.



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5. For the sake of convenience, charges proved against the Respondent/Writ Petitioner, are extracted below:

CHARGE 1:

"that Thiru D.R.B.Gunasekaran, Junior Assistant failed to put up a note pointing out that there is ban for filling up of vacant posts (except certain categories) vide G.O.Ms.No.212, Personnel and Administrative Reforms, Department, dated 29.11.2001 when the Municipal Commissioner ordered the appointment of 12 Sanitary Workers on compassionate grounds on 10.01.2002, 01.02.2002 and 18.02.2002 and 31 NMRs as Sanitary Workers on consolidated pay on 18.02.2002 and 21.02.2002 as noted in Annexure II."

CHARGE 3:

"that he had put up draft proceedings to the Municipal Commissioner for the appointment of Sanitary Workers on consolidated pay of Rs.2000/- on 18.02.2002 and 21.02.2002 in File No.10484/99/H2. Without following the norms issued in G.O.Ms.No.71, Municipal Administration and Water Supply Department, dated 05.05.1998 in fixing their pay with reference to their service."

CHARGE 4:

"that he had failed to take action for obtaining the permission of Commissioner of Municipal Administration as per G.O.Ms.No.195, Municipal Administration and Water Supply Department, dated 17.08.1999, for bringing 30 Sanitary Workers in consolidated pay, into time scale of pay of Rs.2550-55-2660-60-3200 and orders were issued vide procs. 10484/99/H2, dt.13.03.2003/10484/99/H2, dt. 01.04.2003/10484/99/H2, dt. 21.05.2003 of the Municipal Commissioner, Tiruvottiur."



6. Entire charges extracted supra appears to be one falling under Rule 17(a) of the Rules. Hence, according to the learned counsel appearing for the Respondent/Writ Petitioner, in the light of Part III of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970, the Writ Petitioner is entitled to be promoted.

7. Heard the learned Counsel on either side and perused the material documents available on record.

8. It is not in dispute that, the Respondent/Writ Petitioner was charged for a misconduct and out of seven charges framed against him, three charges, as extracted supra, have been held to be proved and the punishment of 'stoppage of increment for two years with cumulative effect' has been imposed. Whether the punishment of 'stoppage of increment with cumulative effect' is a major one or not, has to be considered.

9. Generally, it appears that punishment of 'stoppage of increment with cumulative effect' is a major punishment, but, it depends upon the Rules that are applicable to the charges framed. For the sake of convenience, Part III of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970, is extracted below:

PART III - DISCIPLINE - PENALTIES :

"3. Penalties- The following penalties may, for good and sufficient reason, be imposed on any member of a service, namely:-

(1) Censure;

(2) Withholding of increments or promotion including stoppage at an efficiency bar;

(3) Reduction to a lower rank in the seniority list or to a lower post time scale or to a lower stage in a time-scale;

(4) Recovery from pay of the whole or part of any pecuniary loss caused to a Municipal Council or to any local body or to the State Government or the Central Government by negligence or breach of orders;

(5) Recovery from pay to the necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such



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an order cannot be given effect to;

(6) Recovery from pay to the necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered, where such an order cannot be given effect to;

Explanation:- In case of stoppage on increment with cumulative effect, the monetary value of three times the amount of increments ordered to be withheld may be recovered.

(7) Compulsory retirement from the Municipal service;

(8) Removal from the Municipal service;

(9) Dismissal from the Municipal service;
and

(10) Suspension, where a person has been suspended under rule 17(e), to the extent considered necessary by the authority imposing the penalty.

Explanation":- The penalties mentioned in items 1, 2, 4 to 6 and 10 will be deemed to minor penalties, and those in 3, 7 to 9 as major penalties."

10. From the above explanation, it is clear that, withholding of increments or promotion including stoppage at an efficiency bar, is considered to be a minor penalty.

11. The contention of the learned counsel appearing for Respondent/Writ Petitioner is supported by the decision of this Court in the case of Government of Tamilnadu vs. P.Sundar (Writ Appeal No.1184 of 2015, dated 07.08.2018), wherein, the employee was imposed with the punishment of stoppage of increment for a period of six months without cumulative effect.

12. Even though, learned Government Advocate appearing for the Appellants tried to convince us on the ground that, the punishment of stoppage of increment for six months without cumulative effect imposed on the employee in the case of P.Sundar (supra) is a minor punishment, and in the present case on hand, the punishment of stoppage of increment for two years with cumulative effect imposed on the Respondent/Writ Petitioner is a major one, in terms of the Rules extracted supra, we find much force in the contention of the learned counsel appearing for the Respondent/Writ Petitioner that, the punishment imposed on the Respondent/Writ Petitioner is only minor in nature.



13. In view of the above, we find no reason to interfere with the order dated 22.10.2018 passed by the the learned Single Judge in W.P.No.22761 of 2008, and the same is confirmed.

In fine, the Writ Appeal stands dismissed. No costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

(vm/aeb)

To

1. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 600 009.
2. The Commissioner of Municipal Administration,
MRC Nagar, Chennai 600 028.

+1cc to the Government Pleader, S.R.No.51989

W.A.No.2121 of 2021

PM(CO)
CS/20/10/2021
CS/02/11/2021