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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.646 of 2021
and C.M.P.No.3018 of 2021

1. The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi (G1) Department,
Secretariat,
Chennai-600 009.
 2. The Director of Sericulture,
Salem 636 007.
- .. Appellants/Respondents

Vs.

V.Kandasamy .. Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 08.01.2020 passed in W.P.No.32269 of 2012.

Prayer in WP.32269 of 2012: It is therefore prayed that this Hon'ble Court may be pleased to Issue Writ of Certiorarified Mandamus to call for the records relating to Government Order in G.O.Ms. No. 235 (Handlooms Handicrafts Textiles and Khadi (G1) Department) dated 09.11.2012 issued by the 1st respondent, the Principal Secretary to Government Handlooms, Handicrafts, Textiles and Khadi (G1) Department, Secretariat, Chennai-9 in rejecting the representation of the petitioner to consider for promotion to the post of Assistant Director of Sericulture, quash the same and direct the 1st respondent to notionally promote the petitioner in the post of Asst. Director of Sericulture and disburse all the consequential benefits by refixing his service and attended benefits within short date that may be fixed by this



Honourable Court and pass such further or other orders as this Hon'ble Court may deem fit and proper thus render Justice.

For Appellants : Mr.R.Neelakandan,
State Government Counsel

For Respondent : Ms.G.Sridevi Chandren

J U D G M E N T

Pushpa Sathyanarayana, J.

The State filed this appeal questioning the order of the learned Single Judge dated 08.01.2020 allowing W.P.No.32269 of 2012 with a direction to give notional promotion to the writ petitioner.

2. The respondent is the writ petitioner and he entered into service as Assistant Inspector of Sericulture on 02.05.1980 in the appellants Department and promoted as Inspector of Sericulture on 07.02.1986. While he was working as Senior Inspector of Sericulture, he was issued with a charge memo dated 27.11.2001, which was served upon him on 13.12.2001. After enquiry, the report was submitted on 29.11.2005 holding that the same were proved. Only on 30.03.2008, it was communicated to him and he made a further representation on 10.04.2008. After hearing the writ petitioner, vide G.O.Ms.No.48, Handlooms, Handicrafts, Textiles and Khadi Department, dated 06.04.2011, he was inflicted with the punishment of stoppage of increment for six months with cumulative effect. The next level of promotion for an Inspector in the appellants Department is Assistant Director. Since the writ petitioner was suffering currency of punishment, his name was not included in the promotion panel for the year 2010-2011 and 2011-2012, the crucial date for preparation of the same being 1st April of those years. The writ petitioner submitted an appeal on 17.12.2011 for inclusion of his name in the panel for promotion, but the same was rejected by the Government in G.O.Ms.No.235, dated 09.11.2012. He successfully questioned the said rejection order before the writ Court. Hence, the present appeal.

3. The learned State Government Counsel invited this Court's attention to the provisions of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016 and contended that



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the name of the writ petitioner could not be included in the list, in view of the pendency of charge memo and the order of the learned Single Judge directing to give notional promotion to him, without considering the said aspect is liable to be set aside.

4. The learned counsel for the writ petitioner/respondent would submit that the charge memo was issued as early as on 27.11.2001, for which, he submitted his explanation on 22.12.2001. Though the enquiry officer submitted the report on 29.11.2005, it was communicated to him only on 30.03.2008 calling for his further explanation, which he promptly submitted on 10.04.2008, but nearly after three years, the order of punishment of stoppage of increment for 6 months with cumulative effect was imposed upon the respondent. The learned counsel for the respondent also produced a copy of the Government Order in G.O. (Ms)No.32, HHT & K Department, dated 18.02.2013, and submitted that the said punishment of stoppage of increment for 6 months "with cumulative effect" was modified to one of "without cumulative effect", taking into account the 32 years of service rendered by the writ petitioner and such modification was made based on the opinion/report furnished by the Tamil Nadu Public Service Commission. It is his contention that had the authorities conducted the proceedings in time, the period of punishment would have been over and the petitioner would have been promoted in time. Thus, taking note of the enormous delay in concluding the disciplinary proceedings, which only led to the denial of promotion to the writ petitioner, the writ Court rightly passed the impugned order and sought to sustain the same.

5. Heard the learned State Government Counsel appearing on behalf of the appellants and the learned counsel for the respondent/writ petitioner.

6. The facts are not in dispute. The writ petitioner was served with the charge memo on 27.11.2001 and he submitted his explanation on 22.12.2001. The enquiry officer was appointed after a period of three and half years, thereafter, and upon conclusion of enquiry, the report was allegedly (which was not placed on record) submitted on 29.11.2005. But it was furnished to the writ petitioner only on 30.03.2008 calling for his further explanation, pursuant to which he submitted the same on 10.04.2008. Even thereafter, it took three years for the



authorities to pass the order of punishment on 06.04.2011 imposing the stoppage of increment for 6 months with cumulative effect. In the interregnum, on 04.10.2010, a panel for promotion to the post of Assistant Director was drawn, in which, citing the pending charge memo, the name of the respondent/writ petitioner was deferred for consideration. Similarly, in the letter dated 19.08.2011 also, his name was deferred for consideration. Thus, the writ petitioner made a representation seeking inclusion of his name, which did not yield any response. Since he was due for retirement on 31.01.2012, he filed W.P.No.1791 of 2012, which was disposed of on 08.02.2012 with a direction to the authorities to consider the said representation within a period of twelve weeks. Subsequently, the order impugned in the writ petition rejecting the representation was passed on 09.11.2012.

7. The narration of the above facts makes it crystal clear that there was enormous delay at every stage of the disciplinary proceedings, to say, in the appointment of Enquiry Officer, in furnishing the enquiry report to the delinquent, passing the final order in the proceedings. There is no plausible explanation given by the authorities for such inordinate delay. The learned Single Judge allowed the writ petition on this sole ground. If the snail-paced disciplinary proceedings is conducted and concluded in time, the pendency of the charge memo or punishment would not have stood in the way of the writ petitioner in getting promotion. Thus, there is some force in the argument of the learned counsel for the writ petitioner, so also the conclusion arrived at by the learned Single Judge, that the delay alone denied the petitioner his rightful promotion, as the disciplinary authority and the Government did not bother to take forward the disciplinary proceedings to logical conclusion in time, and they took nearly about 10 years to impose the punishment.

8. The learned Single Judge placed reliance on the judgment of the Full Bench of this Court in the Deputy Inspector General of Police, Thanjavur Range V. V.Rani, 2011 (3) CTC 129, and the statute brought into effect after the said judgment, viz., Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and allowed the writ petition solely on the ground that for the delay on the part of the officialdom, the right of the writ petitioner to get promotion, cannot be deprived.



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9. Applying the principles enunciated in the aforesaid Full Bench judgment, we are of the view that the right of the writ petitioner cannot be denied in the manner it was done in the instant case.

10. At this juncture, it is apposite to refer to the judgment of the Hon'ble Apex Court in Union of India V. Hemraj Singh Chauhan, (2010) 4 SCC 290, wherein, it was held that it is the mandatory duty of the Government to consider the promotion of the Government servant at the relevant time, as it is part of the fundamental right guaranteed under Article 16 of the Constitution of India. The relevant portion of the said judgment are as follows :

"35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."

11. Following the said decision, a Division Bench of this Court also in The Engineer-in-Chief, W.R.O., and the Chief Engineer (General) V. C.L.Pasupathy, 2013 SCC OnLine Mad 592 extended certain benefits to the respondent therein, considering the fact that the Department also delayed preparation of panel and on account of such inaction, there was no justification on their part to deny the benefit of promotion to the employee.

12. It is not out of place to mention that in a catena of decisions, various Division Benches of this Court deprecated similar actions of the authorities and extended benefits to the employees/Government servants. One such recent decision is the judgment of a Division Bench of this Court in V.Visweswaran V. Director of Handloom and Textiles, (2021) 5 MLJ 97, wherein, in paragraph 4, it has been held as follows :



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"3.The only issue which falls for consideration in this appeal is whether the appellant's name can be passed over and not included in the panel for promotion to the post of Handloom officer on the ground that a charge memo was issued much after the crucial date. In this regard, it is relevant to note Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service Act), 2016 which reads as follows:

"Mere filing of cases in Courts by the appropriate investigation Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list".

4.In terms of the above provisions, what would be relevant is whether charge proceedings is pending as on the crucial date. According to the appellant, on the crucial date ie., 01.03.2014, there was no charge proceedings pending and charge memo was issued only on 12.01.2015. In the light of Section 7 of the conditions of Service Act, the competent authority who draws the panel for promotion has to consider the case of the candidate based on the said provisions namely, Section 7(1). Therefore, we are not agreeable with the findings rendered by the learned Single Bench in paragraph No.5, by laying down the broad proposition that pendency of charge even after the crucial date would be a bar. In fact, we find that there are no adequate reasons to support such a conclusion apart from the statutory provisions having not been taken note of. Therefore, we are of the view that the decision rendered in the writ petition cannot be taken to be laying down a general legal principal."

13. Applying the ratio stated in these judgments, we are of the view that there is no error in the order of the learned Single Judge in allowing the writ petition. Accordingly, the writ appeal fails and the same is dismissed upholding the order of the learned Single Judge, with a direction to the appellants to implement the impugned order in the time limit stipulated



therein. No costs. Consequently, connected miscellaneous petition is closed.

14. Before parting with this matter, we are constrained to state that the delay defeats equity and justice. The delay in the disciplinary proceedings defeats the Government servants' lawful service and monetary rights. Even the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act No.14 of 2016) is silent about the outer time-limit within which each and every stage of the departmental proceedings has to be crossed. Unless and until, such time limitation is determined, giving a kind of ringing of a bell as a signal for expiry of time period and it is scrupulously followed, the Courts will have no option, but to interfere with the disciplinary proceedings solely on the ground of delay. We hope that the Government of Tamil Nadu will take appropriate action in this regard.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To

1. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi (G1) Department,
Secretariat,
Chennai-600 009.
3. The Director of Sericulture,
Salem 636 007.

+1cc to M/s.G.Sridevi, Advocate, S.R.No.46604

+1cc to the Government Pleader, S.R.No.47540

W.A.No.646/2021

SJ(CO)

SB(04/10/2021)