



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.A.No.1713 of 2018

K.R.Appavu

... Appellant/Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by its Secretary to Government
Rural Development & Panchayat Raj
Fort St. George, Chennai - 9

2. The Commissioner
Rural Development and Panchayat Raj
Panagal Building, Saidapet
Chennai - 15

...Respondents/Respondents

PRAYER :

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 06.06.2018 passed in W.P. No.11379 of 2011.

Prayer W.P.11379 :-

Pettion filed under Article 226 of Constitution of India a issue a Writ of certiorari to call for the records pertaining to order bearing No. 49629/07/DPC 1.1 dt 20.12.2007 of the 2nd respondent herein and the consequential order bearing Letter No. 39851/2008/DPC 1.1 dated 14.7.2008 of the 2nd respondent herein and quash the same with all consequential benefits

For Appellant : Mr.M.R.Jothimanian

For R1 & R2 : Mr.R.Neelakandan,
State Govt. Counsel



JUDGMENT

The question that arises for consideration in this writ appeal is, whether censure would amount to punishment?

WEB COPY

2. The brief facts leading to the case are that the writ petitioner, who is the appellant herein, retired from Government service on 31.05.2010. Prior to his retirement, he was working as Assistant Project Officer (EAS) at District Rural Development Agency, Coimbatore. The writ petitioner was in the zone of consideration for promotion to the post of Joint Director of Rural Development in the year 2008 - 2009. But he was not considered for promotion by the second respondent, as he was imposed with the punishment of censure dated 20.12.2007. The said minor punishment was imposed for the alleged misconduct committed by the petitioner. When he was the Assistant Project Officer, he applied for Casual Leave for four days, without prior sanction and subsequently proceeded on Un-Earned Leave on Medical Certificate for 30 days, which too was without prior intimation or sanction and further he extended the Un-Earned Leave for another 30 days. For the above misconduct, after issuing a show-cause notice calling for explanation and after enquiry, rejecting the explanation given by the petitioner, punishment of censure was imposed. An appeal against the same preferred before the Secretary to Government, Rural Development Department on 16.9.2008 was rejected on the ground of delay. Therefore, the writ petition was filed.

3. The writ court found that the petitioner could not have any grievance against such innocuous punishment, particularly, when the writ petitioner had already retired from the service. Aggrieved by the same, the writ petitioner preferred the instant writ appeal, which came up for consideration and an order came to be passed on 09.08.2008 by the Division Bench of this court holding that censure can be treated as advisory in nature and not adversary one and as such withholding promotion on such ground can only be unjust and illegal.

4. Aggrieved by the said order, the Government had preferred a Review Petition in Review Application No.230/2019. The review petition was allowed vide order dated 10.12.2019 holding that the earlier order overlooked the provisions of Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which prescribes censure as the first penalty in Rule 8 itself. Thus holding so, review petition was allowed, and the judgment dated 09.08.2018 was set aside and the writ appeal was restored.

5. We are once again given the task of testing the validity of the order passed by the learned single Judge. The punishment of censure was imposed on the appellant for taking unauthorized



leave on various spells, without prior intimation or sanction and secondly for leaving the State Headquarters without the permission of the Collector of the District.

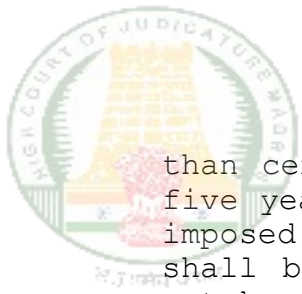
6. The grievance of the appellant is that his promotion was denied to the post of Joint Director on the ground of punishment of censure imposed on him. The learned counsel for the appellant contended that the censure is only advisory in nature. Even presuming it as a punishment, the same was taken away once the sanction was granted by the authorities for the leave taken by the appellant on 30.11.2007.

7. Whether the order of censure is advisory or adversary in nature, has to be decided?

8. Any order of censure is formal and separate act intended to convey that the person concerned is guilty of some misconduct or omission for which it has been found necessary to award him a formal punishment. As has been stated in Rule 8 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, censure is the first penalty. In this case also, after following the procedure of issuing show cause notice, getting an explanation, after enquiry, the authorities have imposed the formal punishment of censure, for good and sufficient reason. The record of punishment would go to the individual's Service Register and the same will have a bearing on the assessment of his merit or suitability for promotion and censure cannot be brushed aside lightly as a warning. Though a warning may be an informal action like admonition or reprimand, even though a warning is made known to the person that he had done something blameworthy and will have an impact over the assessment of his merit and suitability for promotion, it does not amount to imposition of penalty of censure, because it is not a formal punishment going on record.

9. The punishment after due enquiry was imposed on the appellant on 20.12.2007. From the records, it is seen that the panel for promotion was drawn between 2007 - 2008 and therefore on the date of drawing the panel for promotion, the lock in period of one year after punishment of censure was in currency and in operation. Therefore, even presuming that the blameworthy conduct of unauthorised absence of the appellant was regularised or condoned, he could not have been added in the promotion panel during the lock in period of the punishment of censure.

10. In this regard, it is useful to refer to the decision of a Division Bench of this court in W.A. No.67 of 2019 dated 10.01.2019 [G.M.Saravana Muthu Vs. The Principal Chief Conservator of Forests, Mettur, Salem District], wherein the Division Bench of this court held that any punishment (other



than censure) imposed on a member of service within a period of five years prior to the crucial date and a punishment of censure imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. For better understanding, paragraph No.5 of the said judgment is extracted hereunder:

"5. The learned Single Judge has held that currency of punishment is a bar for promotion and an employee suffering from an order of punishment cannot be promoted to the higher post. He is eligible for promotion only after the expiry of the currency of punishment. In the present case, the writ petitioner/appellant herein suffered the punishment on 31.07.2003. The date on which the panel was prepared was 24.11.2003. The appellant was therefore undergoing punishment, when the panel was prepared. The service rules provides that any punishment (other than censure) imposed on a member of service within a period of five years prior to the crucial date and a punishment of censure imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list."

11. In view of the discussion and the decision of this court quoted above, we do not find any error or defect in the order of the learned single Judge dated 06.06.2018 passed in W.P. No.11379 of 2011. Accordingly the same is sustained.

12. Accordingly, the writ appeal is dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Asr

To

1. The Secretary to Government
The Government of Tamil Nadu
Rural Development & Panchayat Raj
Fort St. George, Chennai - 9



2. The Commissioner
Rural Development and Panchayat Raj
Panagal Building, Saidapet
Chennai - 15

WEB COPY

+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.39818

W.A.No.1713 of 2018

NR(CO)
CT/06/09/2021