

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.04.2021

Judgment Delivered on : 29.04.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1311 of 2019
and
C.M.P.No.8923 of 2019

S.Mathivanan,
Special Grade Superintendent (Retd),
Office of the Director of Social Welfare Department,
Saidapet, Chennai-600 015. ... Appellant

Vs.

1. The Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme,
(SW-1) Department,
Secretariat, Chennai-600 009
2. The Director of Social Welfare,
Saidapet,
Chennai-600 002. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 25.10.2018 passed by the learned Single
Judge, in W.P.No.10757 of 2013 on the file of this Court.

Prayer in W.P.No.10757 of 2013:

directing the 1st respondent herein to notionally promote
the petitioner as Administrative Officer for the year 2010-2011
with effect from 27.7.2012 and consequently direct the
respondents herein to revise the petitioners pensionary benefits
as Administrative Officer with all consequential service and
monetary benefits.

For appellant : Mr.S.N.Ravichandran for Mr.T.Ranganathan

For respondents: Mrs.A.Srijayanthi, Spl.G.P.

JUDGMENT

R.SUBBIAH, J

This Writ Appeal has been filed as against the order of dismissal, dated 25.10.2018 passed by the learned Single Judge in W.P.No.10757 of 2013 filed by the appellant herein. By the said order dated 25.10.2018, the learned Single Judge had dismissed the said Writ Petition filed for issuance of a Writ of Mandamus to direct the first respondent to notionally promote the appellant/writ petitioner as Administrative Officer for the year 2010-2011 with effect from 27.07.2012 and consequently direct the respondents to revise the appellant/writ petitioner's pensionary benefits as Administrative Officer with all consequential service and monetary benefits.

2. The brief facts which are necessary to decide the issue involved in this appeal are as follows:

(a) The appellant/writ petitioner joined the service as Junior Assistant on 01.11.1976 and he was promoted as Assistant on 04.12.1981. He was further promoted as Superintendent with effect from 09.08.1991. He was granted Selection Grade of pay and Special Grade of pay as Superintendent.

(b) While so, he was issued with a charge-memo under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 30.04.2009 and the second respondent imposed a punishment of postponement of increment for one year without cumulative effect. He was due for increment on 1st October of every year. The said punishment was under currency from 01.10.2009 to 30.09.2010. By proceedings, dated 01.10.2010, he was granted increment with effect from 01.10.2010 and thereafter, he had no currency of punishment. He was due for promotion as Administrative Officer for the year 2010-2011. On 12.08.2010, his service particulars were forwarded by the Project Officer, Sivagangai to the second respondent and the appellant's consent was also obtained for promotion as Administrative Officer. In September 2010, the second respondent had forwarded the eligible Superintendents for promotion as Administrative Officers, and in this list, his name was included in Sl.No.5 above one Mr.K.Karuppiyah and G.Kumaradoss.

(c) On 15.09.2010, a Certificate was issued by the Project Officer, Sivagangai to the second respondent stating that there are no disciplinary proceedings pending against the

appellant/writ petitioner. On 13.10.2010, another Certificate to the effect that no disciplinary proceedings are pending, was forwarded to the second respondent. On 01.10.2010, the appellant/writ petitioner had preferred a representation to the second respondent to promote him as Administrative Officer. On 20.02.2012 and 24.05.2012 also, he had preferred representations to the first respondent to promote him as Administrative Officer pointing out that he was due for retirement on 31.07.2012. However, no orders were passed on those representations till the date of filing of the instant Writ Petition. Hence, the appellant/writ petitioner had filed the instant Writ Petition for the relief stated supra.

3. The learned Single Judge observed that the promotion can never be claimed as a matter of right, however, consideration of promotion is a fundamental right of an employee. Moreover, the appellant/writ petitioner was allowed to retire on 31.07.2012. Observing so, the learned Single Judge dismissed the Writ Petition, against which, the appellant has preferred this Writ Appeal.

4. The only submission made by the learned counsel for the appellant/writ petitioner is that on 30.04.2009, the writ petitioner was imposed with punishment of postponement of increment for a period of one year without cumulative effect. The said punishment has come to an end on 30.04.2010. The increment was due to the appellant/writ petitioner on 1st October of every year. On account of the said punishment, the increment was not given on 01.10.2009 as currency of punishment got over only by 30.04.2010. After 30.04.2010, the appellant/writ petitioner had become eligible for promotion as Administrative Officer, i.e. in the year 2010-2011, he is due for promotion to the said post. But his name was not considered in the subsequent year, on the ground that there is currency of punishment. In this regard, the learned counsel for the appellant submitted that when the currency of punishment ended on 30.04.2010 itself, there is no impediment for considering his name for promotion. But the learned Single Judge, without considering these aspects, had dismissed the Writ Petition and hence, the appellant has filed the instant Writ Petition for the relief stated supra.

5. Countering the above submissions, the learned Special Government Pleader appearing for the respondents submitted that the currency of punishment commenced from the date on which he is due for increment, i.e. on 01.10.2009. The crucial date for preparation of panel for the year 2010-2011 is on 01.09.2010, whereas his punishment has come to an end only on 30.09.2010.

The panel prepared for the year 2010-2011 for the post of Administrative Officer was on 27.07.2012. Therefore, his name was not included in the panel prepared for the year 2010-2011.

6. Heard both sides and perused the materials available on record.

7. The appellant/writ petitioner was working as Superintendent in the Social Welfare Department. During his service, he was issued with charge-memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, pursuant to which, enquiry was conducted and he was imposed with the punishment of postponement of increment for one year without cumulative effect on 30.04.2009. He was due for increment on the 1st October of every year. Therefore, he ought to have been granted increment on 01.10.2009, but on account of the punishment, he was not granted increment on 01.10.2009. According to the appellant/writ petitioner, the punishment commences from the date of the order, namely on 30.04.2009 and it has come to an end on 30.04.2010. Therefore, there is no impediment for considering his name for promotion to the post of Administrative Officer for the year 2010-2011. The panel for promotion to the said post was to be drawn only on 01.09.2010, and his next increment fell due on 01.10.2010, whereas, according to the learned Special Government Pleader, the punishment of the appellant commenced from 01.10.2009, on which date, he was due for increment. Since the punishment commenced only on 01.10.2009, his name could not be included in the panel for the post of Administrative Officer, which was drawn on 01.09.2010. In fact, on a perusal of the affidavit filed in support of the Writ Petition, we find that, in paragraph 3, he himself accepted that the punishment of stoppage of increment for one year without cumulative effect, was under currency from 01.10.2009 to 30.09.2010. The crucial date for preparation of the panel for the year 2010-2011 was on 01.09.2010. He has to be granted increment with effect from 01.10.2010. Hence, his name was not eligible to be included in the panel drawn on 01.09.2010. Furthermore, the employee cannot claim promotion as a matter of right by seeking promotion to the next category, merely on the basis that he is otherwise fit for promotion. In this regard, it is appropriate to rely upon the judgment delivered by this Court in W.A.(MD).No.315 of 2010, batch, dated 27.04.2011 (The Deputy Inspector General of Police, Thanjavur Range, Thanjavur and another Vs. V.Rani), reported in 2011 (3) CTC 129 = 2011 (3) LW 673 = 2011 (2) LLN 530, wherein, the Full Bench in paragraph 28(1), observed as follows:

"28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

(1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent the finding of the Division Bench in Subramanian Vs. Government of Tamil Nadu, rep. by its Secretary, Chennai and others (2008 (5) MLJ 350) stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible."

8. Therefore, we are of the opinion that the currency of punishment with regard to the postponement of increment, has to be calculated only from the date on which the increment will fall due, whereas, the panel in this case, was drawn for promotion to the post of Administrative Officer, only on 01.09.2010, on which date, there was currency of punishment in respect of the appellant/writ petitioner. If so calculated, in this case, the currency of punishment ends only on 30.09.2010.

9. In this regard, it is appropriate to notice the illustration No.IV given in the Fundamental Rules (F.R) of the Tamil Nadu Government under F.R.26(a), which is based on G.O.Ms.No.158, Personnel and Administrative Reforms (F.R.III) Department, dated 24.02.1982 (with effect from 01.01.1974)):

Date of accrual of last increment	01.04.1980
Normal date of next increment	01.04.1981
Stoppage of increment without cumulative effect for six months ordered in May,1980:	0-6-0
Due date from which increment has to be sanctioned:	01.10.1981
Normal date of subsequent increment	01.04.1982

10. Hence, going by the illustration above and following the judgment of the Full Bench of this Court (quoted supra), we do not find any infirmity in the order passed by the learned Single Judge. The Writ Appeal is accordingly dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme,
(SW-1) Department,
Secretariat, Chennai-600 009
2. The Director of Social Welfare,
Chennai-600 002.

+1cc to Mr.T.Ranganathan, Advocate Sr.26262
+1cc to the Government Pleader Sr.26758

W.A.No.1311 of 2019

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