



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No. 12494 of 2021
and W.M.P. No.13269 of 2021

V.Senthur Pandian

.. Petitioner

Versus

1.Government of Tamil Nadu,
Rep. by its Secretary,
Hindu Religious Charitable Endowment Department,
Fort St. George, Chennai - 600 001.

2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
119, Uthamar Gandhi Salai, Nungambakkam High Road,
Chennai - 600 076. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents 1 and 2 to consider the petitioner for recruitment by transfer to the post of Assistant Commissioner pursuant to the communication of 05.03.2021 or any other year where the petitioner's immediate junior is considered for such promotion.

For Petitioner : Mr. V.Prakash, Senior Counsel
for K.Krishnamoorthy

For Respondents : Mr. C.Kathiravan
Government Advocate

O R D E R

This writ petition is filed for issuance of writ of mandamus directing the respondents 1 and 2 to consider the petitioner for recruitment by transfer to the post of Assistant Commissioner pursuant to the communication of 05.03.2021 or an other year where the petitioners immediate Junior is considered for such promotion.

2. The petitioner states that he joined the service of second respondent department as Executive Officer Gr.-III on 12.05.1999, through Tamil Nadu Public Service Commission. The petitioner was also promoted to the post of Executive Officer Gr.-II on 08.12.2006 and subsequently, to the post of Executive Officer Gr.-I, in the year 2013. The petitioner was



empanelled for recruitment by transfer to the post of Assistant Commissioner in the panel of the year 2019 and his position in the panel was S.No.16. The second respondent was working as Executive Officer Gr.-I. It is stated that the panel which was prepared for 2019-2020 was not implemented due to the reason that the case relating to implementation of communal roster in the appointment by transfer was pending before the Hon'ble Supreme Court. Thereafter, the preparation of panel for promotion to the post of Assistant Commissioner for the year 2020-2021 was initiated. In the relevant time, the petitioner was issued with a charge memo dated 02.09.2020 under Rule 17 (c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the same resulted in imposing a punishment of stoppage of increment of the petitioner for three months without cumulative effect.

3. It is admitted that the crucial date for the panel of the year 2020-2021 is 01.10.2019. The case of the petitioner is that the order of punishment was served on the petitioner and long after the crucial date and that therefore, there is no currency of punishment at the time when the petitioner's promotion was considered. Hence it is submitted that the petitioner's name ought to have considered in the promotion panel prepared for the year 2020-2021. The order of punishment is dated 24.02.2021. The petitioner submitted an appeal against the order of punishment and the appeal is yet to be disposed. The grievance of the petitioner is that the petitioner ought to have been promoted to the post of Assistant Commissioner by including his name in the panel prepared for the year 2020-2021.

4. Learned Government Advocate appearing for the respondents relied upon the counter affidavit. In the counter affidavit, it is admitted that the punishment was imposed by proceedings dated 24.02.2021. However, it is stated that the petitioner's next increment was due only in the year 2022 and that the currency of punishment of stoppage of increments will prevail up to 31.03.2022. Learned Government Advocate further relied upon paragraph 6 of the counter affidavit. Paragraph 6 of the counter affidavit is extracted hereunder:

" 6. It is submitted that the crucial dated for the panel for the post of Assistant Commissioner for the year 2020-2021 is 01.10.2019, and the panel year starts from 19.03.2020 to 18.03.2021. The Government in G.O.(D) No.59, Tourism, Culture and Religious Endowments, dated 05.03.2021 approved estimate of vacancies as 50 (25 by promotion by transfer of service from Superintendent and 25 by promotion by transfer of service from Executive Officer Grade - 1) and the Panel proposals has been sent to Government vide t his office R.C. No.55236/2020/B1 dated 31.05.2021 for approved of panel."



5. The issue is whether the petitioner ought to have been considered for promotion by including his name in the panel prepared for 2020-2021. Learned senior counsel appearing for the petitioner relied upon the judgment of Division Bench of this Court in the case of M.Jagadeesan Vs. N.A.Senthilnathan dated 05.10.2018. The relevant portions of the said judgment are extracted hereunder for convenience:

"...

12. There is no dispute with regard to the appointment of first respondent as Health Officer on 29.06.1992 and issuance of the charge memo on 24.08.2012, imposing punishment of stoppage of increment for a period of three months without cumulative effect by an order dated 15.11.2012. Thereafter, only the dispute arose as to whether the order of punishment would commence immediately on service of the punishment order dated 15.11.2012 on the first respondent on 16.11.2012 or whether it could be postponed and implemented only from the actual date of increment namely 1st July 2013 has to be decided.

13. In any circumstance, only one option can be exercised, even though there were two options available to the appellant / Corporation i.e., either to implement the punishment from the date of service of the punishment order on the first respondent viz., 16.11.2012 or from the actual date of increment namely 01.07.2013. If the appellant / Corporation had chosen to implement the order from the date of service viz., 16.11.2012, the three months punishment period would have ended on 15.02.2013 and only during that period, there would be currency of punishment and therefore, after expiry of three months period, there is no embargo for the Corporation to include the name of the first respondent in the panel drawn for promotion because as on the crucial date viz., 01.04.2013, the currency of punishment would have already ended on 15.02.2013. Hence, the name of the first respondent could have been included and he could have been promoted.

14. The second option available for the Corporation is to postpone the implementation of punishment of stoppage of increment for a period of three months without cumulative effect from the actual date of increment viz., 01.07.2013. If it is so, the currency of punishment would end only on 30.09.2013. In such circumstances, the previous period namely the period prior to 01.07.2013 could be only termed as charge period and it should be deemed that there was no punishment, as the same was postponed and given effect only on 01.07.2013. Therefore, on the relevant crucial date viz., 01.04.2013, only a minor charge which could not be a



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bar for promotion in view of G.O.Ms.No.368 dated 18.10.1993 should be deemed to be pending and there was no other major punishment. Hence, the name of the first respondent could have been included in the panel and he could have been promoted. Without choosing an option, the appellant / corporation had jeopardized the first respondent twice from 16.11.2012 to 30.09.2013 viz. 16.11.2012 to 15.02.2013 and 01.07.2013 to 30.09.2013."

6. In the counter affidavit it has been stated that currency of punishment will be with effect from January 2021. Learned Government Advocate submitted that the petitioner's next increment is due on January 2021 and that therefore the currency of punishment of stoppage of increment will prevail up to 31.03.2022. Though the currency of punishment will commence and prevail up to March 2022, it is implied that up to January 2021, there was no currency of punishment. Having regard to the judgment of the Division Bench, it can be stated that the respondent has chosen to implement the order from the date when the increment is due to the petitioner. That being so, there is no currency of punishment when the petitioner was to be considered for promotion as per the panel prepared for the year 2020-2021.

7. On the short ground, this Court finds that the petitioner is entitled to the relief as sought for in this writ petition. Considering the stand taken by the respondent in paragraph '6' of the counter affidavit, this Court is of the view that the petitioner is entitled to be consider for the post of Assistant Commissioner by recruitment by transfer. Accordingly the petitioner is also entitled to get promotion by getting placement immediately above his junior. With regard to the seniority of petitioner, it is open to the petitioner to make an appropriate representation to the respondents and on such representation being made, the respondents shall consider his placement in the panel prepared for the year 2020-2021 above his immediate junior.

8. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1.The Secretary,

Hindu Religious Charitable Endowment Department,
Fort St. George, Chennai - 600 001.



2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
119, Uthamar Gandhi Salai, Nungambakkam High Road,
Chennai - 600 076.

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+1cc to Mr.K.Krishnamoorthy, Advocate SR.No. 36874

+1 cc to Government Pleader Sr.No. 37502

W.P. No. 12494 of 2021

GPL (CO)

A.SK(20.09.2021)