



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.21459 of 2021

and

W.M.P No.22694 of 2021

N.Shanmugasundaram

... Petitioner

Vs.

Coimbatore Corporation,
Rep. by its Commissioner,
Coimbatore City Municipal
Corporation Building,
Coimbatore.

... Respondent

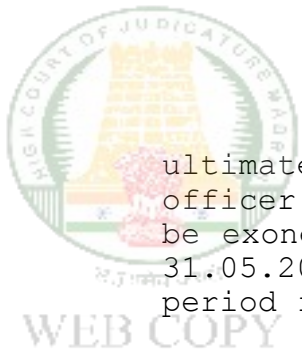
PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue writ of certiorarified mandamus calling for the proceedings of the respondent in Na.Ka.No.952/2020/MC2 dated 26.10.2020 and quash the same in so far as it rejects the request of the petitioner to be placed at the appropriate place in the seniority list of Junior Assistant and Assistant on par with his junior and consequently direct the respondent to promote the petitioner to the post of Assistant and Superintendent on par with his junior Mrs.Menaka kumari with all attendant and consequential benefits in light of the order passed by the learned Judicial Magistrate No.6, Coimbatore in C.C.No.334/2006 dated 27.06.2014 and the proceedings of the respondent dated 14.02.2017.

For Petitioner : Mr.N.Balamuralikrishnan

For Respondent : Mr. Abishek Murthy,
Government Advocate.

O R D E R

The petitioner was appointed as Junior Assistant on 03.03.2001 and on 31.10.2001, he was placed under suspension for some acts of misconduct. On 17.11.2001, he was reinstated in service after revocation of the suspension order, but was served with a charge memo containing seven articles of charges. The petitioner denied the charges by giving his explanations on 04.12.2001. An enquiry was held into the charges and it was



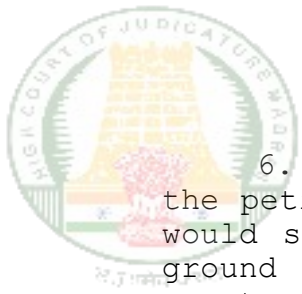
ultimately held as not proved by the report of the Enquiry officer dated 05.07.2004. On 14.07.2004, the petitioner came to be exonerated of the charges. Subsequently, by proceedings dated 31.05.2005, the period of suspension was treated to be as duty period for all purposes.

2. On 02.01.2006, according to the petitioner, he was implicated in a false criminal case and was arrested and placed under deemed suspension as the petitioner had been taken into custody for more than 48 hours. A criminal case was registered in C.C.No.334/2006 and the same was pending before the Judicial Magistrate-VI, Coimbatore. On the basis of the same set of allegation, a charge memo was issued against the petitioner on 21.06.2006. However, there was no further disciplinary action taken against the petitioner after issuance of charge memo dated 21.06.2006.

3. On 27.06.2014, the criminal case against the petitioner ended in acquittal on merits and the Court, while acquitting the petitioner held that the case was foisted against the petitioner falsely. On the department front, the charges which were enquired into was ultimately held not proved by the Enquiry officer dated 17.08.2015. The disciplinary authority, without differing from the Enquiry Officer's findings, has unjustly and illegally imposed a penalty of censure on the petitioner vide order dated 03.03.2016. As against that, the petitioner had filed an Appeal and the Appellate Authority, vide order dated 14.02.2017, ultimately, set aside the punishment of censure and dropped the action against the petitioner.

4. The effect of so many proceedings which were initiated both on the criminal side as well as the departmental side was that from 2001 onwards, the petitioner had been shown in the seniority list with a remark that he was facing criminal as well as departmental proceedings. The result of such remark finding place in the seniority list, was the denial of promotion to the petitioner as Assistant and further to the post of Superintendent.

5. In the said circumstances, the petitioner, being completely relieved of all the charges and had ultimately come out unscathed from both criminal and departmental actions, submitted a detailed representation on 19.10.2020 to set right the legal injuries caused to him for all these years like denial of promotions, proper pay fixation etc. Unfortunately, vide order dated 26.10.2020, his claim for service benefits came to be rejected without giving any valid reasons. The rejection order is the subject matter of challenge in the present writ petition.



6. Mr.N.Balamuralikrishnan, learned counsel appearing for the petitioner reiterated the above facts. The learned counsel would strongly submit that the rejection order passed on the ground that the petitioner had not appealed against the non grant of service benefits within three months and therefore, the same was not to be entertained at this point of time, would suffer from complete absence of application of mind on the part of the authorities, when the fact of the matter was that the petitioner was all along facing criminal and departmental actions right from 2001 and all the criminal as well as the departmental actions ended in favour of the petitioner and the petitioner was given a clean chit including interference in the order of punishment of censure. In all fairness, the authorities ought to have granted all the consequential benefits, for which, the petitioner was otherwise entitled during his long service career.

7. In the said circumstances, the rejection of the applicant's request by a single line order that he did not make his appeal within three months and therefore, not entitled to seek any benefits would only show how the authorities suffer from complete mis-application and non-application of mind in dealing such request. According to the learned counsel, on the face of it, the impugned order is liable to be struck down as being illegal and untenable.

8. This Court is entirely in agreement with the submissions made on behalf of the petitioner. Although a detailed counter affidavit has been filed by the Corporation, this Court is unable to countenance the reaction of the Corporation to the claim of the petitioner herein. In the counter affidavit, it has been stated that the petitioner cannot be considered for promotion on par with the junior, as according to the respondent Corporation, one must have clear record from any of the charges or punishments. Only on clearance of all the charges, the petitioner was given promotion with effect from 24.07.2018. It is also stated in the counter affidavit that the petitioner has not challenged the seniority list published every year nor given any representation to set right the seniority for the purpose of promotions to the post of Superintendent. According to the counter affidavit, the petitioner never questioned the seniority in the cadre of Assistant all along and therefore, it cannot be disturbed after several years.

9. This Court is unable to appreciate the stand taken by the Corporation, which in the opinion of this Court is a downright misreading of the situation which cannot be countenanced both in law and on facts.



10. The respondent Corporation is aware of the pendency of the criminal and departmental proceedings against the petitioner all along and admittedly, in the seniority list, the petitioner was shown with a remark that he was facing criminal and departmental proceedings. In such circumstances, the question of petitioner giving any representation during the time when he was under the cloud, did not rise at all. Only when the censure punishment was dropped by the Appellate Committee, vide order dated 14.02.2017, the petitioner became completely relieved of all the charges against him and then the representations were submitted by the petitioner. Therefore, the stand of the Corporation is completely unacceptable which required to be rejected outright by this Court.

11. The averments that the seniority list cannot be disturbed after several years cannot hold good in respect of the petitioner's claim herein. As the petitioner cannot be faulted for not representing earlier, as he was facing criminal and departmental proceedings all along. Once the petitioner has been completely exonerated of all the charges, fairness and justice demand, that the petitioner must be compensated with all the benefits, which he was otherwise, entitled during his long years of service. If the petitioner be given lower seniority and denied promotions at the appropriate time on par with his juniors, the exoneration of the petitioner of all the charges would have no meaning at all.

12. In the above circumstances, this Court is of the considered view that the petitioner, no matter whether any representation had been earlier made or not, is entitled to all the service benefits, which is normally entitled to but for the pendency of the criminal and disciplinary proceedings against him, which admittedly, ended in his favour eventually.

13. The reasons set forth in the rejection order are sordid reflection of the apathetic mind set of the respondent Corporation, which has to be rejected as being downright ill advised reaction. Once the petitioner has been completely exonerated of the charges, he is entitled to all the benefits that are admissible to him during the entire service career of the petitioner.

14. For the above said reasons, the impugned order passed by the respondent in Na.Ka.No.952/2020/MC2 dated 26.10.2020 is hereby set aside.

15. The respondent Corporation is directed to pass appropriate orders and assign proper and correct seniority to the petitioner as Junior Assistant and grant him promotion as Assistant on par with his juniors and also grant further



promotion to the petitioner to the post of Superintendent on par with the juniors with all attendant and consequential monetary and service benefits as admissible to him for such promotions from the appropriate date and time.

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16. The Corporation is directed to pass orders in this regard within a period of eight weeks from the date of receipt of copy of this order.

17. Accordingly, the Writ Petition stands allowed. No costs. Connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsi/sli

To

The Commissioner,
Coimbatore Corporation,
Coimbatore City Municipal
Corporation Building, Coimbatore.

+1cc to Mr.K.Magesh, Advocate, S.R.No.65417

+1cc to Mr.N.Balamuralikrishnan, Advocate, S.R.No.64784

W.P.No.21459 of 2021
and
W.M.P No.22694 of 2021

PM[co]
NSK 27/12/2021