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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.597 of 2022
and CMP.No.4268 of 2022

The Coimbatore Corporation
Rep. by its Commissioner
Corporation City Municipal Corporation Building,
Coimbatore - 641 001.

... Appellant

Vs

N. Shanmugasundaram

...Respondent

Prayer:

Writ appeal is filed under clause 15 of the Letter Patent praying to allow the Writ Appeal and set aside the order dated 08.12.2021 in W.P.No.21459 of 2021.

Prayer in W.P.No.21459 of 2021:

Writ Petition filed under Article 226 of the Constitution of India, to issue writ of certiorarifies 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 Appellant : Mr.K.Magesh

For Respondent : Mr.Balamurali Krishnan



J U D G M E N T

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S.VAIDYANATHAN, J.
&
MOHAMMED SHAFFIQ, J.

Instant Writ Appeal is filed against the order made in W.P.No.21459 of 2021 dated 08.12.2021 by which the Writ Petition was allowed with a direction to the Corporation 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 post of Superintendent on par with the juniors with all attendant and consequential monetary and service benefits, admissible to him for such promotions from the appropriate date and time within a period of eight weeks from the date of receipt of a copy of this order.

2. The writ petitioner was appointed as Junior Assistant on 03.03.2001 and thereafter he was placed under suspension on 31.10.2001. Apart from the Departmental Proceedings, the petitioner was also facing criminal charges. The criminal case in C.C.No.334 of 2006 ended in acquittal by order dated 27.06.2014 passed by the Judicial Magistrate VI, Coimbatore, holding that charges have been foisted against the writ petitioner and there is no bar for the departmental enquiry to proceed with. The Disciplinary Authority, concurring with the findings of the Enquiry Officer, imposed the punishment of Censure on 03.03.2016. Aggrieved by the said decision, appeal was preferred, in which the punishment was set aside by the Appellate authority on 14.02.2017.

3.The writ petitioner has approached the Writ Court to quash the proceedings dated 26.10.2020 of Coimbatore Corporation and to place him in the Seniority list of Junior Assistant on par with his Junior and to consequently extend the benefits including placing the petitioner on par with the post of Assistant and Superintendent on par with his Junior Mrs.Meena Kumari.

4.According to the Appellant/Corporation, they have conducted the examination for the post of Assistant during the period



5. Mr. Balamuralikrishnam, learned counsel appearing for the respondent would contend that the respondent joined the services in March 2001 and was placed under suspension in October 2001. A charge memo was issued on 13.02.2006 and he was placed under suspension with effect from 21.06.2006. The petitioner was making representations to recall the order of suspension, but the suspension order was withdrawn on 17.12.2014. Based on the Enquiry Officer's report dated 19.08.2015 and the comments made in the Enquiry officer's report dated on 21.09.2015, an order was passed by the Disciplinary Authority on 03.03.2006, imposing the punishment of Censure. The Appellate Authority has accepted the pleadings of the writ petitioner dated 11.04.2006 and vide order dated 14.02.2017, the order of the original Authority was set aside. He would contend that the learned single Judge, having taken note of these facts and that both the Departmental proceedings and the Criminal proceedings have ended in favour of the writ petitioner, directed that the writ petitioner would be entitled to promotion and proper fixation and that the denial of benefits cannot be sustained.

7. It is seen that the writ petitioner joined the service in the year March 2001 and was placed under suspension in October 2001 and a charge memo was issued in 2006. The order of punishment imposed by the Disciplinary Authority on 03.03.2006 was reversed by the Appellate Authority on 14.02.2017 and criminal charge in C.C.No.334 of 2006 has ended in acquittal holding that the charges have been foisted against the writ petitioner. The only issue to be decided in this case is whether the writ petitioner would be entitled to retrospective benefits, pursuant to the



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order of the criminal Court and the order of the Disciplinary Authority. The contention of the Appellant that the writ petitioner was placed under suspension that there was no bar for him to participate in the examination, that he would be eligible to participate and clear the examination only in 2013 and that the monetary benefits would be extended only from that date may not be correct. The contention would have been justified, if the employee had not cleared the examination to the post of Assistant from the Junior category of Assistant. Once he clears the examination, the benefits will have to be extended retrospectively. Admittedly two names referred to by the writ petitioner, namely Menaka Kumari and N.Veerakumar are Juniors to the writ petitioner. Once the examination is cleared by the writ petitioner he should be put back in the original position in the post of Assistant and be placed above his junior. As there are no examination to the post of Superintendent and that based on the years of service, promotion is to be given and that the writ petitioner has satisfied all the conditions required for the same, he is entitled to the post of Superintendent. Apart from that the writ petitioner was facing punishment of censure during which time he will not be entitled to any benefit of promotion and he can claim only after the punishment is set aside i.e., 14.02.2017. Taking note of the aforesaid facts and circumstances, we are of the view that the order of the learned Single Judge in granting relief to the writ petitioner retrospectively holds good and he should be granted the relief from the original date on which the petitioner's Junior has been appointed as Assistant and subsequently his Junior Meena Kumari has been appointed as Superintendent. However, taking note of the pandemic situation and that there was a delay in seeking relief, we are inclined to modify the order of the learned single Judge to the effect that the monetary benefits will flow only three years prior to the date of filing of the writ petition, not before that.

8. The appellant is excepted to complete the exercise of re-fixing the seniority in the post of Assistant and thereafter to the post of Superintendent within a period of three months from the date of receipt of a copy of this order and extend the monetary benefits, within a period of four months from the date of receipt of a copy of this order. No costs



9. With the above observation the Writ Appeal is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq

TO

THE COMMISSIONER,
COIMBATORE CORPORATION COIMBATORE CITY MUNICIPAL
CORPORATION BUILDING,
COIMBATORE.

+lcc to Mr.K. MAGESH, Advocate, S.R.No.18443

+lcc to Mr.V. VIJAY SHANKAR, Advocate, S.R.No.18451

W.A.No.597 of 2022

SRA (CO)
AJ (06/06/2022)