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W.P.No.7784 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.7784 of 2022
and WMP Nos.7807 and 7810 of 2022

V.Sivaraj

... Petitioner

Versus

The Principal Secretary to Government,
Commissioner of Labour,
Chennai-600 006

... Respondent

Prayer:-Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari and Mandamus to call for the records of the respondent in connection with the impugned order passed by him in Proceedings E2/5202/2022-1 dated 14.03.2022 and quash the same and direct the respondent to consider the claim of the petitioner for promotion as Deputy Inspector of Labour in the panel year 2021-2022 within a stipulated time, without reference to the punishment imposed on the petitioner in Proceedings F1/10323/2017 dated 23.11.2018 and promote him as Deputy Inspector of Labour and grant him all consequential service and monetary benefits.

For Petitioner	: Mr.K.Venkatramani Senior Counsel for Mr.M.Muthappan
For Respondent	: Mr.G.Nanmaran Spl.Govt.Pleader



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ORDER

This writ petition has been filed challenging the rejection of the petitioner's claim for promotion on the ground that the petitioner has suffered a punishment of stoppage of increment without cumulative effect dated 23.11.2018 within a period of five years from the crucial date for panel selection.

2. The case of the petitioner is that he entered into service as Typist on 07.12.1994 in the office of the Deputy Chief Inspector of Factories Coimbatore through a selection conducted by Tamil Nadu Public Service Commission. He was promoted as Assistant Inspector of Labour on 04.02.2011.

3. According to the petitioner, no disciplinary proceedings were initiated by the respondent against him during his tenure from 26.11.2013 to 30.09.2015. According to the petitioner, while working as Assistant Inspector of Labour, III Circle, Chennai-79, he made an inspection on 17.06.2014 at M/s Pandiyas Hotel, Thiruvottiyur High Road, Chennai-79 and the Proprietor of the Hotel violated all the Acts and Rules, for which, show cause notice was issued to M/s Pandiyas Hotel and a fine was imposed on them. According to the



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petitioner, as a vindictive measure, M/s Pandiyas Hotel lodged a complaint against the petitioner and pursuant to the same, a charge memo came to be issued by the Assistant Commissioner of Labour-I, Chennai dated 23.12.2016 which was received by the petitioner on 20.01.2017. Thereafter, disciplinary proceedings has been initiated against the petitioner by the department under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Based on the enquiry report, the petitioner was imposed punishment of stoppage of increment for one year without cumulative effect on 23.11.2018. According to the petitioner, he received the punishment order dated 23.11.2018 only on 06.12.2018.

4. According to the petitioner, on 01.07.2019, the said punishment has been given effect to from the date of annual increment. The said punishment should have been effected from 01.01.2019 to 31.12.2019. However, according to him, the respondent has taken one year period of stoppage of increment without cumulative effect from 01.07.2019 to 30.06.2020. According to the petitioner on 01.07.2020, after completion of the punishment, he became eligible to receive the annual increment. The crucial date of promotion panel is 01.05.2021, which is not disputed by the respondent.



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5. According to the petitioner, five years period shall be reckoned from the date of incident and not from the date of punishment. The crucial date of panel is 01.05.2021 and the five years period prior to the said date is from 01.05.2016 to 30.04.2021. According to the petitioner, since there is no currency of punishment either on the crucial date viz., 01.05.2021 or on the date of consideration i.e., on 14.03.2022, the petitioner ought to have been promoted. The petitioner claims that he attained sufficient seniority and merit for consideration of his claim for promotion as Deputy Inspector of Labour for the panel year 2021-2022 for which the crucial date is 1st May of every year. However, the respondent published the panel for promotion to the post of Deputy Inspector of Labour for the period 2021-2022 on 14.03.2022, in which, the petitioner's name has been deferred. The petitioner thereafter, sent representation on 08.03.2022 seeking to include him in the promotional panel for the year 2021-2022. However, under the impugned communication dated 14.03.2022 which has been received by the petitioner on 17.03.2022, he has been informed that his request for inclusion of his name in the promotional panel has been rejected as he has suffered punishment of stoppage of increment of one year without cumulative effect dated 23.11.2018 which ended only on 30.03.2022.



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6. The petitioner has challenged the impugned rejection order on the ground that the alleged occurrence took place on 17.06.2014 which was the subject matter of disciplinary proceedings initiated against the petitioner on 23.12.2016, which is five years prior to the crucial date for preparation of the panel for the year 2021-2022 and the crucial date is 01.05.2021. Hence in view of the guidelines issued in the Tamil Nadu Government Servants (Conditions of Services) Act 2016, Section 7(1) with Annexure XI (11)(13) states that *“If a member of service is imposed with punishment of irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion”*. Hence, according to the petitioner, his claim for promotion in the panel year cannot be deferred and the action of the respondent to defer the claim for the year 2021-2022 as per the impugned order dated 14.03.2022 cannot be sustained and the same is liable to be quashed.

7. A counter affidavit has been filed by the respondent and their main contention is that the name of the petitioner was not considered for promotion only due to the currency of punishment preceding five years of the crucial date



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which falls on 01.05.2021. The relevant contentions of the respondent in the counter affidavit are found in paragraph Nos.9, 10 and 11, which are extracted

hereunder:-

“ I submit that as per para-11 in Part-A(II) in Schedule-XI under Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, any punishment (other than “Censure”) imposed on a member of service within a period of five years prior to the crucial date and 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. Any punishment, including “Censure” imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment. The petitioner was imposed punishment of stoppage of increment for one year without cumulative effect vide Proceedings dated 23.11.2018 and the punishment period from 01.07.2019 and ended on 30.06.2020 which is within the period of five years prior to the crucial date of 01.05.2021.



10. *I submit that as per seniority, the petitioner is to be considered for promotion for the panel year 2021-2022 only and as per the Para-11 in Part-A(II) in Schedule-XI under Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the name of the petitioner was not considered for promotion, due to the currency of punishment preceding five years.*

11. *I submit that with regard to the averments made in para 5 of the Affidavit, it is submitted that the petitioner was awarded stoppage of increment for one year without cumulative effect vide Proceedings No.F1/10323/2017, dated 23.11.2018 of the Commissioner of Labour. The currency of punishment ended on 30.06.2020. It is submitted that as per seniority, the petitioner is to be considered for promotion for the panel year 2021-2022 only and due to adverse remarks in the preceding five years and as per the para-11 in Part-A(II) in Schedule-XI under Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the name of the petitioner was not considered for promotion.”*



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8. Heard Mr.K.Venkataramani, learned Senior Counsel for the petitioner and Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondent.

9. Learned Senior Counsel appearing for the petitioner drew the attention of this Court to clauses 11,12 and 13 of Schedule XI to Tamil Nadu Government Servants (Conditions of Service) Act, 2016. He would submit that Clauses 12 and 13 are exceptions to Clause-11. Since the petitioner was not undergoing any punishment on the crucial date or on the date of consideration of the actual promotion, by applying clause-13, the petitioner ought to have been promoted for the panel year 2021-2022. In support of his contention, he relied on a judgment of the learned Single Judge of this Court dated 23.12.2021 passed in W.P.No.31326 of 2017 in the case of “ ***P.Vasuhi vs The Principal Secretary to Government, Co-operation, Food and Consumer Protection Department and others***” and would point out that in identical circumstances, it was held that “ *If a member of service is imposed with punishment of irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion*”.



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10. Learned Senior counsel would submit that clause-13 was applied in that case and promotion was granted to the said petitioner also. Learned Senior Counsel also drew the attention of this Court to another order dated 08.01.2020 passed by another learned Single Judge of this Court in WP No.32269 of 2012 in the case of “ *V.Kandaswami vs The Principal Secretary to Government and another*” and in particular, paragraph-10, where also, it was held that, “*If a member of service is imposed with punishment of irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion*”.

11. Per contra, learned Special Government Pleader appearing for the respondent would reiterate the contents of the counter affidavit filed by the respondent before this Court and would submit that rightly the impugned order has been passed rejecting the petitioner's request for promotion for the panel year 2021-2022, as the punishment period was in existence five years before the crucial date. According to the learned Special Government Pleader, clause-13 of Schedule XI to the Tamil Nadu Government Servants (Conditions of



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Service) Act, 2016 will not apply to the case of the petitioner as the case of the petitioner was not deferred earlier and his name for promotion was considered only for the first time in the year 2021-2022. He would further submit that the punishment imposed on the petitioner has attained finality since he has not challenged the same before any Court.

12. Admittedly, the charges were framed against the petitioner in the disciplinary proceedings initiated by the respondent on 23.12.2016 i.e., five years prior to the crucial date for promotion i.e., on 01.05.2021. The punishment in the disciplinary proceedings viz., stoppage of increment for one year without cumulative effect was imposed by the disciplinary authority on 23.11.2018. The said punishment has also been given effect to and the one year period of stoppage of increment without cumulative effect was completed on 30.06.2020. Admittedly, on the crucial date for promotion panel i.e., on 01.05.2021 and on the date of consideration for promotion panel i.e, on 14.03.2022, the currency of punishment has already come to an end. Clauses 11,12 and 13 to Schedule XI of to the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 read as follows:

*“ 11. 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. Any punishment, including “Censure” imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.”

(12) A member of service whose name has not been included in the approved list for a punishment shall not be overlooked in the subsequent years' list for the same punishment or punishments, provided the member of service is not undergoing any punishment on the crucial date for preparation of approved list.

(13) If a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion.”



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13. As seen from the aforesaid clauses, Clauses 12 and 13 are exceptions to Clause 11. Learned Senior Counsel for the petitioner relied upon Clause 13 to substantiate the claim of the petitioner. As seen from Clause-13, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion, he ought to have been promoted. The petitioner's case also falls in the said category. The petitioner's punishment as per the order of the disciplinary authority came to an end on 30.06.2020 as one year period of stoppage of increment without cumulative effect came to an end on that date. Admittedly, on the crucial date of panel selection ie., on 01.05.2021 and on the date of consideration for promotion on 14.03.2022, the petitioner was not undergoing any punishment. Applying Clause-13 of Schedule XI to Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the respondent ought to have promoted the petitioner for the panel year 2021-2022 as Deputy Inspector of Labour. However, by total non application of mind to Clause-13 of Schedule XI of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the petitioner's promotion was deferred. In the impugned order also, the respondent has rejected the petitioner's representation by erroneously applying Clause-11 of Schedule XI of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 instead they ought to have applied Clause-13, referred to supra.



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14. Clause-13 is an exception to clauses 11 and 12 and it makes it clear that if the petitioner was not undergoing punishment on the crucial date for promotion or on the date of consideration for actual promotion, his name shall be considered for promotion. By total non application of mind, the respondent has rejected the petitioner's request for promotion.

15. The decisions relied upon by the learned Senior Counsel for the petitioner referred to supra also support the case of the petitioner, wherein, it has been consistently held that if a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion.

16. For the foregoing reasons, the impugned order dated 14.03.2022 passed by the respondent has to be quashed and the writ petition will have to be allowed.



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ABDUL QUDDHOSE,J.

sr

17. Accordingly, the impugned order dated 14.03.2022 passed by the respondent is quashed and the writ petition is allowed. The respondent is directed to consider the claim of the petitioner for promotion as Deputy Inspector of Labour in the panel year 2021-2022 if he is otherwise eligible within a period of six weeks from the date of receipt of a copy of this order without reference to the punishment imposed on the petitioner in Proceedings F1/10323/2017 dated 23.11.2018 and promote him as Deputy Inspector of Labour and grant him with consequential service and monetary benefits. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Speaking Order/Non-Speaking Order

To

The Principal Secretary to Government,
Commissioner of Labour,
Chennai-600 006

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