



W.P.No.30389 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30389 of 2017

D.Anbazhagan

...Petitioner

Vs.

1.Tamil nadu Electricity and Distribution Corporation
Rep.by its Chairman cum Managing Director,
144, NPKRR Maligai, Anna Salai,
Chennai – 600 002.

2.The Chief Engineer (Personnel),
Tamil nadu Electricity and Distribution Corporation
144, NPKRR Maligai, Anna Salai,
Chennai – 600 002.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to promote the petitioner to the post of Accounts officer whose name is though included but deferred in the panel viz. (Per) CMD TANGEDCO Proceedings No.175 dated 20.10.2017 without reference to the minor punishment “Censure” with all consequential benefits arising thereof and issue further orders, directions as this Honourable court deems fit.



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

For Respondents : Mr.P.Subramanian
Standing Counsel
[For TANGEDCO]

ORDER

The writ of mandamus has been filed to direct the respondents to promote the petitioner to the post of Accounts Officer by including his name in the panel dated 20.10.2017 without reference to the punishment of Censure imposed on the writ petitioner with all consequential benefits.

2. The petitioner was working as Assistant Accounts Officer. A charge memorandum was issued against him under major penalty clause in proceedings dated 23.09.2014. The allegation against the writ petitioner was negligence and lack of supervision, which resulted in misappropriation of the funds of the respondent Board to the tune of Rs.73,53,750/- by one R.Saravanan, Assessor Grade-II. An enquiry was conducted. The disciplinary proceedings ended with an order of punishment, which became final.

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3. The learned Senior counsel appearing on behalf of the petitioner mainly contented that the similarly placed co-employees namely (1) Mr.L.Venkatesan, Executive Engineer (Palladam), (2) Mrs.Tamilselvi, Executive Engineer (Palladam), (3) Mr.Viswalingam, Assistant Executive Engineer, Palladam Division, (4) Mr.Satish, Deputy Finance Controller, (5) K.Rajan, Deputy Finance Controller, (6) Mrs.K.Kalavathi, Assistant Accounts Officer, (7) K.Vijayalakshmi, Accounts Officer were exonerated from the charges. When the petitioner was also similarly placed, he was imposed with the punishment of Censure by the first respondent vide order dated 22.03.2017. The appeal preferred by the petitioner, challenging the punishment was rejected. Thus, the name of the writ petitioner was deferred for promotion to the post of Accounts Officer in the panel published on 20.10.2017. The petitioner made a representation, which was not considered and thus, the petitioner is constrained to move the present writ petition.

4. The learned Senior counsel appearing on behalf of the writ petitioner mainly contended that the punishment of Censure would not have any implications in the matter of grant of promotion. There is no monetary



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implication in the punishment of Censure and therefore, passing over the name of a person for a period of one year based on the punishment of Censure is untenable. It is contended that the punishment of Censure is equivalent to warning and therefore, it would not have the effect of debarring a candidate from getting an opportunity for promotion to the higher post.

5. In the present case, the petitioner is eligible for inclusion of his name in the panel of the year 2017-18 for promotion to the post of Assistant Accounts Officer and his name was passed over merely on the ground that the punishment of Censure was imposed on him in proceedings dated 22.03.2017.

6. The learned Senior Counsel appearing on behalf of the petitioner relied on the Full Bench judgment of this Court in the case of ***The Deputy Inspector General of Police, Thanjavur Range, Thanjavur Vs. V.Rani, reported in 2011 (3) CTC 129***, wherein the Government letter No.248, P & AR Department dated 20.10.1997 was quashed by the Full Bench of this Court and therefore, the check period of one year in the case of Censure and



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5 years in the case of other minor punishments were held as illegal and impermissible.

7. The learned counsel appearing on behalf of the respondents objected the said contention by stating that the punishment of Censure imposed on the writ petitioner became final. Therefore, the petitioner is not entitled for inclusion of his name in the panel of the year 2017-18. However, the name of the petitioner was included in the next year panel and accordingly, he was included in the panel and promoted. Therefore, the petitioner is not entitled for any further relief.

8. The learned counsel for the respondents relied on the Board proceedings issued in (Permanent) B.P.(FB).No.38, dated 11.10.2010. As per the said Board proceedings, the duration of punishment of Censure is one year. If the punishment of Censure is in currency on the crucial date or imposed after the crucial date, but before actual promotion, the name of the officer/employee should be passed over and his / her name should not be included in that panel / should not be given promotion, as the case may be.



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9. Therefore, the Board proceedings will prevail over in the case of the petitioner and the said Board Proceedings was not the subject matter before the Full Bench of this Court in the case of *V.Rani (cited supra)*. As as per the said Board Proceedings, the Currency of Punishment of Censure was in force during the relevant point of time, when the panel of the year 2017-18 was published. Thus, the name of the petitioner was passed over and in the next year panel, he was considered and promoted. Thus, there is no infirmity.

10. With reference to the judgment of the Full Bench of this Court in the case of *V.Rani (cited supra)*, no doubt, the Government Letter No.248, P & AR Department dated 20.10.1997, prescribing check period and one year currency for the punishment of Censure was quashed. However, the Full Bench quashed the Government letter mainly on the ground that the said Government Letter No.248, P & AR Department dated 20.10.1997 were non Statutory rules framed under Proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu



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Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

11. Thus, the Full Bench of this Court quashed the Government letter on the ground that it was non Statutory Rules and cannot be held valid. However, the currency of punishment in general was not quashed by the Full Bench of this Court. Even the Full Bench has stated that after the currency of punishment, the eligible persons are to be considered for further promotion, if they are otherwise eligible. The Full Bench has clearly held that the check period is illegal.

12. Pertinently, after Full Bench judgment, the Law was enacted and Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Act No.14 of 2016) came into force.

13. The learned counsel for the respondents state that the Act was adopted by the Board and they are following the Act. However, the learned Senior Counsel for the petitioner objected the said contention by stating that



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there is no document filed by the respondents to establish that the provisions of the Act 14 of 2016 were adopted by the Tamil Nadu Electricity Board.

14. Presuming that the Board has not adopted the Service Conditions Act, the said Service Conditions Act contemplates the currency of punishment for Censure for a period of one year. The Service conditions Act and the Rules contemplates procedures for promotion. Since the Censure has been prescribed as a punishment under the Discipline and Appeal Rules, the Government stipulates that the punishment of Censure will have the currency for a period of one year and further, the currency of punishment is a bar for promotion. As of now, the Censure is a punishment under the Rules and the currency of punishment for Censure would be one year period. Thus, the name of an employee during the said currency period shall be passed over by the competent authorities, since the Full Bench of this Court quashed the Government letter on the ground that it is non Statutory in nature, and cannot be construed as a Rules. Thus, the Government subsequently enacted the Statute and Rules, which contemplates Censure is a punishment and the currency for Censure is one year duration.



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15. In the above context, we have to consider the Board Proceedings in (Permanent) B.P.(FB).No.38 dated 11.10.2010 and the said Board Proceedings were not quashed and the Board Proceedings stipulates that the duration of punishment of Censure is one year. It further states that if the punishment of Censure is in currency on the crucial date or imposed after the crucial date but before actual promotion, the name of the officer/employee should be passed over and his/her name should not be included in that panel/should not be given promotion, as the case may be.

16. Thus, the said Board Proceedings holds good and as per the Board Proceedings, the currency for punishment of Censure is one year and therefore, quashing of Government Letter No.248, P & AR Department dated 20.10.1997 by the Full Bench may not have any direct application as far as the employees of the Board is concerned and more so, even in respect of Government servants, such provisions were restored by enacting a Statute namely Tamil Nadu Government Servants (Conditions of Service) Act, 2016.



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17. In the present case, the petitioner admittedly suffered the punishment of Censure, which would have the currency for a period of one year and therefore, his name was rightly passed over in the panel of the year 2017-18. However, the petitioner was subsequently included in the panel of the year 2018-19 and was promoted to the post of Assistant Accounts Officer. Thus, the petitioner has not made out any acceptable ground for the purpose of considering the relief.

18. Accordingly, the writ petition stands dismissed. No costs.

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Index : Yes
Speaking order: Yes
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To

1. The Chairman cum Managing Director,
Tamil nadu Electricity and Distribution Corporation
144, NPKRR Maligai, Anna Salai,
Chennai – 600 002.

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2. The Chief Engineer (Personnel),
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S.M.SUBRAMANIAM, J.

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