



W.P.No.11936 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11936 of 2017
and
W.M.P.No.12829 of 2017

V.Kulasekaran

...Petitioner

Vs.

1.The Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai – 9.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.

3.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in connection with the impugned orders passed by him in C No.J2/ PR73/ 2013 in DO No.847/ 2013 dated 26.8.13 and the consequential order issued in C.No.J2/ PR73/ 2013 DO No.891/ 2016 dated 17.12.2016 and quash the same and direct the respondents to consider the claim of the



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petitioner for promotion to the post of Deputy Superintendent of Police, Category-I for the year 2015-16 and promote him as Deputy Superintendent of police, Category-I and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani
Senior counsel
For M/s.M.Muthappan

For Respondents : Mr.S.Rajesh
Government Advocate

ORDER

The order of punishment of postponement of increment for one year without cumulative effect imposed on the writ petitioner, which was confirmed by the Appellate Authority are under challenge in the present writ petition. Further, a direction is sought for to direct the respondents to consider the claim of the petitioner for promotion to the post of Deputy Superintendent of Police, Category-I for the year 2015-16 and promote him as Deputy Superintendent of police, Category-I and grant him all consequential service and monetary benefits.

2. The petitioner joined as a Sub-Inspector of Police through Direct



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Recruitment on 28.09.1987. He was promoted as Inspector of Police on 30.09.2003. There was a delay in promoting the petitioner to the post of Inspector of Police due to the pendency of the disciplinary proceedings and after exoneration, he was promoted as Inspector with retrospective effect on par with his junior.

3. The learned Senior counsel appearing on behalf of the petitioner mainly contended that the right of promotion of the petitioner to the post of Deputy Superintendent of Police was wrongfully denied on account of an erroneous implementation of the punishment of postponement of increment for one year without cumulative effect imposed on him. The punishment of postponement of increment for one year is to be implemented from the date of communication of the order to the writ petitioner.

4. In the present case, the order of punishment was issued on 05.08.2013, which was communicated to the writ petitioner on 18.09.2013. Therefore, the punishment is to be implemented with effect from 18.09.2013 and accordingly, the period of punishment expired on 17.09.2014 and



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consequently, the name of the writ petitioner ought to have been included in the panel of the year 2015-16 for promotion to the post of Deputy Superintendent of Police. However, the respondents have erroneously implemented the punishment of postponement of increment for one year by taking note of the date of fall of increment i.e., first July 2014. Such a procedure adopted by the respondents in implementing the punishment is in violation of the rules.

5. In this context, the learned Senior counsel appearing on behalf of the petitioner drew the attention of this Court with reference to the orders passed by this Court in W.P.No.29297 of 2006 dated 20.02.2007, wherein the procedures for implementing the punishment of stoppage of increment has been considered and the relevant paragraph 13 of the said orders reads as under:

“13. In the writ petition in W.P.No.34829 of 2006, the original punishment of stoppage of increment without cumulative effect for one year was from 06.04.2005, which was communicated on 23.04.2005, the same was modified by subsequent order dated 09.05.2006 as that of stoppage of increment for 6 months without cumulative effect. As contended



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by Mr.K.Venkataramani, there is absolutely no difficulty to construe that the said modified punishment dated 09.05.2006 should be deemed to come into effect from the original date of punishment, namely, 06.04.2005. By applying that from 06.04.2005, the punishment of 6 months of stoppage of increment without cumulative effect came to an end on 23.10.2005. However, the respondents take the stand that the increment falls due in respect of the petitioner was only on 01.01.2006, therefore, it was from that date, namely, 01.01.2006 even though, the punishment was communicated as early as 23.04.2005 and therefore, the petitioner should wait till 30.06.2006 for completion of 6 months period from 01.01.2006 for next promotion. Even thereafter, for the subsequent year 2006-2007 also the name of the petitioner was not included for which also the respondents relied upon the letter of clarification of the Government dated 28.04.2006 only.”

6. Relying on the above judgment of this Court, the leaned Senior counsel for the petitioner reiterated that the case of the petitioner is to be considered for grant of promotion by including his name in the panel of the year 2015-16 to the post of Deputy Superintendent of Police as the punishment of postponement of increment for one year expired on completion of one year from the date of communication of the said order of punishment



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i.e., on 18.09.2013. Thus, the punishment expired on 17.09.2014 and consequently, he is entitled for promotion in the next panel of the year 2015-16 for promotion to the post of Deputy Superintendent of Police.

7. The procedures as followed by the Department has been originally contemplated by the Government in letter dated 11.09.2009 as follows:

“3. With a view to make the intention clear, it is hereby clarified that the currency of punishment (including withholding of increment) begins when the punishment order is communicated to the concerned Government servant and concludes when the actual period of punishment is over.

“For example, an official was awarded with a punishment of stoppage of increment for one year on 10.04.2005 and the order was communicated to the individual on the same day. Since his normal increment is first day of April, the punishment can be implemented only from 01.04.2006. He is eligible to attain his next increment only on 01.04.2007. However, the currency of punishment begins on 10.04.2005 and concludes on 31.03.2007.”

8. However, the said letter has been withdrawn by the Government in



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letter dated 04.11.2009 and therefore, the procedures as followed by the respondents are not in consonance with the rules in force.

9. The learned Senior counsel further relied on the procedures contemplated in Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 and Sub Clause 17 reads as under:

“(17) Any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over.”

10. Relying on the above procedures, it is contended that the punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over. Based on



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the rule, the name of the petitioner is to be included in the panel of the year 2015-16 for promotion to the post of Deputy Superintendent of Police.

11. The learned Government Advocate appearing on behalf of the respondents objected the said contentions by stating that the punishment of “Postponement of increment for one year without cumulative effect” was issued in proceedings dated 05.08.2013 and the order was served on the petitioner on 18.09.2013, which is not disputed. However, the next increment due to the petitioner fell on 01.07.2014 and therefore, the implementation of the punishment commenced with effect from 01.07.2014 onwards and consequently, it expired on 30.06.2015 and therefore, the name of the petitioner was not included in the panel of the year 2015-16. Thus, there is no infirmity in respect of the implementation of the punishment of “Postponement of increment for one year without cumulative effect”. When there is no due for increment, the punishment of postponement of increment cannot be implemented and therefore, in the present case, it was implemented with effect from 01.07.2014. The earlier increment fell before passing the order of punishment and the increment already granted cannot be cancelled.



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Therefore, wherever the punishment of postponement of increment imposed, the punishment will be implemented from the date on which the next increment falls to the employee. This being the procedures followed, in the case of the petitioner, the Department has followed the said procedure and accordingly, his case was not considered for inclusion of his name in the panel of the year 2015-16 for promotion to the post of Deputy Superintendent of Police.

12. The principles regarding grant of promotion are not in dispute. An employee facing charges under Rule 3(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is not eligible for promotion. Pendency of Rule 3(a) charges is not a bar for consideration. But, the punishment is a bar for promotion. Importantly, the currency of punishment is also a bar for promotion. Therefore, two aspects are to be considered. Pendency of Rule 3(b) charge is a bar for promotion, so also the currency of punishment is a bar for promotions.



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13. The learned Senior counsel relied on Clause 17 of Schedule XI Part

A of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 for the purpose of contending that the punishment shall take effect from the date on which the said punishment order is served to the member of the service concerned. The said rule is to be followed scrupulously and there is no dispute on that.

14. In the present case, the order of punishment was issued on 05.08.2013, which was served on the writ petitioner on 18.09.2013. Therefore, the period of punishment shall commence from the date on which the order was served to the petitioner i.e., on 18.09.2013. The punishment is one aspect and the currency is another aspect. The punishment and currency are separate aspects, which is to be considered with reference to the nature of punishments imposed. Even in respect of the punishment of stoppage of increment, stoppage of increment for six months or one year without cumulative effect is considered as minor punishments. If the punishment of stoppage of increment for three years with cumulative effect, then it is considered as major punishment. Even in case, the punishment of stoppage of



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increment for three years without cumulative effect is imposed, then the three years increments are to be recovered for the purpose of implementing the punishment as a whole. Therefore, the currency may occur on different spells depending on the nature of punishments imposed on the employee concerned. It is not that the currency shall be fixed. Currency is to be considered depending on the punishment imposed on the employee. As far as the punishment is concerned, it shall take effect from the date, on which, the said punishment order is served to the member of the service.

15. As far as the promotions are concerned, the punishment takes effect from the date of serving of the order to the employee. However, the currency of punishment may go on depending upon the nature of punishment imposed on the employee, which may vary from employee to employee, based on the nature of punishment imposed.

16. For example, currency of punishment of Censure has been held for one year. Therefore, it is a fixed punishment, wherein, the date can be taken into consideration from the date of passing of the order. However, no such



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circumstances would arise in case, the punishment of stoppage of increment was imposed, because the stoppage of increment is imposed for 6 months, 1 year, 2 years, 3 years or otherwise. Therefore, currency of punishment may go on for different spells depending on the period of stoppage of increment inflicted on the employees. Thus, the action of the respondents cannot be construed as in violation of Clause 17 of Schedule XI to the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

17. Question arises, whether an increment can be stopped in the absence of any eligibility for earning increment. The increments are granted on completion of one year of service to every Government employee. Therefore, a Government servant earns increment on completion of his one year of service and therefore, the stoppage of increment can be implemented only if an employee earns an increment, but not otherwise. In respect of the earned increment in the present case, the petitioner was sanctioned increment with effect from 01.07.2014 onwards. However, the punishment was imposed on 05.08.2013, after sanctioning the increment to the writ petitioner. Therefore, the department has to necessarily wait for implementing the



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punishment till the next increment is earned by the employee on completion of one year of service. Therefore, the punishment of postponement of increment cannot be implemented during the in-between period, where an employee has not even earned increment. Thus, the punishment has to be implemented only on earning increment, more specifically, on completion of one year of service as per the rules in force.

18. In the present case, the petitioner earned increment on 01.07.2014. Therefore, the department has postponed the increment, which was earned by the petitioner on 01.07.2014 and the currency went up to 30.06.2015. Therefore, it is not only the punishment, which is to be taken into consideration as per the rules, but also the currency of punishment, which is also considered as a bar for promotion. In the present case, the name of the writ petitioner was not considered for promotion in the panel of the year 2014-15 on account of the punishment imposed in order dated 05.08.2013, which was communicated on 18.09.2013, but his name was not considered in the panel of the year 2015-16 on account of the currency of punishment, which expired only on 30.06.2015. Therefore, there is no infirmity in respect



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of the implementation of the order of punishment of Postponement of increment for one year without cumulative effect inflicted on the petitioner and his case was rightly considered by the competent authorities with reference to Clause 17 of Schedule XI to Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

19. With reference to the orders referred by the learned Senior counsel for the petitioner dated 20.02.2007, pertinently, the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 was not in force and the promotion conditions prevailing during the relevant point of time was considered. That apart, the interpretation of the rules were not elaborately considered in the said orders. Generally, the Court has discussed that the punishment of stoppage of increment is to be implemented with effect from the date of order. But the currency of punishment, which is a bar, was not considered in the said order.

20. In this context, it is relevant to cite the judgment of the Hon'ble Division Bench of this Court in the case of The Honourable Division Bench



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of this Court in the case of ***Director of Sericulture Department Vs.***

K.Kumar reported in ***[2015 (4) CTC 241]***, considered the binding nature of the orders, relying on the judgment of Honourable Supreme Court, which reads as under:

"34. It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in A.R.Antulay vs. R.S.Nayak [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal



inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of admission and (2) by getting those orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. Hence, the second contention of the writ petitioners is also liable to be rejected.

41. In Union of India v. Kartick Chandra Mondal [(2010) (2) SCC 422], the Supreme Court, relying upon its previous decisions in various cases including the one in State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 69], held that Article 14 is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of



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individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in Kartick Chandra Mondal was subsequent to the decision in Maharaj Krishan Bhatt and the decision in Maharaj Krishan Bhatt is also referred to in Kartick Chandra Mondal."

21. The Hon'ble Supreme Court of India in the case of ***Basawaraj & Anr. Vs. Special Land Acquisition Officer*** reported in ***2013 14 SCC 81*** held in unambiguous terms that *"it is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a*



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negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order.”

22. In view of the principles settled by the Apex Court, and considering the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act 2016, this Court is of an opinion that the punishment of postponement of increment is to be implemented with effect from the date on which an employee earned increment immediately after passing an order of punishment. Thus, the earned increment cannot be cancelled as it was already granted before imposing the punishment and such an increment was granted for the services already rendered and the punishment prospectively imposed cannot be implemented with retrospective effect.

23. Thus the punishment of postponement of increment is to be



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implemented from the point, when an employee earned increment on completion of one year of service and the currency will continue till the punishment was fully implemented. The period of implementation may differ based on the nature of punishment imposed, and currency is also a bar for promotion as per the rules in force, which is not in dispute between the parties.

24. This being the factum established, the petitioner is not entitled for inclusion of his name in the panel of the year 2015-16 for promotion to the post of Deputy Superintendent of Police and the implementation of punishment of postponement of increment for one year without cumulative effect was done by the respondents in consonance with the provisions of the Service Conditions Act and Rules and there is no infirmity as such.

25. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Speaking order: Yes
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To

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