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W.P(MD)No.2327 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders reserved on
28.07.2022

Orders pronounced on
05.08.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.2327 of 2014

M.Francis

... Petitioner

Vs.

1.The Chief Executive Officer,
Tamilnadu Khadi and Village
Industries Board,
Kuralagam,
Chennai - 08.

2.The Assistant Director,
Khadi and Village Industries Board,
Kottar Junction,
Nagercoil.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of appointment of Selection Grade Supervisor Grade IV (Leather) by the first respondent in Rc.No.14983/E2(3)/2009 dated 12.11.2012 and consequential rejection of Appeal in Na.Ka.No.14983/E2(3)/2009 dated 17.06.2013 by the first respondent and quash the same as illegal and consequently direct the first respondent to grant Selection Grade to the petitioner in the post of Leather Supervisor Grade IV with effect from 26.04.2004 with all consequential benefits within a time stipulated by this Court.



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For Petitioner : Mr.J.Lawrance
For Respondents : Mr.Raguvaran Gopalan

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of appointment of Selection Grade Supervisor Grade IV (Leather) by the first respondent in Rc.No.14983/E2(3)/2009 dated 12.11.2012 and consequential rejection of Appeal in Na.Ka.No.14983/E2(3)/2009 dated 17.06.2013 by the first respondent and consequently directing the first respondent to grant Selection Grade to the petitioner in the post of Leather Supervisor Grade IV with effect from 26.04.2004 with all consequential benefits.

2. Learned counsel appearing for the petitioner submitted that the petitioner joined as Leather Supervisor Grade-IV in the respondents office on 27.06.1994. He is entitled to Selection Grade with effect from 27.06.2004. However, the first respondent by proceedings in Rc.No.14983/E2(3)/2009, dated 12.11.2012, granted Selection Grade to the petitioner with effect from 01.04.2011, instead of 27.06.2004. Hence, he preferred an appeal



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before the first respondent on 05.01.2013 to grant Selection Grade with effect from 27.06.2004. However, the first respondent rejected the appeal by proceedings in Na.Ka.No.14983/E2(3)2009, dated 17.06.2013 holding that during the relevant period, disciplinary proceedings were pending against him and he suffered the punishment of stoppage of increment for a period of one year without cumulative effect by proceedings of the first respondent in Na.Ka.No.19895/2003/E 4(1), dated 17.10.2008 and subsequently, his appeal was also dismissed by the Khadi Board Proceedings on 07.01.2010. Prior to that, the petitioner suffered a punishment of stoppage of increment for a period of two years without cumulative effect in the first respondent proceedings in Na.Ka.No. 64990/2000/E3(1), dated 31.05.2007. The petitioner preferred an appeal before the Tamil Nadu Khadi and Village Industries Board. The said appeal was also dismissed on 07.01.2010. As per G.O.Ms.No.68, Personnel and Administrative Reforms (PER-M) Department, dated 23.01.1986, for advancement of Selection/Special Grade on completion of 10/20 years, the Government servant should put in satisfactory service. However the said impediment was removed pursuant to the Government Order in G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992. G.O.Ms.No.368, Personnel and



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Administrative Reforms Department, dated 18.10.1993 was issued for promotion to the higher posts. In Letter No.5381/S/94-7, Personnel and Administrative Reforms (S) Department, dated 24.02.1995, it was mentioned that persons undergoing the punishment of increment with or without cumulative effect should also be considered for movement to Selection Grade or Special Grade. Without giving the benefits of these Government Orders and letter, the first respondent rejected the petitioner's request through the impugned order in Rc.No.14983/E2(3)/2009, dated 12.11.2012 and rejected the Appeal in Na.Ka.No.14983/E2(3)/2009 dated 17.06.2013. Therefore this Writ Petition.

3. Learned counsel appearing for the petitioner produced the order of this Court in ***W.P.No.7008 of 2007 (A.Sundarraaj Vs. The Secretary to Government, Handlooms, Handicrafts, Textiles and Khadi Department and another), dated 01.09.2009***, for the proposition that pendency of disciplinary proceeding is not a bar for the grant of Selection Grade.

4. Per contra, learned counsel appearing for the respondents submitted that the petitioner was charged under Regulation 34(b) of the Tamil Nadu Khadi and Village Industries Board by the Regional



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Deputy Director (Khadi and Village Industries), Madurai, vide charge memo Rc.No.8808/02/E2, dated 09.07.2002 and was awarded punishment. Another charge was framed by the Chief Executive Officer vide charge memo Rc.No.19895/E4(1)/03, dated 25.09.2003 and it also ended in punishment. The petitioner was awarded Selection Grade in the post of Supervisor Grade IV (Leather) after finalization of the specific charges framed against him and after completion of the punishment period. He was not granted Selection Grade in the year 2004 for the reason that two charges and punishment periods were in force. Thus, the petitioner's request and appeal were rightly rejected by the first respondent.

5. Considered the rival submissions and perused the records.

6. There is no dispute with regard to the fact that the petitioner faced two charges and that resulted in punishment, during the period when he completed 10 years of service as Leather Supervisor Grade IV in the year 2004. From the facts narrated above, it is clear that the enquiry and punishment period got over only in the year 2009. When the next panel was prepared in the year 2011, his name was included for the grant of Selection Grade.



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The petitioner filed this writ petition on the basis of G.O.Ms.No.68, Personnel and Administrative Reforms (PER-M) Department, dated 23.01.1986, G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992, G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 and Letter No.5381/S/94-7, Personnel and Administrative Reforms (S) Department, dated 24.02.1995.

7. G.O.Ms.No.68, Personnel and Administrative Reforms (PER-M) Department, dated 23.01.1986, laid out fresh guidelines to be followed while moving the Government employees to Selection/Special Grade.

8. G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992, was issued giving revised guidelines with regard to advancement to selection/Special Grade. Through this G.O., the criterion that one should possess the qualifications and pass the tests, if any, prescribed for next higher posts need not be insisted upon for movement to selection/Special Grade.



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9. G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, deals with preparation of panel for appointment by promotion / by recruitment / by transfer.

10. The Letter from the Government of Tamil Nadu in Letter No.5381/S/94-7, Personnel and Administrative Reforms (S) Department, dated 24.02.1995, modifies the instructions issued in G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, through which it was stated that the cases of persons undergoing the punishment of stoppage of increment with or without cumulative effect should also be considered for movement to Selection Grade or Special Grade.

11. It is pertinent to extract the relevant portion in Letter No.5381/S/94-7, Personnel and Administrative Reforms (S) Department, dated 24.02.1995, which reads as follows:-

GOVERNMENT OF TAMIL NADU

*Personnel and Administrative
Reforms (S) Department,
Secretariat,
Chennai - 9.*



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Letter No.5381/S/94-7, dated : 24.2.1995.

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Thiru.M.B. Pranesh, I.A.S.,

Secretary to Government.

To

All the Heads of Departments.

Sub : Public Services - Advancement to Selection Grade / Special Grade posts of persons against whom punishments have been imposed - Procedure to be followed - Instructions issued.

Ref : (1) Government letter No.118117/86-1, P & A.R (Per.S) Dept, dated 15.5.87.

(2) Government Letter No.57502/90-1, P & A.R (Per.S) Dept, dated 27.9.90.

(3) G.O.Ms.No.368, P & A.R (Per.S) Dept, dated 18.10.93.

In modification of the instructions issued in the letters first and second cited, the Government direct that the instructions issued in paragraph 2 II(iv) to (vi) of G.O.Ms.No.368, Personnel and Administrative Reforms (Per.S) Department, dated 18.10.93 as amended from time to time shall be followed for the movement of persons to Selection Grade or Special Grade.

2. The cases of persons undergoing the punishment of stoppage of increment with or without cumulative effect or of reduction to lower stage in the time scale should also



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be considered for movement to Selection Grade or Special Grade based on the instructions issued in the reference third read above and if any one is considered fit for movement to Selection Grade or Special Grade, monetary value equivalent to the increments withheld for the unexpired period, or monetary value equivalent to the amount representing the difference between the normal stage and the reduced stage for the unexpired period, as the case may be, shall be recovered. However, in the case of persons undergoing the punishment of reduction to a lower rank in the seniority list, they can be considered for movement to Selection Grade or Special Grade only from the date on which the punishment has been completed or the immediate junior with reference to the lower rank moves to the Selection Grade or Special Grade, whichever is earlier."

12. G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, read with Letter No.5381/S/94-7, Personnel and Administrative Reforms (S) Department, dated 24.02.1995 provides for the guidelines as to the manner in which the panel for promotion has to be constituted, taking into consideration, the punishment in case of persons undergoing the punishment of stoppage of increment with or without cumulative effect subject to recovery of monetary value equivalent to the increments withheld for the unexpired period, or monetary value



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equivalent to the amount representing the difference between the normal stage and the reduced stage for the unexpired period. Relying on this letter, the petitioner now claims that the punishment of stoppage of increment against him is not a bar for considering his Selection Grade from the year 2004.

13. In response, learned counsel appearing for the respondents submitted that there was a further clarification issued by the Government in Letter No.18688/S/2010-3, dated 09.06.2011, wherein it was mentioned that in awarding Selection Grade or Special Grade, for the persons imposed punishments including withholding of increment with or without cumulative effect, the Selection Grade or Special Grade has to be awarded only after the currency of punishment ceases. It is relevant to extract Paragraph No.3 of this Letter No.18688/S/2010-3, dated 09.06.2011, which reads as follows:-

"3. As far as inclusion of name of a person in a panel is concerned, there should not be any currency of punishment on the crucial date or on the date of consideration or on the date of actual promotion. Till such time, his name has to be passed over irrespective of the number of panels drawn during the period in which the said individual



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suffers with currency of punishment. In other words, his name shall be considered for inclusion in a panel drawn after the said punishment ceases to be incurrency. applying this yardstick in awarding Selection Grade or Special Grade, for the persons imposed punishments including withholding of increment with or without cumulative effect, the Selection Grade or Special Grade has to be awarded only after the currency of punishment ceases."

14. Replying to this submission of the learned counsel appearing for the respondents, learned counsel appearing for the petitioner submitted that the clarification, Letter No. 18688/S/2010-3, dated 09.06.2011 was given only in the year 2011 and it cannot be applied to the case of the petitioner for the reason that cause of action for the petitioner's claim for Selection Grade arose in the year 2004 and therefore, Government Letter No. 5381/S/94-7, Personnel and Administrative Reforms (S) Department, dated 24.02.1995, alone is applicable to the case of the petitioner.

15. While considering G.O.Ms.No.68, Personnel and Administrative Reforms (PER-M) Department, dated 23.01.1986 and



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G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992, in a similar case in **W.P.No. 7008 of 2007 (A.Sundarraaj Vs. The Secretary to Government, Handlooms, Handicrafts, Textiles and Khadi Department and another), dated 01.09.2009**, this Court ordered the grant of Selection Grade pay to the petitioner therein despite the pendency of disciplinary proceedings, it was observed as follows:-

"10. I have perused both the G.O.Ms.No.68, Personnel and Administrative Reforms (Per-M) Department and G.O.Ms.No.276, Public and Administrative Reforms (Personnel.S) Department. In view of the G.O.Ms.No.276, Public and Administrative Reforms (Personnel.S) Department, the petitioner is entitled to Selection Grade with effect from 19.10.1993, as the pendency of disciplinary proceeding is not bar for the grant of Selection Grade.

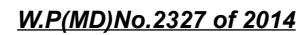
11. I am of the considered view, that after the issue of G.O.Ms.No.276, Public and Administrative Reforms (Personnel.S) Department, the petitioner is entitled to Selection Grade from 19.10.1993 on completion of 10 years of service irrespective of pendency of disciplinary proceedings as on 19.10.1993."



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16. In this case also, the petitioner was denied the Selection Grade on the ground that disciplinary proceedings were pending and there was a currency of punishment. G.O.Ms.No.68, Personnel and Administrative Reforms (PER-M) Department, dated 23.01.1986, deals with the grant of Selection Grade/Special Grade on the condition that the employee should possess the qualification required at the time of preparation of panel, which was modified in G.O.Ms.No.276, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.08.1992.

17. Following the order of this Court in ***W.P.No.7008 of 2007 (A.Sundarraaj Vs. The Secretary to Government, Handlooms, Handicrafts, Textiles and Khadi Department and another), dated 01.09.2009***, this Court finds that the petitioner is entitled for the similar relief for grant of Selection Grade, despite the pendency of disciplinary proceedings and award of punishment, from 27.06.2004. Thus, the impugned order of grant of Selection Grade Supervisor Grade IV (Leather) by the first respondent in Rc.No.14983/E2(3)/2009 dated 12.11.2012 and consequential rejection of Appeal in Na.Ka.No.14983/E2(3)/2009 dated 17.06.2013 by the first respondent are set aside. The first



18. In the result,

There shall be no order as to costs.

05.08.2022

Internet :Yes
Index :Yes / No
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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Chief Executive Officer,
Tamilnadu Khadi and Village
Industries Board,
Kuralagam,
Chennai - 08.
- 2.The Assistant Director,
Khadi and Village Industries Board,
Kottar Junction,
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G.CHANDRASEKHARAN, J.

ps

Order made in
W.P(MD)No.2327 of 2014

05.08.2022