



W.P(MD)No.12940 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 27.04.2022

DELIVERED ON :24.06.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.12940 of 2018

W.Johnson

... Petitioner

Vs.

**1.The State of Tamil Nadu,
represented by its Principal Secretary,
Home (Transport) Department,
Secretariat,
Chennai - 600 009.**

**2.The Transport Commissioner,
Ezhilagam, Chepauk,
Chennai - 600 005.**

**3.The Regional Transport Officer,
Regional Transport Office,
Tirunelveli.**

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to
issue a Writ of Mandamus, directing the respondent herein to fix the
seniority and consequently grant the petitioner, promotions to the post of



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Assistant with retrospective effect from the date on which similarly placed persons were promoted and consequently promote the petitioner as Superintendent with retrospective effect from the date on which similarly placed persons were promoted and accord all consequential benefits including monetary benefits and all other benefits flowing therefrom within the period fixed by this Court.

For Petitioner : Mr.P.Samuel Gunasingh

For Respondents : Mr.S.Kameswaran
Government Advocate (Civil Side)

ORDER

This Writ Petition has been filed for writ of Mandamus, directing the respondents to fix the seniority and consequently grant the petitioner's promotions to the post of Assistant with retrospective effect from the date on which similarly placed persons were promoted and consequently promote the petitioner as Superintendent with retrospective effect and grant all consequential benefits including monetary benefits.

2. The brief facts of the case are that the petitioner was recruited as



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Junior Assistant, vide order of the Joint Transport Commissioner, Madurai, dated 19.02.2004. The petitioner joined the post on 23.02.2004. Since the petitioner was not regularized, he preferred a writ petition in W.P.(MD)No.14545 of 2014 and based on the order of this Court, the petitioner's service was regularized retrospectively with effect from 23.02.2004. The petitioner has cleared all the exams, which were held in the month of May, 2008 and hence petitioner was fully qualified for the post of Assistant. But, the petitioner's name was not included in the panel for the year 2009-2010.

3. The contention of the petitioner is that since he has not completed Bavanisagar Training, his name was not included in the panel and consequently was not granted any promotion to the post of Assistant and Superintendent. Aggrieved over the same, the petitioner had filed another Writ Petition in W.P(MD)No.23038 of 2015 and this Court vide order, dated 21.12.2015, directed the respondents to consider the case of the petitioner and pass orders. The respondents, in order to comply with the order, had declared probation vide order dated 02.09.2016, with retrospective effect. The order dated 02.09.2016, was passed after filing Extension Application before this Court for extension of time to declare



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probation. Even in the said application, the Government has stated that the petitioner's seniority is fixed in the respective panel of Assistants and after the said fixation, the same is to be forwarded to the Government and the petitioner's name to be included in the promotion to the post of Assistant and Superintendent posts and thereafter, prayed for some time to comply with the order. But, till the date filing of this Writ Petition, no action was taken to include the petitioner's name in the promotion panel whereas, only the probation was declared by passing the order, dated 02.09.2016. The respondents with vengeance have not included the name of the petitioner in the panel.

4.The further contention of the petitioner is that his name has not been included deliberately since disciplinary proceedings were initiated on 27.04.2016, under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The disciplinary proceeding was initiated in order to wreak vengeance. Since the disciplinary proceeding was initiated after passing the order in the earlier Writ Petition, the allegation in the said disciplinary proceeding is completely unconnected to the petitioner and the same is imaginary. The respondents vide order, dated 02.04.2018, had imposed punishment of stoppage of increment for



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one year without cumulative effect.

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5.The further contention of the petitioner is that even the disciplinary proceeding will not affect the promotions due for the petitioner and the same was not during the check period. From 23.02.2004 to 03.09.2015, when the promotions were due for the petitioner for the said period, since the same was not considered, hence the present Writ Petition is filed.

6.The respondents have filed counter stating that the petitioner was appointed as Junior Assistant on 23.02.2004. As per Rule 32 of Tamil Nadu Ministerial Service Rules, a person appointed by direct recruitment shall be on probation in total period of two years on duty with continuous period of three years. The service of the petitioner was regularized retrospectively with effect from 23.02.2004 F.N. vide G.O.Ms.No.289 Home (Tr.IV) Department, dated 25.03.2015. As per Rule 34(a) read with Annexure V of the Special Rule for Tamil Nadu Ministerial Service Rule, a directly recruited Junior Assistant has to undergo the foundational training at Bavanisagar for a period of two months within the period of probation. The petitioner was deputed to the training



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belatedly and has completed the foundational training on 23.06.2015.

The foundation course was attended by the petitioner from 12.05.2015 to 23.06.2015 and the delay was only due to administrative reasons, for which, his probation cannot be declared on completion of probation of two years i.e., on 23.02.2006.

7. Thereafter, disciplinary proceeding was initiated against the petitioner on 27.04.2016. But the Government had declared the probation considering the fact that the pending disciplinary proceeding was not a bar for declaration of probation. While the petitioner was working as Junior Assistant in Motor Vehicle Office at Valliyur, a preliminary enquiry was conducted for not keeping holograms in a safe and secure manner. The holograms are very important for issuing new license or renewal of driving license and other transaction connected with the driving license and Motor vehicle Act. Further, the respondents submitted that on 03.11.2014, the petitioner has not properly handed over the hologram to another subordinate in the office of the Superintendent of Motor Vehicle Inspector Grade-I. The missed holograms would be used for preparation of fake licenses and the petitioner has caused the missing of important document, which clearly establishes the negligence



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and reckless attitude. Moreover, the petitioner failed to report about the missing holograms till 03.00 pm on 05.11.2014. Since there is negligence on the part of the petitioner, the disciplinary proceeding was initiated under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, dated 27.04.2016. After conducting enquiry, the Enquiry Officer has held that the charges as 'proved'. Thereafter, the petitioner was given an opportunity to make further submission for the proven charges. After considering the petitioner's representation, the punishment of stoppage of increment for one year without cumulative effect was imposed on the petitioner with effect from 02.04.2018. On 03.11.2014, the petitioner has not properly handed over the holograms to any other subordinate viz., the Superintendent or Motor Vehicle Inspector. The petitioner has not satisfactorily completed the probation. The petitioner has not completed the foundation course conducted in Bavanisagar Training. Further, the probation of the petitioner was declared after relaxing Rule 34 (a) read with Annexure V of Tamil Nadu Ministerial Service Rules along with Rules 23 A, 26, 28 of the Tamil Nadu Subordinate Service Rules with effect from 23.02.2006. The Government employee under probation cannot be included in the promotion for higher cadre. The respondents further submitted that if the



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currency of the punishment is in force, the petitioner's name could not be included for the panel year from 2009-2010 to 2017-2018 periods. Therefore, the respondents rejected the petitioner's representation and prayed to dismiss the writ petition.

8. Heard Mr.P.Samuel Gunasingh, the learned Counsel appearing for the petitioner and Mr.S.Kameswaran, the learned Government Advocate (Civil Side) appearing for the respondents and perused the records.

9. The petitioner has joined the service on 23.02.2004. The service of the petitioner was regularised retrospectively with effect from 23.02.2004 F.N. vide G.O.Ms.No.289 Home (Tr.IV) Department, dated 25.03.2015 and the said declaration is dated back to the date of appointment.

10. The petitioner is entitled to declare probation on 23.02.2006. But the contention of the respondent is that since the petitioner has not completed the Bavanisagar Training in time, the petitioner cannot be considered for the post of Junior Assistant. The issue of considering



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Bavanisagar Training in the Junior Assistant Cadre and Rural Welfare Officer cadre was considered in several cases, where it has been held that the service qualification if not completed because of the delay in sending the employee for training within the stipulated time cannot be foisted on the petitioner. The Bavanisagar Training Centre is having a limited seat and each year, Government is selecting and sending some 30 members to the said training. Admittedly, there would be delay in imparting training to others. Therefore, this Court is of the considered opinion, if the petitioner has not completed Bavanisagar Training and if the delay is attributable to the respondents, then, the same cannot be foisted on the petitioner. Therefore, the respondents ought to take the case of the petitioner for considering promotions to the post of Assistant and Superintendent.

11.The next contention putforth by the respondents is that there was a disciplinary proceeding initiated against the petitioner for the allegation that the holograms, which are within the custody of the petitioner, was misplaced or misused. Therefore, disciplinary proceeding was initiated and the petitioner's name was not considered for promotion for the panel from the year 2009-2010 to 2017-2018. It is seen from the



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records that the petitioner was appointed as Junior Assistant, on 23.02.2004 and the petitioner's service ought to be regularised in the year 2006. There was a delay in declaring the probation because the petitioner has not undergone Bavanisagar Training. Since this Court has held supra that the same cannot be put against the petitioner, if the delay is attributable on the respondents, in such circumstances, the petitioner is eligible for considering promotion from the date of declaration of probation till the initiation of the disciplinary proceedings. Since the disciplinary proceeding was initiated in the year 2016, then the petitioner is entitled to be considered for promotion from the date of completion of 2 years after appointment to the post until 2016. In other words the petitioner is entitled to be considered for promotion from 23.02.2006 till 2016

12. The specific contention of the respondents is that the petitioner's name was not considered to the post of Assistant from the year 2009-2010 to 2017-2018, since the petitioner undergoing punishment and thereafter check period. As per the service rules if the Higher Officials are contemplating to take any disciplinary proceeding, then the delinquent's name cannot be included in the promotion. If there



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is a delay in conducting the enquiry, if it is delayed by the respondents, then also the delinquent's name cannot be included in the panel. This Court is of the considered opinion that the punishment is for the period of one year, but by imposing check period the respondents have imposed six years as punishment. In Rani's case reported in 2011(3) CTC 129, the Full Bench Judgment has held that check period is alien to the service jurisprudence. Therefore, this Court is of the considered opinion that the check period cannot be imposed. Consequent thereof the petitioner is entitled to be considered for promotion, after punishment period of one year. In other words this Court is of the considered opinion that the petitioner will not be entitled to consider for promotion during the punishment period alone.

13. Admittedly, in the present case, from the year 2009 to 2018 the petitioner's name was not considered for the sole reason that the disciplinary proceeding was initiated as against the petitioner. The higher officials are having absolute power to initiate disciplinary proceedings. Therefore, declining the employee's name from including in the panel and considering the employee's name for promotion is often misused by the higher authorities. Even there is a contemplation of



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departmental enquiry, the respondents decline to consider the name of the delinquent to consider for promotion. Hence this Court is of the considered opinion that contemplation of departmental proceedings and decline promotion to the delinquent is conferring absolute power to the respondent, which is often misused and hence contemplation of departmental proceedings is not sufficient to deny promotion.

14. Therefore, this Court is of the considered opinion that the respondents cannot state that the petitioner is not eligible for promotion from the year 2009-2018. The currency of punishment is imposed only in the year 2018, hence the petitioner is not eligible for promotion during 2018 period alone. For the rest of the period, the petitioner is eligible and the respondents are bound to consider the petitioner's name for promotion.

15. Therefore, the respondents are directed to grant promotion to the petitioner to the post of Assistant and Superintendent and grant promotion retrospectively with effect from the date on which the similarly placed persons were permitted and consequently, pay the monetary benefits to the petitioner. The said exercise shall be completed



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within a period of eight weeks from the date of receipt of a copy of the order.

16. With the above directions, the writ petition stands allowed. The respondents are directed to implement this order within a period of six weeks from the date of receipt of the copy of the order. No costs

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Index : Yes/No
Internet : Yes/No
lr

To

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S.SRIMATHY, J.

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