



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD) No.18364 of 2015

and

M.P. (MD) Nos.1,2 and 3 of 2015

R.Madhaiyan

... Petitioner

vs.

The Chief Engineer

(Agricultural Engineering),

Nandanam, Chennai -600 035.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in connection with the impugned panel for promotion to the post of Diesel Mechanic cum Fitter issued in Se.Mu.No.Me.Pa.5/21727/14, dated 15.07.2015, in so far as rejecting the petitioner and to quash the same as arbitrary and ultravires and consequently to direct the respondent to promote him to the post of Diesel Mechanic cum Fitter of the year 2014 and pay all service and monetary benefits within the time limit that may be stipulated by this Court.

For Petitioner : No appearance

For Respondent : Mr.D.Sachi Kumar
Additional Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash impugned panel for promotion to the post of Diesel Mechanic cum Fitter issued in Se.Mu.No.Me.Pa.5/21727/14, dated 15.07.2015, in so far as rejecting the petitioner and consequently to direct the respondent to promote the petitioner to the post of Diesel Mechanic cum Fitter of the year 2014 and pay all service and monetary benefits within the time limit that may be stipulated by this Court.

2.The petitioner was appointed in service on 02.06.1982 as Assistant Driller, then promoted in November 2002 as Driller and then as Drill Supervisor on 22.11.2006. A charge memo dated 21.01.2013 was issued under Rule 17 (a) of Tamil Nadu Civil Service and Appeal Rules and ended up by imposing punishment of censure on 31.05.2013. The contention of the petitioner is that the petitioner's name was included in the promotion list for the post of



Diesel Mechanic cum Fitter on 23.07.2014 in Serial No.3 and assigned with Seniority No.11 as on 01.01.2010. The respondent without assigning any reason for not effecting the earlier panel issued the present promotion panel, dated 15.07.2015, for the post of Diesel Mechanic cum Fitter in the ratio of 2:1 from the category of Special Artisan and Supervisor as on 01.04.2014. The petitioner was placed in deferred list for the reason of punishment of censure was in currency and denied the promotion. The petitioner submitted a representation, dated 05.08.2015, to promote the petitioner as Diesel Mechanic cum Fitter but the respondents had not passed any order.

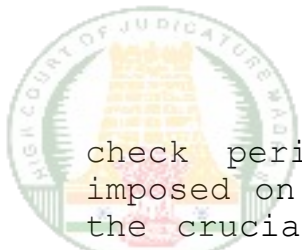
3.The contention of the petitioner is that the juniors were promoted thereby, his promotion is seriously affected. Since the concept of check period of one year in the case of censure and five years in the case of minor punishment was held to be illegal in the case of **Deputy Inspector General of Police Vs. V.Rani**, wherein this Court has held that the G.O. and the government letter has no statutory force and Rules have statutory force than the G.O. The respondents cannot put the "censure" against the petitioner, since in the said Rani case, the said concept was set aside. Therefore it is illegal to keep the petitioner in deferred list.

4. Heard Mr.D.Sachi Kumar, learned Additional Government Pleader appearing for the respondent.

5. The respondents have not filed any counter. The Learned Additional Government Pleader submitted that the Government has issued G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 24.02.2014 and the case of the petitioner ought to be seen in the light of G.O. Ms. No. 22.

6. On perusing the materials placed on records, it is seen that the petitioner was imposed with a punishment of censure on 31.05.2013 and the check period would be until 30.05.2014. The G.O. Ms. No. 368 Personnel and Administrative Reforms Department dated 18.10.1993 and the Secretary to Government letter dated 7.10.2005 by referring to G.O.Ms.No.368, Personnel and Administrative Reforms (S) Department dated 18.10.1993 and series of other letters were issued prescribing check period. The issue of check period was considered by the Full Bench of this Court in the Deputy Inspector General of Police Vs V. Rani reported in 2011 (3) CTC 129 and the Hon'ble Court quashed the said G.O. and the connected government letters, since the same was not having any statutory force. The concept of check period was held as illegal. Therefore as per the Hon'ble Full Bench the petitioner would be eligible to be consider for promotion.

7. However the government issued G.O.Ms.No.22, Personnel and Administrative Reforms Department was issued on 24.02.2014 and the <https://hccourtservices.in/hccourtservices> effect from 24.02.2014 onwards. As per G.O. 22, the



check period would be until 30.05.2014, since the censure was imposed on 31.05.2013. The panel was drawn on 15.07.2015, by fixing the crucial date as 01.04.2014. Then as on the crucial date, the G.O. Ms. No. 22 is holding the field. Now the question would be whether the petitioner is eligible to be considered for promotion as per G.O. Ms. No. 22. This G.O. Ms. No. 22 is put to challenge before this Court and the same is pending.

8. While considering the concept of check period in Rani's case the Hon'ble Full Bench has held that the censure is not a punishment and it is only warning and prescribing check period for the punishment "censure" is illegal. Therefore based on the Rani's case, there is no check period at all especially for censure. Admittedly, if any punishment is inflicted beyond censure by way of check period would be inflicting one more punishment.

9. This Court is of the considered opinion that for the punishment of censure, check period cannot be inflicted and consequently the petitioner is entitled to be included in the panel for the year 2013-2014. Hence, the impugned order is set aside and this Court is directing the respondents to promote the petitioner as Diesel Mechanic cum Fitter in the year 2014 in the available vacancy and pay the service and monetary benefits. The petitioner was 55 years old at the time of filing this Writ Petition and as on date, the petitioner has attained superannuation. Therefore, the respondents are directed to give notional promotion and consequential service and monetary benefits to the petitioner.

10. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

Tmg

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Chief Engineer
(Agricultural Engineering),
Nandanam, Chennai -600 035.

+1 CC to M/s.SPL.GP (SR-1505[F] dated 12/01/2022)

W.P. (MD) No.18364 of 2015
11.01.2022

nsn(CO)
TR(03.02.2022) 4P 3C