



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.4748 of 2016

and

W.M.P (MD)Nos.4285 of 2016 & 12590 of 2017

WEB COPY

M.Ganesan

... Petitioner

vs

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation, 12
Thambu Samy Road, Keelpauk, Chennai 10.
2. The General Manager, (Administration)
Tamil Nadu Civil Supplies Corporation, 12
Thambu Samy Road, Keelpauk, Chennai 10.
3. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Regional Office, Thoothukudi.
4. V. Kirubakaran, Superintendent
Tamil Nadu Civil Supplies Corporation,
Regional Office, Thoothukudi.

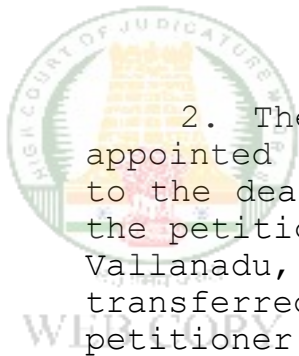
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records connected with the Impugned Order passed by the 1st respondent in his Proceedings Se.Mu.A.No.AD 4/87676/14 dated 02.11.2015 and quash the same and consequently direct the 1st respondent to promote the petitioner as Superintendent in the existing vacancy, the date on which the petitioner's Junior V. Kirubakaran got promoted on 30.01.2014 with all other attendant monetary and other consequential service benefits.

For Petitioner : Mr.S.Govindan
For Respondents : Mr.R.Saravanan
for Mr.P.Seetharaman

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 02.11.2015 and consequently direct the respondents to promote the petitioner as Superintendent in the existing vacancy, the date on which the petitioner's junior V.Kirubakaran got promotion on 30.01.2014 with all other attendant monetary and other consequential service benefits.



2. The brief facts of the case are that the petitioner was appointed as Bill Clerk on 01.06.2001 on compassionate grounds due to the death of his father, who was working as Watchman. Initially the petitioner was appointed as Bill Clerk in Amutham Retail Shop at Vallanadu, then promoted as Junior Assistant on 16.09.2008 and then transferred to Regional Office at Thoothukudi. Subsequently, the petitioner was promoted as Assistant on 08.10.2010. The next promotion to the petitioner is Superintendent and the crucial date for promotion is first September every year. The respondent published seniority list of Assistant on 01.09.2013 for the year 2013. The petitioner's name was in Sl.No.3 and the petitioner's seniors namely N.Selvaraj and B.Shenbahavalli were in Serial No. 1 & 2 and were promoted subsequently. The petitioner's name ought to be considered for the next promotion. In the meantime, the second respondent issued a show cause notice on 21.10.2013 after the crucial date for preparation of seniority list dated 01.09.2013. The allegation against the petitioner is that one V. Murugan, Junior Assistant of the same office had made a complaint against the petitioner stating that the petitioner has not inspected the Fair Price Shops as ordered by the third respondent along with K.Skathivel, Junior Assistant and the petitioner has given a wrong statement as if the petitioner has inspected the Fair Price Shops and other 10 charges.

3. The contention of the petitioner is that the third respondent had ordered to inspect the Amutham Retail Shop on 22.12.2012 and 24.12.2012 along with K.Sakthivel. The petitioner had inspected the said Shop on the said two days along with the Sakthivel and has submitted a report about the irregularities committed by one Senthil Kumar, who was in-charge of the Retail Shop. Based on the inspection report, Rs.17,293/- was recovered from the individual, namely, Senthil Kumar who is responsible for the loss caused to the Amutham Retail Shop. Therefore, the allegation against the petitioner is that he has not inspected the Shop as ordered by the third respondent and issued a show cause notice dated 21.10.2013 was vehemently opposed by the petitioner. Based on the show cause notice, the petitioner was deferred for the promotion for the year 2013. The third respondent appointed one G. Nagaraj, Superintendent to conduct a preliminary enquiry and the enquiry has ended up in dropping the proceedings. In the meanwhile, the first respondent by an order dated 22.01.2014 released the panel for the promotion of Superintendent, where the petitioner's name was deferred alleging major charges pending against the petitioner. In the meanwhile, the Review Authority as Suo Motu reviewed the entire proceedings and imposed the punishment of stoppage of increment for six months without cumulative effect, vide order, dated 02.11.2015. According to the petitioner there was not charges pending against the petitioner on the crucial dated i.e., 01.09.2013 and on the date of crucial date, a Charge Memo was not issued, therefore, the petitioner should be considered for the promotion. Hence the present



4. The third respondent has filed a counter affidavit stating that the promotional panel for the Superintendent for the year 2013 was published on 22.01.2014, wherein the petitioner's name was deferred since charge memo dated 21.10.2013 was issued to the petitioner. In the subsequent promotion list for the year 2014 dated 21.01.2015, the petitioner's name was not included. As per the Board proceedings, vide RC.No.R2/26811/93 dated 15.07.1993 in the Circular Para 3, it has been stated that,

"If charges are framed subsequent to the crucial date and still pending disposal till the panel is drawn, the following guidelines have to be adopted.

a) If charges are pending under Major penalty such cases should not be considered."

5. The contention of the respondent is that in a recent judgment of Division Bench, it has been held that, if a charge is pending on the date of consideration, then the promotion cannot be granted. The disciplinary proceedings were initiated properly and the Enquiry Officer found that all the charges are proved against the delinquent officer but the disciplinary authority, the predecessor in office, dropped the proceedings inspite of the findings of the Enquiry Officer that the charges are proved. A show cause notice dated 23.12.2014 was issued to initiate Suo Moto review proceedings as per the Regulation 8 Chapter 5 as per 200th Board meeting held on 09.03.1992 under item no.37 and as per reference number 11962/91 G2 dated 21.05.1992 with effect from 01.06.1992. It is stated in Para 12 as under:

"Notwithstanding anything contain in this regulation the board (or) the Managing Director shall either suo-motto (or) otherwise at any stage of disciplinary proceedings may call for the filed and give any direction as deemed just and equitable provided such direction shall not a breached the procedure for imposing penalty".

6. Therefore, the show cause notice dated 23.12.2014 was issued, to show cause why the order of dropping of proceedings dated 17.09.2014 should not be reviewed. The petitioner was directed to submit an explanation and the petitioner submitted explanation dated 12.02.2015 and subsequent letter in October 2015. The impugned order dated 02.11.2015 was issued after considering the explanation, thereby set aside the order dated 17.09.2014 and a punishment of stoppage of increment for six months without cumulative effect was issued. The petitioner has referred 17(b) of the Tamil Nadu Subordinate Service Rules, but the service of the delinquent is governed by the Tamil Nadu Civil Supplies Corporation Employees



Service Rules and Wages settlement is arrived before appropriate before the Labour Commissioner under section 12(3) of Industrial Dispute Act 1947. The petitioner ought to raise an Industrial Dispute before the appropriate Labour Court instead of approaching this Court. Therefore, the respondents prayed to dismiss the writ petition.

7. Heard Mr.Govindan, learned Counsel appearing for the petitioner and Mr.R.Saravanan, learned Counsel appearing for the respondents.

8. The respondents have circulated a Circular dated 15.07.1993 in Sub-Clause 3 it has been held as under:

"3) If charges are framed subsequent to the crucial date and still pending disposal till the panel is drawn, the following guidelines have to be adopted.

a) If charges are pending under major penalty such cases should not be considered.

b) If charges are pending under minor punishment, the competent authority should exercise discretion to decide the case on merit.

4) If the delinquent has not been exonerated from the charges and awarded the punishment by way of "Censure" such a punishment will have a bar for Six months from the date of issue of orders.

5) Stoppage of increment without cumulative effect irrespective of the period will have a bar for promotion for one year from the date of passing orders.

6) Stoppage of increment with cumulative effect irrespective of the period will have a bar for promotion for Two years from the date of Final orders.

7) Suspension period treated as substantive punishment will render the persons concerned, ineligible for promotion for a period of Two Years from the date of Final orders.

8) Recover proceedings issued in respect of the following cases will have a bar for a period of One Year from the date of orders.

a) Misappropriation of funds.

(Direct involvement)

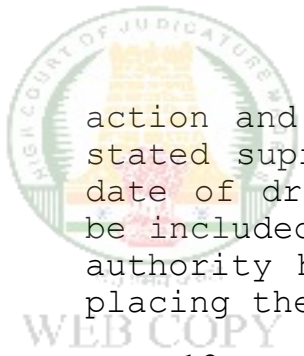


b) *Recovery ordered on account of direct involvement in monetary loss to the TNCSC Limited*".

9. It is seen from the records that the petitioner is eligible to be considered for the post of Superintendent from 09.10.2012 onwards. The petitioner's name was in seniority panel is in Serial No.3 and Serial No.1 & 2 were already granted promotion. The crucial date for promotion is 01.09.2013 and the show cause notice was issued on 21.10.2013. Therefore, this Court is of the considered opinion that the petitioner is eligible during the period from 01.09.2013 to 20.10.2013 and the respondent's bounden duty is to consider the petitioner's name during that period.

10. It is seen that the enquiry report dated 17.04.2014 was submitted and the disciplinary proceedings was dropped on 17.09.2014 and the petitioner is entitled to include his name on the crucial date 01.09.2014. The petitioner submitted a representation dated 07.10.2014 and the 3rd respondent through proceeding dated 30.09.2014 recommended to include the petitioner's name to the 1st respondent. However, the 1st respondent different from the disciplinary authority and issued show cause notice dated 23.12.2014 invoking the reviewing power and petitioner submitted explanation on 11.03.2015 and the Review Authority imposed punishment dated 02.11.2015 of stoppage of increment for six months without cumulative effect. Therefore for the year 2014 the petitioner is eligible for promotion from 01.09.2014 since the disciplinary proceedings was dropped through order dated 17.09.2014, but the Review Authority declined the chance by issuing show cause notice 23.12.2014 to review the order. However the petitioner is eligible from 01.09.2014 to 23.12.2014, therefore this Court is of the considered opinion to the petitioner is eligible from 01.09.2014 to 23.12.2014.

11. The contention of the respondents are that as per Circular dated 15.07.1993, if there is any pending disciplinary proceeding then the petitioner is not entitled to consider for promotion. But the circular states, if charge is pending under major penalty, such cases cannot be considered. If there is minor penalty then the respondent shall consider the delinquent for promotion by exercising the discretionary power. Since in the present case the respondents ought to have invoked the discretionary power and considered the claim of promotion. But the respondents submitted even if minor punishment is imposed, then the petitioner is not entitled to promotion for further one year as per clause 5, wherein it states, *stoppage of increment without cumulative effect irrespective of the period will have a bar for promotion for one year from the date of passing orders*. This clause comes under the concept of "check period" and this Court has held in Deputy Inspector General of Police Vs V. Rani reported in 2011 (3) CTC 129, that check period is alien to service jurisprudence and has quashed the relevant G.O. and Circulars. Therefore this Court is of the considered view that check period is like imposing punishment twice for the same cause of



action and the respondents cannot invoke Clause 5 as per Rani case stated supra and the petitioner is eligible for promotion from the date of dropping of proceedings i.e. from 17.09.2014 and he should be included in the seniority list dated 01.09.2014. The disciplinary authority had also recommended through proceedings dated 30.09.2014 placing the petitioner in Serial No. 1.

12. In the present case, it is only a minor penalty and the respondents should have exercised the discretion to decide the case on merits, but the respondents failed to do so. The petitioner is entitled to consider for promotion in the place of his junior namely V.Kirubakaran. The respondents are directed to grant promotion to the petitioner with all attendant benefits and monetary benefits from the date on which the petitioner's junior V.Kirubakaran was promoted. The petitioner has not worked in that place, but the respondents have deliberately not granted the promotion. Therefore, in order to meet the ends of justice, the petitioner is entitled to 50% of the monetary benefits and 50% notional monetary benefits. The learned Counsel for the petitioner also consented for the 50% of backwages and 50% of notional monetary benefits.

13. Based on the above discussions the respondents are directed to grant promotion to the petitioner in the post of Superintendent from the date on which his junior V.Kirubakaran was promoted and grant 50% of monetary benefits and 50% notional monetary benefits. With the above observation, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

jbr

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 Managing Director,
Tamil Nadu Civil Supplies Corporation, 12
Thambu Samy Road, Keelpauk, Chennai 10.



2. The General Manager, (Admn.)
Tamil Nadu Civil Supplies Corporation, 12
Thambu Samy Road, Keelpauk, Chennai 10.

3. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Regional Office, Thoothukudi.

4. The Superintendent
Tamil Nadu Civil Supplies Corporation,
Regional Office, Thoothukudi.

+1 CC to M/s.S.GOVINDAN, Advocate (SR-16240[F] dated 04/04/2022)

+1 CC to M/s.P.SARAVANAN, Advocate (SR-16458[F] dated 04/04/2022)

W.P. (MD)No.4748 of 2016
31.03.2022

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