



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2022

CORAM

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

W.P. (MD)No.6789 of 2016

I.Mogan Kaasilingam

... Petitioner

vs.

The Principal Secretary to Government,
Handlooms, Handicrafts,
Textiles and Khadi Department,
Secretariat,
Chennai - 600 009.

... 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 of the respondent relating to Government Letter No.8409/E2/2015-5, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 10.03.2016 and to quash the same and consequently, to direct the Government to re-include the name of the petitioner in the approved list of Handloom Officers of the year 1998-99 on par with junior and provide him notional promotion on par with his junior and arrange to send revised pension proposals on par with his junior within a specified time frame that may be fixed by this Court.

For Petitioner

: Mr.S.Visvalingam

For Respondent

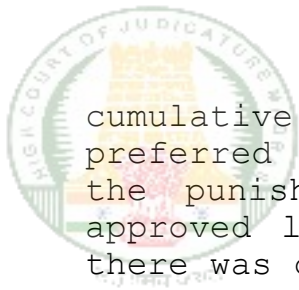
: M/s.D.Farjana Ghoushia

Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the Government Letter No.8409/E2/2015-5, Handlooms, Handicrafts, Textiles and Khadi (E2) Department, dated 10.03.2016 and consequently, to direct the Government to re-include the name of the petitioner in the approved list of Handloom Officers of the year 1998-99 on par with junior and provide him notional promotion on par with his junior and arrange to send revised pension proposals on par with his junior within a specified time frame that may be fixed by this Court.

2. The petitioner was serving as a Handloom Officer. A disciplinary proceeding was initiated against the petitioner in proceedings, dated 15.07.1993, for the allegation that permission was granted for using lesser quality materials in the construction of Weavers Housing Scheme, Ettayapuram and the petitioner submitted detailed explanation. However, a final order was passed inflicting a punishment of stoppage of increment for a period of 6 months without



cumulative effect, vide order, dated 11.11.1996. The petitioner preferred appeal which was dismissed on 20.10.1997, consequent to the punishment, the petitioner's name was not included in the approved list of Handloom Officer for the year 1996- 1997, since there was currency of punishment in force.

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3. The contention of the petitioner is that the petitioner's name was included again in the Handloom Officers for the year 1998-1999, vide order, dated 10.04.1998. But unfortunately, the name was deleted from the approved list, vide proceedings, dated 23.12.1998, on the ground that the punishment comes within the check period of five years. Thereafter, the show cause notice was issued by the Director of Handlooms and Textiles, Chennai, vide show cause notice, dated 25.08.1999, directing the petitioner to explain why the punishment of stoppage of increment should not be enhanced to five years. The petitioner preferred a Writ Petition in W.P.No.799 of 2006, challenging the said show cause notice, dated 25.08.1999. This Court, vide order, dated 29.07.2009, quashed the said show cause notice on the ground that it was not issued within the limitation time and also held that the respondents have .

4. In the meantime, the Director of Handlooms and Textiles informed the petitioner that the deletion of the petitioner's name from the approved list of the year 1998-1999 is correct, since the show cause notice has been issued for enhancement of punishment. In the meanwhile, this Court, vide order, dated 29.07.2009, has quashed the said show cause notice in W.P.No.799 of 2006. Thereafter, the petitioner preferred a Review Petition to the Government on 20.10.2015, for re-inclusion of the petitioner's name in the approved list of Handloom Officers on par with his juniors since the show cause notice, dated 25.08.1999, is the only sole ground for deletion of his name, but, the said show cause notice was quashed by the High Court. Without considering the same, the government had rejected the Review Petition, vide order, dated 10.03.2016.

5. The contention of the petitioner is that the alleged delinquency took place in the year 1990-1991 and the punishment of stoppage of increment was ordered on 11.11.1996 and the punishment was given effect from 01.07.1997 to 31.12.1997. In G.O.Ms.22, P & AR Department, dated 24.02.2014, it is stated that if a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion if a member of service is not undergoing any such punishment on crucial date. The Government in the impugned order, dated 10.03.2016, have stated that the above stated amendment comes into force only from 19.10.2001 and therefore, for inclusion of the petitioner's name for the year 1998-1999 cannot be considered. In G.O.Ms.22, P & AR Department, dated 24.02.2014, it is mentioned that the statutory effect is given from 18.10.1993. The respondent has conveniently brushed aside the said <https://hcc.mca.gov.in/Services/>, but the respondent has referred to the Government



letter (Ms.) No.248, P & AR Department, dated 20.10.1997, but the respondent has not taken into account the retrospective effect granted in G.O.Ms.22, P & AR Department, dated 24.02.2014. Moreover, the said G.O., clearly states that if an Officer's name is passed over once it, need not be passed over for the second time on account of the same punishment at the time of subsequent consideration for the next panel. In the present case, the petitioner's name was not included in the approved list for the year 1996-1997 in view of the currency of the above said punishment. Therefore, even according to the instructions issued in Government letter (Ms.) No.248, P & AR Department, dated 20.10.1997, the petitioner is entitled for inclusion for the year 1998-1999. In all angle, the petitioner is entitled for consideration for promotion.

6. The respondent has filed a counter affidavit stating that the punishment for six months without cumulative effect was imposed on the petitioner, vide proceedings, dated 11.11.1996. The petitioner preferred an appeal and the same was rejected on 20.10.1997. The crucial date for preparation of panel for the year 1996-1997 is 01.03.1996 and the charges under Rule 17(b) were pending against the petitioner as on the crucial date. As per the G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, in cases, where specific charges under Rule 17(b) have been framed, promotion / appointment of such persons shall be deferred till the proceedings are concluded. Due to the pendency of 17(b) charges on crucial date, i.e., 01.03.1996, the petitioner's name was not included in the panel on 1996-1997. For the year 1998-1999, the petitioner's name was included in Serial No.5, vide proceedings, dated 10.04.1998. However, the petitioner's name was deleted, vide order, dated 23.12.1998, on the ground that the punishment imposed comes within the "check period" of 5 years. The above punishment was given effect from 01.07.1997 to 31.12.1997. The punishment of six months increment cut imposed on the petitioner on 11.11.1996 was within the five years prior to the crucial date, i.e., 01.03.1998, for the panel year 1998-1999. Therefore, the above punishment was held against the petitioner and the petitioner's name was not included in the panel for 1998-1999. The Director of Handlooms issued show cause notice, dated 25.08.1999, stating that as to why the punishment should not be enhanced to five years. The said notice was challenged in W.P.No.799 of 2006 and this Court vide order, dated 29.07.2009 has quashed the show cause notice and the relevant portion of the order is extracted as under:

"In the case on hand, on 11.11.1996, the petitioner was imposed with a penalty of stoppage of increment for six months without cumulative effect. The appeal dated 07.01.1997 to the Joint Director of Handlooms and Textiles was rejected on 20.10.1997 after a lapse of nearly ten months.

Inasmuch as the show cause notice has been issued by the Head of the Department after the statutory period of



six months, following the decisions stated supra, this Court has no hesitation to hold that the impugned show cause notice as without jurisdiction and hence the impugned same is set aside.

Accordingly, the writ petition is allowed. No costs."

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7. The petitioner's name was not included as the charges were pending on the crucial date for the panel 1997-1998. The petitioner's name was not included because no panel was drawn for that year for the year 1998-1999. The petitioner's name was included and subsequently dropped, since the punishment was within the 5 years check period prior to the crucial date. The petitioner is not entitled to as per Government Letter (Ms.) No.248, P & AR Department, dated 20.10.1997, G.O.Ms.22, P & AR Department, dated 24.02.2014, in para D, the same came into effect only from 19.10.2001. Therefore, the respondent prayed to dismiss the Writ Petition.

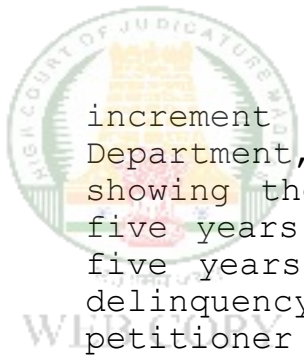
8. Heard Mr.S.Visvalingam, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondent.

9. On perusing the documents, it is seen that the petitioner is not entitled to be included in the panel 1996-1997 since the 17(b) charges are pending and therefore, this Court is of the considered opinion that the petitioner is not entitled to be included in the panel 1996-1997.

10. The petitioner's name was not included for the panel in the 1997-1998, since the panel was not drawn, the petitioner was not entitled to. Now, the question ought to be considered is whether the petitioner is entitled to include his name in 1998-1999 panel.

11. The contention of the respondent is that since the punishment of six months increment cut is imposed on 11.11.1996, which is within a period of five years "check period", hence the petitioner is not entitled to. It was held by this Court in the Hon'ble Full Bench in Rani's case, that the check period is alien to the service jurisprudence. Already the delinquent would be punished and by stating the check period, the delinquent cannot be punished again. The check period concept was set aside in the said Full Bench, wherein, it was stated that the check period was introduced by way of administrative order which is against rules. The administrative order cannot be issued against statutory rules, therefore, the same cannot be enforced. Therefore, this Court is of the considered opinion that the petitioner is entitled to be considered for the year 1998-1999.

12. The next contention put forth by the petitioner is the delinquency took place in the year 1990-1991 and the stoppage of



increment was ordered on 11.11.1996. As per G.O.Ms.22, P & AR Department, dated 24.02.2014, the promotion cannot be denied by showing the punishment for the delinquencies which were committed five years before. In this case, the punishment is imposed after five years. Hence, the promotion cannot be denied by showing the delinquency that happened in the year 1991. Therefore the petitioner is entitled to relief on this plea also.

13. Therefore, the petitioner is entitled to promotion for the panel 1998-1999. Therefore, the impugned order is set aside and the respondent is directed to grant notional promotion and grant pensionary benefits to the petitioner. The respondent is directed to implement this order within a period of four weeks from the date of receipt of a copy of this order.

14. With the above direction, the Writ Petition is allowed. No costs.

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.

To

The Principal Secretary to Government,
Handlooms, Handicrafts,
Textiles and Khadi Department,
Secretariat,
Chennai- 600 009.

+1 CC to M/s.SPL GP (SR-16113[F] dated 01/04/2022)

W.P. (MD)No.6789 of 2016

31.03.2022

nsn(CO)

TR(14.06.2022) 5P 3C