



W.P.No.17615 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.17615 of 2011

R.Paneerselvam

... Petitioner

Vs

1.The Director General of Police,
Tamil Nadu, Mylapore,
Chennai – 4.

2.The Additional Director General of Police,
O/o. The Director General of Police,
Tamil Nadu, Mylapore,
Chennai – 4.

3.The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.

... Respondents

PRAAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the entire records of the second respondent in connection with the impugned orders passed by the second respondent in Rc.No.0448700/NGB II(1)/2011, dated 02.07.2011 and quash the same and further direct the

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respondent to consider the claim of the petitioner for promotion as Superintendent for the panel year 2010 and 2011 and promote him as Superintendent and grant him all consequential service and monetary benefits and grant such other further relief.

For Petitioner : Mr.K.Venkataramani Sr. Counsel for
Mr.M.Muthuppan

For Respondents : Mr.R.Neethi Perumal GA

ORDER

The Challenge in this Writ Petition is to quash the order passed by the second respondent dated 02.07.2011 and to direct the respondents to consider the claim of the petitioner for promotion as Superintendent for the panel year 2010-11 and promote him as Superintendent with all consequential service and monetary benefits.

2.Heard Mr.K.Venkataramani learned Senior Counsel for Mr.M.Muthuppan, learned counsel appearing for the petitioner and Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents.

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3. The learned Senior counsel would submit that the petitioner entered into the services of the District Police office as a Typist on compassionate grounds in the year 1989. The petitioner was further promoted as Assistant on 22.07.1997 and was ranked in serial No.214 in the seniority list of the year 1996-97. The petitioner was issued with a charge memo in P.R.No.39 of 2008, under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Originally an order of punishment of postponement of next increment for a period of one year without cumulative effect was inflicted on the petitioner and on appeal, the same had been modified into an order of censure by order dated 30.06.2010. While that being so, a panel of persons working as Assistant were drawn for the promotion to the post of Superintendent for the year 2010-11. The crucial date for arriving at the panel was 15.03.2010 and a 'C' list of Assistants fit for promotion as Superintendent for the panel year 2010-11 was published on 14.06.2011. The name of the petitioner was not included in the 'C' list,

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but the names of the juniors from serial No.215 to 229, were included.

Therefore, the petitioner had made a representation to consider the claim for promotion as Superintendent and the said claim had been rejected by the order impugned by holding that the petitioner had suffered a punishment on 20.01.2010 and the eligible Assistants fit for promotion as Superintendent was drawn on 15.03.2010.

4.The learned Senior counsel would submit that even though the punishment of stoppage of increment for a period of one year without cumulative was originally imposed the said punishment had been modified as a punishment of censure. Therefore, while the final list was drawn, the petitioner's name should have been included as regards to the punishment of censure implemented as there is no currency of punishment. He also relied upon the Full Bench judgment of this Court in W.A.(MD).Nos.315 of 2010 etc., batch, dated 27.04.2011, wherein the Hon'ble Full Bench had held that the Government Order in G.O.Ms.No.368, cannot be equated to statutory Rules and does not

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have any legal force. He would submit that the reason for rejecting the petitioner's claim was that the period of one year of censure had expired only on 19.01.2011 and whereas the crucial date for drawal of temporary panel of Assistants fit for promotion as Superintendent for the panel year 2011-11 is 15.03.2010 and therefore, his name could not be considered and could only be considered in the upcoming panel for the year 2011-12.

5.He would further submit that the Division Bench had specifically held that the check period of one year in respect of punishment of censure is illegal and impermissible under the statutory Rules. When that being so, he would submit that the original order of punishment of stoppage of increment, which has been modified as censure would have date back to the original order of punishment and therefore, the name of the petitioner should have been included in the temporary panel that was drawn on 15.03.2010 and the petitioner ought to have been granted promotion as Superintendent on par with his

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juniors. Therefore, he would seek interference of the impugned order in this Writ Petition.

6.Countering his arguments, Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents would submit that one year period of imposition of punishment of censure expires only on 19.01.2011, whereas the panel of Assistants fit for promotion as Superintendent was drawn on 15.03.2010, on which date, the check period of one year was in force for which reason only the name of the petitioner had not been included in the panel. He would further submit that the order of censure passed against the petitioner was given effect from 20.10.2010 and therefore, the period had expired only on 19.01.2011 and hence, there was no infirmity in the order rejecting the request made by the petitioner.

7.I have considered the rival submissions made on either side and perused the materials placed on record.

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8.Before advertng to the facts of the case, it is pertinent to note that the Government had issued G.O.Ms.No.368, Personal and Administrative Reforms Department, dated 18.10.1993, and also a consequential letter No.248 (P&R) Department, dated 20.10.1997. Various Rules have been framed under the aforesaid Government Order as regards to the effect of punishment on inclusion in the panel. It is also held under the said order that any warning or severe warning which is not a statutory punishment need not be held against the Officer, but however, the said Rules prescribed a check period in case of censure namely, a period of one year prior to the crucial date of drawing the panel.

9.Admittedly, the Hon'ble Full Bench judgment of this Court had specifically held that such imposition of check period is illegal and impermissible, as the said Government Order does not have any statutory force.

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10. Further admittedly, the punishment that had been originally imposed on the petitioner had been modified into a punishment of censure which even according to the respondent had been implemented on the petitioner on 20.01.2010. The same is also expressly admitted to by the respondent in their counter. The admission made in the counter is extracted hereunder:-

6. I further submit that the modified punishment of 'Censure' was given effect from 20.01.2010 and expired on 19.01.2011 as per the Government guidelines. Hence, petitioner's claim for inclusion of his name in the panel of Assistants fit for promotion as Superintendents for the year 2010-11 could not be considered.

11. As rightly pointed out by the learned Senior counsel for the petitioner that there is no currency of punishment in respect of the punishment of censure. The check period that had been sought to be put against the petitioner had been expressly struck down by the Full Bench judgement of this Court. Therefore, the impugned order cannot

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be sustained by taking a stand that the period of one year expires from 19.01.2011 as the punishment had been imposed w.e.f., 20.01.2010.

12. In such view of the matter, I am inclined to hold that the order impugned in rejecting the claim of the petitioner suffers from illegality as it is contrary to the law laid down by the Hon'ble Full Bench judgment of this Court. For better appreciation, that the conclusion arrived at by the Hon'ble Full Bench of this Court is extracted hereunder:-

28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and others [2008 (5) MLJ 350] stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for

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promotion to the next post, if otherwise eligible.

2) If any benefit has been conferred on the party to the judgment rendered by the Division Bench in Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and others [2008 (5) MLJ 350], the same shall not be affected by the judgment of this Bench since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

3. The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

4. The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso Article 309 of the Constitution of India



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and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules.

13. In fine, the Writ Petition is allowed and the impugned order is set aside. The respondents are directed to include the name of the petitioner in the 'C' list of Assistants fit for promotion to the post of Superintendent and if otherwise eligible, grant promotion to the petitioner with all other consequential service benefits for which the petitioner would be entitled to. But however, the petitioner would be entitled only for notional fixation of monetary benefits and would be entitled to the increased monetary benefits from the date of the order. However, there shall be no order as to costs.

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Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

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K.KUMARESH BABU,J.

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