IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE V.LAKSHMINARAYANAN

W.A.No.2443 of 2010

The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road, Kilpauk,
Chennai – 600 010. ... Appellant

Vs.

1.N.Ganesan (deceased)
2.G.Vijaya
3.G.Arun
4.G.Vindhiya
5.G.Brindha ... Respondents

[RR 2 to 5 brought on record as LRs
of the deceased sole respondent vide
order dated 27.10.2017 made in
CMP.No.17750 of 2017 in WA.No.2443/2010]

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 20.04.2010 made in W.P.No.9264 of 2004 passed by this Court.

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|---|---|
| For Appellant | : Mr.C.Selvaraj |
| For R1 | : Died |
| For R2 to R4 | : No appearance |

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This writ appeal has been directed against the order passed by the Writ Court on 20.04.2010 made in W.P.No.9264 of 2004.

2. The 1st respondent viz., Ganesan was an employee of the appellant Corporation. He was working as Assistant Quality Inspector. The next promotion avenue for him as Quality Inspector. For getting such a promotion depending upon the vacancy every year panel will be prepared by having 1st October of that year as a crucial date. It seems that for the year 1992, a panel was prepared by taking 01.10.1992 as a crucial date.

3. Though the 1st respondent Ganesan was eligible to be considered to be included in the panel for promotion of Quality Inspector, his name was not included, therefore he made a request to that effect, which was rejected by the order 12.11.2003 by the appellant Corporation, which was under challenge before the Writ Court.

4. The learned Judge who considered the said case has allowed the said writ petition. Aggrieved over the same, the present writ appeal has been filed by the appellant.

5. Heard Mr.C.Selvaraj, learned Standing Counsel appearing for the appellant Corporation who would submit that, insofar as the said Ganesan is concerned, he was otherwise eligible to be included in the panel for the year 1992 for promotion to the post of Quality Inspector. However, on 04.11.1992 the panel was drawn and on 18.11.1992 for the alleged violation on the part of the said Ganesan, a charge memo has been prepared and served on him. Since there has been a charge memo that has been prepared and served on him, as per Clause 3 of the Circular issued by the appellant Corporation dated 05.07.1988, his name need not be considered for inclusion in the panel of the year 1992 and therefore that request made by him was turned out through the order dated 12.11.2003.

6. The learned counsel would further submit that, these aspects have not been considered in proper perspective by the learned Judge who dealt with the writ petition and ultimately allowed the said writ petition, therefore it is erroneous, he contended.

7. We have considered the said submissions made by the learned Standing Counsel appearing for the appellant and have perused the materials placed before this Court.

8. The learned Standing Counsel very much relied upon the Circular issued by the appellant Corporation dated 05.07.1988 where, *inter alia,* the following has been stated:

> "1) Charges should not be pending as on the crucial date, i.e. 1st April of each year.
> 2) If charges are pending on the crucial date and final orders passed subsequent to that date and before the drawal of the panel (either dropping further action or issuing a warning or awarding a censure), the cases of those employees will be taken up for consideration for inclusion in the panel, if otherwise qualified.

> 3) If charges are framed subsequent to the crucial date and still pending disposal till the panel is drawn, the case of those employees cannot be considered for inclusion irrespective of the nature of charge."

9. The learned Standing Counsel very much relies upon Clause 3 of the Circular and would submit that, if charges are framed subsequent to the crucial date and still pending disposal till the panel is drawn, the case of those employees cannot be considered for inclusion irrespective of the nature of charge.

10. In the case in hand, it is to be taken note of that, the crucial date is October 1992 i.e., 01.10.1992. As per Regulation 27 of the Tamil Nadu Civil Supplies Corporation Employees Service Regulations, 1989 such a crucial date has been fixed.

11. On the crucial date i.e. on 10.01.1992 admittedly there has been no charge pending against the employee. Only on 18.11.1992 the charge has been framed before which the panel has been drawn on 04.11.1992.

12. Having these factual matrix in hand, if we apply even the Clause 1 and 3 of the Circular of the appellant Corporation dated 05.07.1988, the 1st Clause says, charges should not be pending as on the crucial date, i.e. 1st April of each year. The learned Standing Counsel has submitted that the 1st April has been amended subsequently as 1st October for this cadre.

13. Be that as it may, on the crucial date, there should not be any charges pending. The crucial date is admittedly on 01.10.1992 on that date there has been no charge pending against the employee. Therefore, even if we apply Clause 1 of the said Circular, that would no way hamper the prospects of the employee to get included in the panel. Assuming that, the Clause 3 of the Circular can be applied against the employee even that Clause says if charges are framed subsequent to the crucial date and still pending disposal till the panel is drawn, the case of those employees cannot be considered for inclusion.

14. In this case, the charge was framed on 18.11.1992 whereas the panel was drawn on 04.11.1992. Therefore, till the date of drawal of panel there has been no charge pending.

15. Therefore, neither Clause 1 nor 3 of the Circular dated 05.07.1988 would apply to the case of the employee and therefore, the denial of inclusion of his name in the panel dated 04.11.1992 for promotion to the post of Quality Inspector cannot be countenanced.

16. If we consider Clause 1 and 3 of Circular dated 05.07.1988 in juxtaposition, we can easily come to the conclusion that the primacy of the Clause 1, which says that, on the crucial date no charge shall be pending against an employee, cannot be overridden by Clause 3 as it is only supplementary not supplanting to Clause 1. Therefore, on the crucial date i.e. 01.10.1992 since there has been no charge framed against the employee, his inclusion in the list of panel for the promotion to the post of Quality Inspector for the year 1992 cannot be hampered. Therefore, the rejection made in this regard dated 12.11.2003 is bad in law and

therefore, the learned Judge is right in coming to a conclusion that the said order which is impugned before the Writ Court is to be quashed and accordingly the approach of the learned Judge in allowing the said writ petition cannot be found fault with, with the result this appeal fails.

17. It has been brought to our notice during the pendency of these proceedings in the year 2012, the employee superannuated and in the year 2014 the employee died and the legal heirs have been brought on record in these proceedings, however they did not choose to appear before this Court. Be that as it may, the employee since was entitled to get such a promotion by getting him included in the year 1992 panel to the post of Quality Inspector, such a gesture should be shown to him by giving the notional promotion to the employee as Quality Inspector pursuant to the panel of the year 1992 and accordingly his service benefits only for the purpose of calculating the pension/family pension shall be calculated and be revised and the revised pensionary arrears as well as family pension payable to the employee and his legal heirs, shall be calculated and be paid to them within a period of eight weeks from the

date of receipt of a copy of this judgment.

18. With these observations and directions, the Writ Appeal is dismissed. No costs.

(R.S.K. J.) (V.L.N. J.)
05.07.2023

Index : Yes

Speaking Order : No

Neutral Citation : No

Sgl

R. SURESH KUMAR, J.
And
V.LAKSHMINARAYANAN, J.

Sgl

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