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W.P.No.17469 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17469 of 2013

MP.Nos.3 to 5 of 2013

1.A.Rajaram(deceased)

2.Prema

3.Gowtham Rajaram

(P2 & P3 substituted as LR's of the deceased

first petitioner vide order dated 30.06.2023

made in WMP.No.18887 of 2023 in

WP.No.17469 of 2013)

... Petitioners

Vs.

1.The Secretary to Government of Tamilnadu,

Department of Labour & Employment,

Fort St.George, Chennai 600 009

2.The Commissioner of Labour,

Department of Labour,

DMS Teynampet, Chennai 600 008

3.The Joint Commissioner of Labour,

Department of Labour,

Ellis Nagar, TNHB Building, Madurai

4.Chandramohan, IAS

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the second respondent in its letter No.E2/22186/2012-2 dated 25.04.2013



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quash the same insofar as the petitioner is concerned and consequently direct the respondents to include the name of the petitioner in the panel for promotion to the post of Deputy Inspector of Labour for the year 2012-2013 and promote him to such post from the date his juniors have been promoted with all consequential benefits flowing therefrom and costs.

For Petitioner : Mr.Karthik Rajan
for Mr.Karthik

For Respondents

For R1 to 3 : Mr.V.Veluchamy,
Additional Government Pleader

For R4 : No appearance

ORDER

This writ petition has been filed challenging the order passed by the second respondent thereby refused to include the petitioner's name in the panel for promotion as Deputy Inspector of Labour for the year 2012 to 2015 on the ground that the currency of punishment / pending charges.

2. Heard, the learned counsel appearing on either side.

3. While pending writ petition, the first petitioner died and his legal representatives were substituted as petitioners 2 and 3. The



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deceased first petitioner joined as Assistant Inspector of Labour on 13.05.1980 by direct recruitment. When the deceased first petitioner was working under the then Inspector of Labour during the period from 23.06.1998 to 14.12.2000, he was served with 17 charge memos. Out of which 15 under 17(a), 2 under 17(b) of Tamilnadu Civil Service (Discipline and Appeal) Rules. In respect of 17(a) proceedings, the deceased first petitioner was imposed minor punishments totalling to 17 years increment cut without cumulative effect. In respect of two charges under 17(b) are concerned, they were dropped respectively on 02.06.2004 and in the year 2007. The deceased first petitioner challenged some of the penalties by way of Original Application before Tamilnadu Administrative Tribunal and thereafter all the applications were transferred to this Court. The deceased first petitioner had taken specific ground that the disciplinary authority i.e. Inspector of Labour, Tuticorin acted in a biased manner and he was charged with 17 charge memos within a span of 2 ½ years. In fact, none of the charge memos framed against the deceased first petitioner related to grave charges such as corruption, moral turpitude etc.



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4. He also filed review petition before the second respondent against minor punishment imposed by the disciplinary authority. Though it was rejected on the ground that review was not maintainable, it was challenged by way of writ petition. In the meantime, by order dated 15.02.2011, a writ petition in which minor penalties were challenged before this Court was allowed and thereby set aside 7 minor punishments issued by the disciplinary authority on the ground of bias and further directed the first respondent to constitute adhoc disciplinary authority to consider the explanation offered by the petitioner uninfluenced by the earlier order passed by the second respondent and to conduct enquiries, if necessary, and pass appropriate orders. Accordingly, the first respondent had constituted disciplinary authority i.e. Joint Commissioner of Labour, Chennai as adhoc disciplinary authority to consider the explanation submitted by the deceased first petitioner in the minor penalty proceedings. On receipt of explanation, adhoc disciplinary authority considered the explanation as well as documents, written defences, deposition offered by the deceased first petitioner and concluded that the punishment imposed were erroneous and set aside all the punishments



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imposed by the then Inspector of Labour for the period from 23.06.1998 to 14.12.2000. Final order was also forwarded to the first respondent and the same was duly accepted. Therefore, the deceased first petitioner was entitled for promotion as Deputy Inspector of Labour and in fact, on 25.06.2012, the third respondent had recommended his inclusion in the panel for the next higher post of Deputy Inspector of Labour of the year 2011 to 2012. However, the second respondent addressed the first respondent as if 20 punishments were pending against him and the currency of punishment extends up to the year 2020 without even considering the order passed by the adhoc disciplinary authority.

5 Again on 29.06.2012, his name was recommended by the third respondent for the post of Deputy Inspector of Labour for the year 2012 to 2013. The crucial date for panel is 1st of July of the previous year i.e. 01.07.2011. On that date, there was neither currency of punishment nor any 17(b) charges were pending against the deceased first petitioner. However, by the order dated 25.04.2013, the second respondent refused to include the petitioner in the panel for promotion as Deputy Inspector of Labour for the year 2012 to 2013.



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6. On perusal of counter filed by the respondents, revealed that adhoc disciplinary authority passed orders setting aside the seven orders of punishments imposed on the deceased first petitioner. However, it was found deviation of the orders passed by this Court and had certain procedural irregularities, based on the directions of the Government the adhoc disciplinary authority was instructed to enquire and pass appropriate orders as per direction of this Court. Therefore, in continuation of the same, the adhoc disciplinary authority on 08.08.2013, held that seven punishments referred to it will not stand the test of law. Further clarified that other cases referred only as a collateral evidence. Therefore, it is clear that adhoc disciplinary authority had not passed any order in the matter of 19 other cases which have in the first instance not even been referred to it by this Court. Therefore, the petitioner could not be considered for promotion in view of 19 punishments imposed on him and in view of currency of these punishments which extends upto 31.12.2015.



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7. In fact, this Court passed interim order in the present writ petition on 28.06.2013 and observed that it went into the matter and set aside all the punishments imposed by the then Inspector of Labour, Tuticorin. In spite of the same, the petitioner's name was not included in the panel for the promotion to the post of Deputy Inspector of Labour. Therefore, the respondents 1 and 2 were instructed to give temporary promotion to the deceased first petitioner under Rule 39(d) of Tamilnadu State Subordinate Service Rules pending disposal of the writ petition. However, the deceased first petitioner was not given any promotion and he also attained age of superannuation as on 31.03.2014. Thereafter, he died on 16.04.2021.

8. On perusal of the order passed by the adhoc disciplinary authority, on the direction issued by this Court, the deceased first petitioner requested the adhoc disciplinary authority by his letter dated 07.05.2012 to consider other 12 cases also since the disciplinary authority acted in bias in respect of other 12 cases. It was forwarded to the second respondent by the adhoc disciplinary authority by the



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communication dated 25.05.2012 requesting further orders in the order.

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The second respondent vide its letter dated 18.07.2012 forwarded the other 12 cases as collateral evidence towards a fuller appreciation of the issues in dispute. On receipt of those cases, the adhoc disciplinary authority commenced enquiry.

9. Further, on perusal of all the charges in 19 cases, the allegations were that the deceased first petitioner returned seized platform scale without the authority of the controller of weights and measures. There was a delay in sending prosecution proposal. Fact of the return of the platform scale was not informed to the Inspector of Labour. He had sent ratification letter in English. Therefore, the disciplinary authority imposed punishment of increment cut which goes even beyond the date of superannuation. All the charges were not even related to the allegations of corruption or corrupt practices or the deceased first petitioner had tried to get bribery from any party which charges alone would disentitle him from promotion. That apart, all the charges levelled against the deceased first petitioner were within a period of 2 ½ years. Therefore, the adhoc



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disciplinary authority also looked into the punishments imposed by the then disciplinary authority as follows:

S. No	Date of order	With effect from	To	Period
1	A/7732/99 dt 28.12.99 Inspector of Labour, Tuticorin	01/07/.2000	30/06/01	1 year
2	A1/12758/99 dt 30.12.99 (within 2 days) Inspector of Labour, Tuticorin	01.07.01	31.12.01	6 months
3	A2/239/99 dt 30.12.99 (same day) Inspector of Labour, Tuticorin	01.01.03	31.12.02	1 year
4	A/577/99 dt 31.1.2000 (within 1 month) Inspector of Labour, Tuticorin	01.01.03	30.06.03	6 months
5	F1/7951/95 dt 27.4.2000 Commissioner of Labour, Chennai	01.07.03	30.06.07	2 years
6	A1/13385/99 dt 21.6.2000 Inspector of Labour, Tuticorin	01.07.05	30.06.05	2 years
7	A/9777/99 dt 14.11.2000 Inspector of Labour, Tuticorin	01.07.07	30.06.09	2 years
8	A/9652/99 dt 22.1.2001 Inspector of Labour, Tuticorin	01.07.09	30.06.11	2 years
9	A/806/2000 dt 26.2.2001 Inspector of Labour, Tuticorin	01.07.11	30.06.12	1 year
10	A/13398/99 dt 26.2.2001 (same day)	01.07.12	30.06.13	1 year
11	F1/49230/96 dt 23.4.2001 Commissioner of Labour,	01.07.13	30.06.14	1 year



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	Chennai				
12	A/11672/99 dt 30.3.2001 Inspector of Labour, Tuticorin(within one month from Col.(10)	01.07.14	30.06.16	2 years	
13	F1/79717/2001 dt 11.9.2001 Commissioner of Labour, Chennai	01.07.16	30.06.17	1 year	
14	A/342/2010 dt 17.9.2002 Inspector of Labour, Tuticorin	01.07.17	30.06.18	1 year	
15	A/3311/2001 dt 17.9.2002 Inspector of Labour, Tuticorin	01.07.18	30.06.19	1 year	
16	A/9184/2001 dt 30.12.2002 Inspector of Labour	01.07.19	30.06.20	1 year	
17	F1/72768/2000 dt 20.5.2003 Commissioner of Labour, Chennai	01.07.20	30.09.20	3 monhs	
18	E2/14260/2001 dt 22.5.2003 Chief Inspector of Factories, Chennai	01.10.20	31.12.20	3 months	
19	E2/14259/2002 dt 22.5.2003 (same day) Chief Inspector of Factories, Chennai	01.10.21	31.03.22	6 months	

10. Further concluded that the punishment of increment cut which were imposed on and from 01.07.2000 continued without even break for a single day upto 31.03.2022. In fact the deceased first petitioner's date of superannuation was on 31.03.2014. But the increment



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cut runs beyond his superannuation. Therefore, the adhoc disciplinary authority held that the deceased first petitioner is freed totally from all the unfounded and arbitrary punishments meted out to him by a person who is totally biased and prejudiced against him in no uncertain terms. Further observed that the said Inspector of Labour i.e. one Gunabalan had escaped from any action or punishment as he had conveniently and comfortably retired from Government service. The said report was accepted by the first respondent. Even then, without considering the same, the second respondent refused to include the deceased first petitioner's name in the panel for the year 2012 to 2013.

11. In view of the above, the impugned order dated 25.04.2013 is hereby quashed and this writ petition is allowed. The second respondent is directed to give notional promotion from the year 2012 to 2013 to the post of Deputy Inspector of Labour with all monetary benefits. Since the first petitioner died, his legal representatives i.e. petitioners 2 and 3 are entitled to receive all monetary benefits due to the deceased first petitioner in view of his notional promotion. It is made



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clear that the second respondent is directed to revise the deceased first petitioner's scale of pay as per the notional promotion to the post of Deputy Inspector of Labour and disburse all the monetary benefits to petitioners 2 and 3 within a period of twelve weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

21.07.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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To

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- 4.The Government Advocaote,
Madras High Court



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G.K.ILANTHIRAIYAN, J.

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