



WEB COPY



W.P.No.30680 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2023

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. No.30680 of 2015

M.N.Srinivasen

... Petitioner

Vs.

1.The State of Tamilnadu
Rep.by its Principal Secretary to Government
Industries Department
Fort St.George
Chennai – 600 009.

2.The Additional Director of Sugar
Nandanam, Chennai – 600 035.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders passed by the 2nd respondent in Na.Ka.No.12548/Pa.A1/2007 dated 04.04.2012 and the 1st respondent in Letter No.12599/MIC2/2014 – 4 dated 23.07.2015 and quash the same, direct the respondents to give promotion to the petitioner as “Assistant Director of Sugar (Non-Technical)” by including his name in the panel for the year 2006 – 2007 and confer all the consequential benefits.



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For Petitioner : Mr.V.Sivalingam
for M/s V.S.Associates
For Respondents : Mr.S.Arumugam, GA for R1
For R2 – No appearance

ORDER

Aggrieved against the punishment of “Censure” imposed on the petitioner as well as non-inclusion of his name, in the panel of promotion to the post of Assistant Director of Sugar (Non-Technical) for the year 2006-2007, the petitioner has filed the present Writ Petition.

2.It is averred in the Writ Petition that the petitioner has joined in the services of the 2nd respondent office as Junior Assistant on 27.08.1981, promoted as Assistant in the year 1988 and further promoted as Superintendent on 13.07.2001. On 27.04.2006, he was posted in the Cane Section. While so, by an order dated 18.08.2006, the petitioner was placed under suspension, on the ground that he behaved arrogantly with Junior Assistant and Additional Director of the 2nd respondent office and thereafter, based on the enquiry report, punishment of reversion from the



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post of Superintendent to Assistant, for three years was passed on 31.05.2007. Aggrieved against the same, the petitioner has preferred a Writ Petition in W.P.No.20072 of 2011 and this Court by an order dated 19.12.2011, set aside the impugned order and remanded the matter back to the 2nd respondent for appointing fresh Enquiry Officer and to proceed further.

3. Upon the directions of this Court, the 2nd respondent appointed new Enquiry Officer and who in turn conducted enquiry and submitted his report as the charges levelled against the petitioner are not proved. Subsequently, the 2nd respondent issued 2nd show cause notice on 17.02.2012 calling for explanation on the enquiry officer's report. Since the charges are not proved as per the version of the Enquiry Officer's report, the petitioner herein has not submitted his explanation. However, he was imposed with the minor punishment of Censure on 04.04.2012. Thereafter, the petitioner attained sufficient seniority and merit for consideration of his claim for promotion to the post of Assistant Director of Sugar (Non-Technical) for the year 2006-2007. The crucial date for preparation of the panel was 01.09.2007. When



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the panel was published, the claim of the petitioner was overlooked, on the ground that as on the crucial date, disciplinary proceeding is pending.

Hence, the petitioner seeks Certiorarified Mandamus directing the respondents to quash the punishment of “Censure” imposed on him and also grant promotion to the post of Assistant Director of Sugar (Non-Technical).

4.The learned counsel for the petitioner contended that the new Enquiry Officer conducted enquiry and filed his final report stating that the charges levelled as against the petitioner are not proved and it could be seen from the impugned order dated 04.04.2012 that the 2nd respondent has not given any reason for his decision to disagree with the findings of the Enquiry Officer, in respect of the charges levelled against the petitioner. Even the petitioner was not allowed to have a chance of personal hearing. Mere statement that the 2nd respondent disagree with the findings of the Enquiry Officer is not sufficient, as the 2nd respondent is duty bound to record reasons in writing and express his views for disagreeing the report of the Enquiry Officer. Even, with regard to the punishment of Censure, before



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the new Enquiry Officer, witnesses examined on the side of the 2nd respondent were turned hostile. Hence the punishment of Censure itself liable to be quashed and the consequential benefit of promotion to the post of Assistant Director of Sugar (Non-Technical) has to be granted to the petitioner.

5.The 2nd respondent has filed counter affidavit, wherein the 2nd respondent denied the averments made in the affidavit filed by the petitioner. Further, it is averred that there is no need for any malafide intention on the part of the respondents to victimize the petitioner, since there is no personal enmity against the petitioner and the respondents took action against the petitioner based on material records only in the capacity of administrative head of the office, to safeguard the interest of discipline in the office. With regard to promotion in respect of the petitioner is concerned, the Government have issued consolidated instruction for preparation of panel for appointment by promotion vide Government Lr.No.18824/S/2005-2 P & AR Department dated 07.10.2005, which reads as under: -



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“Whenever the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules against Government employees are merely stayed by a court/Tribunal, their cases shall be deferred till the proceedings are concluded unless a contrary order is passed by the Court/Tribunal quashes the charge memo then the name of the Government employee concerned should be considered for inclusion in the panel for appointment to higher post by promotion/recruitment by transfer, if he is otherwise qualified”.

6. Therefore, in view of the above order, the petitioner's name was not considered for the panel period 2006-2007 and 2012 – 2013 and also he was imposed with the punishment of Censure on 04.04.2012. Subsequently, he was retired from service on 30.09.2012. Further, it is stated that as per the letter dated 27.08.2003 in Rc.No.6765/S/2006-6 P & AR Department (S), any punishment other than Censure imposed on an officer within a period of five years, prior to the crucial date and a punishment of Censure within a period of one year prior to the crucial date (or Censure imposed after the crucial date but before actual promotion) should be held against the officer,



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in such a case, the officers name should be passed over. Therefore, the request of the petitioner to give promotion as Assistant Director of Sugar (Non-Technical) not feasible to consider and include his name in the panel for the year 2006-2007.

7.Heard the rival submissions of the parties and perused the materials available on record.

8.In the case on hand, at the time of drawal of panel for the year 2006 – 2007, petitioner was imposed with the punishment of reduction to lower rank for a period of three years. Thereafter, based upon the direction of this Court in W.P.No.20072 of 2007 dated 19.12.2011, fresh enquiry was conducted, and the new Enquiry Officer submitted his enquiry report as the charges levelled against the petitioner were not proved. However, the 2nd respondent imposed the punishment of Censure, vide order dated 04.04.2012. Whenever the Disciplinary Authority disagrees with the Enquiry Authority on any article of charge, then before it records its own



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finding on such charge, it must record its tentative reasons for such disagreement and give it to the delinquent officer for an opportunity, to represent, before it records its findings.

9.In an unreported Judgment referred by the learned counsel for the petitioner in W.A.No.1699 of 2010 dated 23.12.2011, it has been held by this Court that the statutory authority has taken its final decision without giving an opportunity of hearing to the appellant at the state at which it proposed to differ with the findings given by the Inquiry Officer, this violation goes to the root of the matter and as such, is sufficient to vitiate the findings recorded by the Disciplinary Authority contrary to the findings recorded by the Enquiry Officer.

10.Under these circumstances, this Court is of the view that the impugned order dated 04.04.2012 in Na.Ka.No.12548 / Pa.A1/2007 passed by the 2nd respondent is hereby quashed. Since the very punishment of Censure itself quashed, the petitioner is entitled to get his promotion to the



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post of Assistant Director of Sugar (Non-Technical) for the panel year 2006-2007 and other consequential monetary benefits. Accordingly, the order passed by the 1st respondent in Letter No.12599/MIC2/2014-4 dated 23.07.2015 is also quashed and the 1st respondent is directed to grant promotion to the petitioner to the post of Assistant Director of Sugar (Non-Technical), by including his name in the panel for the year 2006 – 2007 and confer all the consequential benefits. The said exercise shall be completed within a period of six months from the date of receipt of a copy of the order.

11.In the result, the Writ Petition stands allowed. No costs.

21.02.2023

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No
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To

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J.NISHA BANU, J.,

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