



W.P.No.3958 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2023

Pronounced on : 19.12.2023

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.3958 of 2012

R.Selvaraj

... Petitioner

Vs.

1. The Secretary to Government,
Labour & Employment Department,
Fort St. George,
Chennai – 9.
2. The Director of Employment & Training,
Guindy, Chennai – 600 032.
3. The Joint Director of Employment,
Guindy, Chennai – 600 032.

... 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 in pursuant to the impugned orders passed by the third respondent in Proceedings No.O.Na.1/8008/2009 dated 29.08.2011 and the Appellate Order passed by the second respondent in Proceedings No.O.Na.1/34227/2011 dated 07.11.2011 quash these orders and consequently direct the respondents to grant all increments and promotion to the post of Junior Employment Officer by including the name of the petitioner in the approved panel dated 03.09.2009 in accordance with his seniority and all other consequential monetary and service benefits.



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For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

This Writ Petition has been filed questioning the orders passed by the third respondent in Proceedings No.O.Na.1/8008/2009 dated 29.08.2011, as confirmed by the second respondent in Proceedings No.O.Na.1/34227/ 2011 dated 07.11.2011 and quash the same. The petitioner has also sought for a consequential direction, directing the respondents to grant all the increments and promotion to the post of Junior Employment Officer by including his name in the approved panel dated 03.09.2009 in terms of his seniority with all consequential, monetary and service benefits.

2. The brief facts that are relevant for disposal of the Writ Petition are as under:

2.1. While the petitioner was working as Assistant in the office of the District Employment Exchange, Krishnagiri, a raid was conducted by the Vigilance and Anti-Corruption Department on his house on 14.02.2009 and



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thereafter, basing upon the recommendation made by the Regional Deputy Director, Coimbatore, the petitioner was transferred outside of Coimbatore region through Proceedings No.Nir4/8008/09 dated 05.03.2009. As the petitioner failed to join at the new place of posting and applied for leave from time to time, disciplinary proceedings were initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, resulting in imposing a punishment of stoppage of one increment for three months, without cumulative effect by an order dated 29.08.2011. Aggrieved by the same, the petitioner filed an appeal before the second respondent and the second respondent by an order dated 07.11.2011 in Proceedings No.O.Na1/34227/2011, modified the punishment to that of censure. Aggrieved by the said punishment of censure, the petitioner filed further appeal before the first respondent. While the said further appeal was pending, the petitioner approached this Court by filing the Writ Petition seeking the relief as noted herein above.

3. The respondents have filed counter affidavit and there is no dispute about the facts as noted herein above. It is further stated in the counter



affidavit that on the further appeal filed by the petitioner before the first respondent, the same was allowed by passing an order in G.O (Rt) No.241, Labour and Employment (N2) Department dated 12.07.2013 and the punishment of censure awarded to the petitioner was cancelled.

4. In the light of the above, it is contended by the learned counsel for the petitioner that the petitioner was deprived of consideration of his case for promotion in the year 2009 on the ground of pendency of the disciplinary proceedings, which ultimately ended in dropping of the charges against the petitioner and therefore, he is entitled for consideration of his case on par with his Juniors, as he was illegally denied promotion by initiating the disciplinary proceedings.

5. However, it is contended by the learned counsel appearing for the respondents that pursuant to the raid conducted by the Vigilance and Anti-Corruption Department, a case was registered against the petitioner in Special C.C.No.6 of 2012 and a charge-sheet was filed in the said case on 02.08.2012



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and the same is pending before the Court of the Chief Judicial Magistrate and the Special Judge, Dharmapuri. Thus, it is contended that the petitioner is not entitled for consideration of his case for promotion as the said Special C.C.No.6 of 2012 is still pending against the petitioner.

6. As against the same, the learned counsel for the petitioner contended that in terms of paragraph 5 of the Schedule 11 of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016, mere filing of cases in Courts by the appropriate Investigating Authority against a member on service shall not be a bar for inclusion of his name in the approved list unless a charge-sheet is filed as on the crucial date.

7. The relief sought in the Writ Petition against the orders of punishment passed by the respondents 2 and 3 has become infructuous by virtue of the orders issued by the first respondent in G.O (Rt) No.241, Labour and Employment (N2) Department dated 12.07.2013. The only relief that remains for consideration is as to whether the petitioner is entitled for consideration for his case for promotion as on the date of promotion of his



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Juniors in the year 2009 or not ?

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8. The said paragraph 5 reads as under:

“(5) Mere filing of cases in Courts by the appropriate Investigating Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list.”

The language of paragraph 5 of the Schedule 11 of the Tamil Nadu Government Services (Conditions of Services) Act, 2016 read with Section 7 of the Act, 2016 is very clear. For not including the name of the petitioner in the approved list for promotion to the post of Deputy Employment Officer, there should have been a charge-sheet filed as on the date fixed for preparation of panel. Admittedly, the charge-sheet in the Special C.C.No.6 of 2012 in question was filed only on 02.08.2012 and whereas, the case of the petitioner had fallen for consideration as early as in the year 2009. But the



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case of the petitioner was not considered in the year 2009, because of the pendency of the disciplinary proceedings, which ultimately ended in favour of the petitioner at a later point of time. As the pendency of Special C.C.No.6 of 2012 cannot be a ground for refusing to consider the case of the petitioner, as in the year 2009 and the reason for not considering the case of the petitioner in the year 2009 is no more existing, the right of the petitioner for consideration of his case for promotion on par with his Juniors in the year 2009 cannot be denied.

9. In the light of the above discussion, in the considered view of this Court, the right of the petitioner for consideration of his case for promotion on par with his Juniors cannot be denied in the facts and circumstances of the case on hand. In such circumstances, as the petitioner has already retired from service, the Writ Petition is allowed directing the respondents to consider the case of the petitioner for notional promotion on par with his Juniors as on date of promotion granted in favour of his Juniors, without reference to the pendency of the Special C.C.No.6 of 2012 on the file of the the Chief Judicial



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Magistrate and the Special Judge, Dharmapuri and pass appropriate orders thereon, as expeditiously as possible, at any rate within a period of two months from the date of receipt of a copy of this order in accordance with law. There shall be no order as to costs. Miscellaneous Petitions, if any, shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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To

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MUMMINENI SUDHEER KUMAR, J.

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