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W.P. No.20103 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Writ Petition No.20103 of 2014

K.Vijhay Saai
Superintendent
O/o the Assistant Commissioner
Civil Supplies and Consumer Protection Department
Mylapore Zone
4 Venkatesa Agraharam Street
Mylapore, Chennai – 600 004.

... Petitioner

VS.

1.The Commissioner
Civil Supplies and Consumer Protection Department
Chepauk
Chennai – 5.

2.The Joint Commissioner
Civil Supplies and Consumer Protection Department
Chepauk
Chennai – 5.

3.The Assistant Commissioner
Civil Supplies and Consumer Protection Department
Thousandlights Zone
Vidyodaya School Main Road
T.Nagar, Chennai – 17.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, to pass a Writ of Certiorarified Mandamus, call for the records relating to the proceedings in Roc.No.A1/35852/13 dated 10.07.2014 passed by the 2nd respondent, quash the same, in so far as this petitioner is concerned and consequently direct the 2nd respondent to promote the petitioner to the post of Administrative Officer for the year 2014-2015 in the appropriate place, viz., above C.Muthukrishnan.

For petitioner : Mr.T.N.Bhuvaneswaran

For respondents : Mr.U.M.Ravichandran
Special Government Pleader
for RR1 and 2
R3 – No appearance

ORDER

Challenging the proceedings in Roc.No.A1/35852/13 dated 10.07.2014 passed by the 2nd respondent, the present Writ Petition has been filed, whereby the petitioner's name was not considered for promotion to the post of Administrative Officer, for the year 2014-2015, on the ground that he was awarded with the punishment of Censure.



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2. Petitioner herein was appointed as Junior Assistant on 10.04.1985 through Tamil Nadu Public Service Commission and reached upto the post of Superintendent, by way of promotion. When the fact stood thus, disciplinary proceedings under Rule 17 (a) of the T.N.C.S (D&A) Rules was initiated against the petitioner, by the 1st respondent, in terms of charge memo dated 03.04.2012 and the said charge memo was issued alleging, minor lapse committed by him in misplacing the service register, when he was working as A1 Assistant. After completing the disciplinary proceedings, the disciplinary authority, 3rd respondent herein passed an order vide proceedings No.Roc.A1/41/2011 dated 31.10.2013, awarding punishment of Censure. Aggrieved by the said punishment, petitioner preferred an appeal before the 2nd respondent and the same is pending for disposal.

3. In the meanwhile, the 2nd respondent drew a panel of Administrative Officers eligible for promotion for the year 2014 – 2015 in proceedings No.Roc.A1/35852/13 dated 10.07.2014, without including the name of the petitioner and promotion was given to his immediate junior – C.Muthukrishnan in S.No.11. Hence, the present Writ Petition.



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4.The learned counsel for the petitioner would submit that as per the decision of the Full Bench in the case of ***the Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani*** reported in ***2011 (3) CTC 129***, the punishment of Censure is not a bar for inclusion of Government employee in the panel for promotion and the relevant paragraphs are extracted hereunder:-

“Therefore, the contention of Mr.G.Rajagopal, learned Senior Counsel appearing in W.A.(MD) No.587 of 2010 and Mr.Ajmalkhan, learned Counsel for the Petitioner in W.P.(MD) No.3602 of 2011 that under Rule 36(b)(ii) of the Tamil Nadu State Subordinate Service Rules elicited above, promotion can be withheld only if a penalty has been passed by withholding the promotion can be withheld only if a penalty has been passed by withholding the promotion and in all other cases irrespective of pendency of penalty, promotion is a matter of right based on seniority is totally unacceptable. In fact, Mr.G.Rajagopal, learned Senior Counsel appearing for the Appellant in W.A.(MD) No.587 of 2010 would fairly submit that his contention is not that in all cases where punishment is being undergone, promotion should be given as a matter of right and that only in cases where promotion is withheld as a penalty as per Statutory Rules, viz., Tamil Nadu



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State and Subordinate Service Rules, the promotion should be withheld. [para 15]

The above said Rule 36(b)(ii) cannot be read in isolation in order to come to a conclusion that irrespective of merit and ability, even in cases of currency of punishment imposed after following the procedures, a person should be given promotion blindly by seniority as it is antithesis to the service law and it is also opposed to the decision of the Supreme Court in State of Tamilnadu V. K.S.Murugesan (cited supra). If such contention is accepted, the same will go against the established legal principle that promotion is not a matter of right. (para 16) 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 promotion to the next post, if otherwise eligible.”



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5.The learned Special Government Pleader appearing for the respondents 1 and 2 has also fairly submitted that the disqualification put against the petitioner has been removed by the Full Bench decision of this Court, cited supra.

6.Recording the above submissions made by the learned counsel on either side and in view of the ratio laid down by this Court, refusal of the respondents to include the name of the petitioner in the promotion list for the year 2014-2015, to the post of Administrative Officer is untenable. Accordingly, the impugned order is set aside and the Writ Petition is allowed, with a direction to the respondents to include the name of the petitioner in the promotion list, for the year 2014 – 2015 and promote the petitioner to the post of Administrative Officer, in the appropriate place, viz., above C.Muthukrishnan and also grant all other consequential benefits to him. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

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Note:Registry is directed to issue order copy on 03.06.2023.



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Index :Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
Neutral citation:Yes/No

To

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J.NISHA BANU, J.

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ORDER MADE IN
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