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WP.No.22395/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.22395/2019

P.Nagarajan

... Petitioner

Versus

1.The State of Tamil Nadu
rep.by its Additional Chief Secretary
to Government, Home [Transport II]
Department, Secretariat
Chennai 600 009.

2.The Transport Commissioner
Chepauk, Chennai 600 005.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st respondent to temporarily promote the petitioner to the post of Regional Transport Officer as per seniority under Section 47[1] of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016, entitling all service and monetary benefits.

For Petitioner : Mr.A.Ganesan

For Respondents : Mr.S.Ravikumar, Spl.GP

ORDER



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- (1) The writ petition has been filed in the nature of a mandamus seeking a direction to the 1st respondent, Additional Chief Secretary to Government, Home [Transport II] Department, at Chennai, to temporarily promote the petitioner to the post of Regional Transport Officer as per seniority and thereby entitling the petitioner for all service and monetary benefits.
- (2) The petitioner was originally appointed as Motor Vehicles Inspector Grade-II in the Transport Department on 07.12.2000 by selection made by the Tamil Nadu Public Service Commission. He was then promoted s Motor Vehicles Inspector Grade I on 09.06.2007. On the date of filing of the writ petition, he was working as Motor Vehicles Inspector Grade I at Regional Transport Office at Tambaram.
- (3) In the year 2011, when he was working as Motor Vehicles Inspector Grade I at Regional Transport Office, Kancheepuram, there was an inspection by the Vigilance and Anti Corruption Department, who conducted a surprise check. It was found that an unaccounted amount of Rs.75,565/- was available in the premises of the Regional Transport Office at Kancheepuram. The petitioner was then issued



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with a Charge Memo on 20.01.2014 along with others. The Disciplinary Proceedings moved in a very slow phase and finally, on 10.04.2017, a punishment was imposed of stoppage of increment for one year without cumulative effect.

- (4) The learned counsel for the petitioner contended that this order of punishment would come into effect from 01.10.2017 and would be in force till 30.09.2018. The punishment is not questioned before this Court. The promotion panel to the next post of Regional Transport Officer [Category-II] was prepared in the year 2017-18. This particular panel was prepared on 03.12.2018. It is contended by the learned counsel for the petitioner that on 03.12.2018, the punishment had been completed by 30.09.2018. It is therefore contended that the petitioner should be included in the panel for consideration of promotion.
- (5) It is also further contended by the learned counsel for the petitioner that in this particular panel, the name of the petitioner was found. But it was also remarked that there was a currency of punishment. This list was actually approved only on 08.03.2019. It is therefore, further



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contended that on the date of approval, the period of punishment had been completed and therefore, the petitioner should be included in the panel for the year 2017-18.

- (6) In this connection, the learned counsel places reliance on Schedule XI – Preparation of Panels under the Tamil Nadu Government Servants [Conditions of Service] Act, 2016. He specifically places reliance on Clause 13 which is as follows:-

"13.If a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion of appointment to a post. If the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion."

- (7) It is the contention of the learned counsel for the petitioner that the delinquency was committed five years prior to the date on which the panel for promotion was prepared. It is therefore contended that since, the petitioner was not undergoing such punishment on the crucial date or on the date of consideration for actual promotion, then his name should be included in the panel. The learned counsel further



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contended that the promotion panel was approved only on 08.03.2019, on which date, the punishment had already been suffered by the petitioner and it had lapsed. It is therefore, contended that the petitioner should be placed in the promotion panel for the year 2017-18.

- (8) A counter affidavit has been filed and the learned Special Government Pleader had pointed out the counter affidavit wherein it had been stated that the stoppage of increment was given effect from 01.10.2017 and it concluded on 30.09.2018. It was therefore, contended that the petitioner had obtained service qualification for consideration of promotion only in the panel 2018-19. It is further contended that the crucial date of consideration for the panel 2017-18 was 01.07.2017 and on that particular date, the petitioner was suffering from the punishment which was in force. It is therefore, contended by the learned Special Government Pleader that the petitioner could not have been accommodated in the panel 2017-18. But, however, after the expiry of the period of punishment, the petitioner had been considered for promotion in the panel 2018-19. It



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is therefore, contended that the writ petition should be dismissed.

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(9) I have carefully considered the arguments advanced.

(10) The facts are not in dispute. When the petitioner was working as Motor Vehicles Inspector Grade I at Regional Transport Office at Kancheepuram, there was a surprise inspection by the Vigilance and Anti Corruption Department officials on 21.10.2011. At that particular point of time, they found Rs.75,565/- unaccounted cash in the Regional Transport Office at Kancheepuram. Along with the petitioner, several others were issued with Charge Memos. This was in the year 2011. The enquiry proceeded in a slow manner and finally, on 10.04.2017, after five years, a punishment was imposed against the petitioner of stoppage of increment for one year without cumulative effect and this would come into force from the next date on which the increment is payable to the petitioner herein namely, 01.10.2017. The increment would not be granted from 01.10.2017 till 30.09.2018. Since the increment was cut without cumulative effect subsequently it would be granted from 01.10.2018. The crucial date for preparation of panel for promotion to Regional Transport Officers



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from Motor Vehicles Inspectors Grade I was 01.07.2017. On that particular date, the punishment had been imposed and it only awaited putting the punishment into effect which was from 01.10.2017.

- (11) Learned counsel for the petitioner however contended that though the crucial date for preparation of the panel was 01.07.2017, the panel was actually prepared much later on 03.12.2018. The preparation of the panel on 03.12.2018 would not mean that the punishment which was in force between 2017-18 would therefore, be wiped away. Though the panel was prepared on 03.12.2018, it was for those who were eligible between 2017 and 2018. The petitioner during that particular period, between 2017 and 2018 was undergoing punishment. Therefore, he could not be included in the panel in the year 2017-18. It is further contended by the learned counsel for the petitioner that this panel was finally approved only on 08.03.2019. In this regard, reliance is placed on Clause 13 which had been extracted above, according to which if the punishment is for irregularities or delinquencies which had been committed five years prior to the crucial date, then, if the delinquent is not undergoing punishment on



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the crucial date or on the date of consideration for actual promotion, then he should be included in the panel. There are two separate conditions, one, he must not be undergoing punishment on the crucial date. If he is not undergoing punishment on the crucial date, then the 2nd condition will come into place, namely, the date of consideration for actual promotion. In the instant case, the crucial date is 01.07.2017. On that particular date, the punishment had been imposed and awaiting putting into effect which was put into effect from 01.10.2017 onwards. Therefore, on the crucial date for consideration, the petitioner had suffered an order of punishment and it was only awaiting putting the punishment of stoppage of increment into effect. It was in force. Therefore, there cannot be consideration of the second portion, namely, the date of consideration for actual promotion. Even if that particular date of consideration is to be taken, it would only be the date on which the promotion opened up. That would arise in the cases of a single promote where anybody had retired or anyone had died and then, a single promotive post was available and junior is promoted to that particular post. The learned



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counsel for the petitioner interprets the word 'consideration' as 'approval'. But the approval is only an administrative sanction granted to a panel which had already been drafted. That particular panel was drawn keeping in mind, the crucial date of 01.07.2017. On that particular date, the petitioner was suffering from punishment. It had already been imposed on 10.04.2017 and was in force till 30.09.2018. Therefore, the petitioner's claim for seeking to be included in the panel 2017-18 cannot be granted. However, he has been promoted in 2018-19. Let him be satisfied with that. The relief sought for, cannot be granted.

(12) The writ petition stands **dismissed**. No costs.

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AP

Internet : Yes



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To

1.The Additional Chief Secretary
to Government,
State of Tamil Nadu
Home [Transport II] Department,
Secretariat, Chennai 600 009.

2.The Transport Commissioner
Chepauk, Chennai 600 005.



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C.V.KARTHIKEYAN, J.,

AP

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