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W.P.No.25445 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.25445 of 2021
and W.M.P.Nos.26882 of 2021

R.Rajalakshmi

...

Petitioner

/vs/

1. State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai – 600 009.

2. The Director of Medical and Rural Services,
DMS Campus,
Chennai – 600 006.

...

Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the second respondent in Ref.No.18889/E2/3/2021 dated 18.08.2021 and quash the same and consequently direct the respondents to grant promotion of the petitioner to



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the post of Junior Administrative Office (J.A.O.) on par with her junior with effect from 05.05.2017 on inclusion of the petitioner in 2016-2017 panel consequent to re-fixation of panel seniority order vide proceedings in Ref.No.18889/E2/3/2020 dated 08.06.2020, without reference to the disciplinary proceedings / charge memo in Ref.No.34143/SCII/2/2020 dated 20.08.2020 issued by the Director of Medical Education, within a time frame.

For Petitioner	...	Mr.G.Sankaran Senior Counsel for Mr.S.Nedunchezhiyan
For Respondents	...	Mr.S.Silambanan Additional Advocate General assisted by Mr.T.Arunkumar Additional Government Pleader

ORDER

The petitioner who had suffered the punishment of stoppage of increments with 7 months cumulative effect has filed this Writ Petition in view of his grievance that his name was not included in the promotion panel during the relevant period in view of the disciplinary action pending against him.

2. Mr.G.Sankaran, the learned Senior Counsel for the petitioner



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submitted that if the disciplinary proceedings against the individual has been completed at the time when the panel was prepared for the relevant year, the petitioner would have been included in the panel; when the petitioner is considered for future promotion, that should relate back to the year during which he was originally entitled for inclusion in the promotion panel for the post of Junior Administrative Officer; the petitioner's name was not included in the promotion panel in view of the bar under Clause (8) of Para II of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which reads as under:

“(8) Pendency of charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list.”

2.1. Had the petitioner come out of the disciplinary proceedings without any punishment, he can have a straight away case in view of Para II (1) of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Since the petitioner was given with a cut in increments for seven months, his promotion needs to be considered under Clause (11) & (19) of Para II of Schedule XI of the Tamil Nadu



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Government Servants (Conditions of Service) Act, 2016 which reads as

under:

“(11) Any punishment (other than ‘Censure’) imposed on a member of service within a period of five years prior to the crucial date and a punishment of ‘Censure’ imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including ‘Censure’ imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.

...

(19) The case of a member of service whose promotion or appointment has been deferred on account of any pending charges, shall be reopened after disposal of the charges and appropriate orders shall be passed on merits, either giving him promotion or appointment if he is exonerated or acquitted of the charges and if there is no other adverse factor to be reckoned or denying him promotion or appointment or giving promotion or appointment from a later date, depending upon the nature of punishment and other factors to be reckoned in other cases. In all such cases, the appointing authority shall take suo moto action within fifteen days from the date of issue of final orders in the departmental disciplinary case or criminal case.”



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2.2. Even though the petitioner was not qualified to be included in the promotion panel of the year for which the promotion fell due, he is entitled to be included in the immediate next promotion panel. The petitioner suffered punishment in the year 2022 and 7 months punishment period was over from the date of issuance of the order dated 29.09.2022.

3. Mr.S.Silambanan, the learned Additional Advocate General submitted that though the petitioner was eligible to be included in the promotion panel for the year 2016-2017, at the time of consideration for inclusion of his name, disciplinary proceedings has been initiated under Rule 17 (b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) and charge memo has been issued to the petitioner; as per Clause (8) of Para II in part A under Schedule XI of the Tamil Nadu Government Servans (Conditions of Services) Act, 2016 (hereinafter referred as “the Act”), the name of the petitioner was deferred from including in the promotion panel for Junior Administrative Officer as on 25.08.2020; only in view of the pendency of disciplinary proceedings under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules at the time of promotion to the post of Junior Administrative Officer, the petitioner was deferred from getting



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included in the panel; hence the petitioner is not entitled to the relief as prayed.

4. The fact that the petitioner's entitlement for promotion to the post of Junior Administrative Officer based on the panel year 2016-2017 on par with her juniors would not have been affected, if there was no disciplinary proceedings pending against her. The fact that the petitioner's name would have been included in the year 2016-2017 panel in the absence of any disciplinary proceedings, is not denied. The promotion panel 2016-2017 was prepared in the year 2020 i.e. on 08.06.2020. Unfortunately on the said date some disciplinary proceedings were pending against the petitioner.

5. The inclusion of delinquent's name in any panel list will only get postponed to a future date in case any disciplinary proceedings are pending. In other words, subsequent to the completion of disciplinary proceedings, if the authority concerned decides to give promotion to the individual, he can be placed only in the promotion panel of the year 2016-2017 and not somewhere else.



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6. In Para II Clause (19) of Schedule XI of the Act it is made clear that the promotions deferred on account of any pending charges. At the conclusion of the proceedings the file has to be taken up for dealing the subject which was deferred already and appropriate orders should be passed on merits, either by giving promotion or by denying it for any reasons recorded. In the case on hand, the appropriate authority had chosen to give promotion to the petitioner. In such case, his action can only be viewed as reopening a deferred matter and not opening a matter afresh. Since the inclusion of the petitioner's name has been deferred in respect of 2016-2017 panel, while reopening the file, automatically the inclusion of the name of the petitioner will fall under 2016-2017 panel, for which the subject was deferred as against the petitioner.

7. There is difference between resuming an exercise which was stopped for a particular reason and beginning an exercise afresh altogether. The exercise mentioned under Clause (19) of Para II of Schedule XI of the Act only means the resumption of a stopped action. If any other interpretation is given by the respondent authorities and if the petitioner is



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included in the promotion panel of the subsequent year, that will not validate the words “deferred” and “reopened” used in Clause (19) of Para II of Schedule XI of the Act. So the exercise which was kept pending due to the pending disciplinary proceedings have to be resumed after the disciplinary proceedings got disposed. The respondent authorities shall not construe the mandate of Clause (19) of Para II of Schedule XI of the Act as resorting to a new exercise.

8. In the instant case, once the appropriate authority decides to give promotion which was due to the petitioner, by considering the result of the disciplinary proceedings and other merits, he has to do the exercise only within the scope of Clause (19) of Para II of Schedule XI of the Act and not otherwise. So the inclusion of the petitioner’s name in any other future panel for promotion other than 2016-2017 for the post of JAO can be done, only if the petitioner has been given with the punishment of stoppage of promotion itself. Obviously such punishments were not imposed on the petitioner at the conclusion of the disciplinary proceedings. In such case, it shall not presumed that the petitioner has to be considered to be included in



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that panel relating to a later year, as though she was slapped with the punishment mentioned above.

9. In this regard it is relevant to cite the judgment of this Court in G.Selvamoorthy Vs. The Chief Engineer (Personnel), TANGEDCO and other in W.P.No.6294/2021 dated 17.10.2023 wherein it is held as under:

“8. This five years period is usually called as the 'check period'. It is submitted that the petitioner's punishment fell within five years from the date of the promotion panel i.e., 26.02.2021 and hence, he was not included in the panel. The punishment for stoppage of one increment has been imposed on the petitioner on 21.10.2019, in which case, one year period would have got expired on 21.10.2020. The learned Standing Counsel for the respondents submitted that one year period will be counted only after the order is received and it is enforced. The order does not state that the period of punishment should be started to be implemented from any time later than 21.10.2019, though there may be some practical inconvenience in effecting the stoppage of increment immediately from 21.10.2019.

9. However, as on 26.02.2021, there is no currency of punishment. Now let the focus be on five years 'check period'. The eligibility of the candidate for promotion is considered based on his merits. One among the several parameters for promotion is 'no previous punishment for any misconduct'. If the punishment is imposed on the employee within a period of five years, before the date of consideration, normally, it will be read against the employee. However, it cannot be strictly interpreted in such a way that the promotion should not at all be granted for all those persons who had



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been imposed with punishment even though the punishment is not current.

10. According to the Tamil Nadu Electricity Board Disciplinary and Appeal Regulations, one of the punishments for the erring employee is withholding the increment or promotion. When an increment is withheld, the petitioner cannot be denied with promotion. If promotion is stopped, then the increment also cannot be stopped. It is like punishing twice for the same lapse. It is not in dispute that the petitioner has been imposed only with the penalty of stoppage of increment and not stoppage of promotion.

11. The purpose of limiting the 'check period' for five years is with a view that no one should be deprived of his promotional prospectus for his entire span of service, if he happened to get a punishment any time during his service. So, the five years limitation is a cap on the period under consideration for promotion. That means, a person's dossiers not more than 5 years need to be dugged to appreciate his suitability for taking him to the next cadre. However, the punishment within that period also is not a strict obstacle for taking a favourable decision on his promotion. It is at the discretion and appreciation of the Appropriate Authority, who would take into consideration of all other attendant facts for weighing the merits.

12. That is the reason why, the rule is not in a language that would convey in unequivocal terms that no promotion should be given to a person for five years, if he had suffered any punishment. On the other hand, the language of the Rule only conveys that promotion for a person cannot be denied for more than five years. In my opinion, this cannot be further expanded and interpreted that a person who had suffered punishment should not be given with any promotion at all during entire 'check period', even though the punishment is just a stoppage of increment and that too, not



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current at the relevant point of time. Even if a rule about penalty or punishment is capable of giving two interpretations, the interpretation which is favourable to the employee should be given effect to. Such interpretation in service jurisprudence is possible, because it is as similar as to penal jurisprudence where also, when two views are possible, the view which is favourable to the accused is given to his benefit. The similarity is due to the imposition of penalty and its consequences on the employee, while dealing him under the Service Rules.

10. By applying the above logic, I feel the one and only punishment issued on the petitioner is stoppage of increment for seven months and not stoppage of his promotion or postponement of promotion. But the second respondent has wrongly construed the import of Clause (19) of Para II of Schedule XI of the Act and had chosen to act afresh without resuming from the point where the subject was stopped and thus created a confusion as though the petitioner is not entitled to be included in the promotion panel 2016-2017. Clause (11) & (19) of Para II of Schedule XI of the Act should be read together and it should be understood as postponement and not denial. The impugned order has been passed without understanding the mandates of Clause (19) of Para II of Schedule XI of the Act in a fair and proper manner and hence it is liable to be set aside.



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WEB COPY 11. In the result, this Writ Petition is allowed and impugned proceedings issued by the second respondent in Ref.No.18889/E2/3/2021 dated 18.08.2021 is hereby quashed and the respondents are directed to grant promotion order to the petitioner to the post of Junior Administrative Office (J.A.O.) on par with her junior with effect from 05.05.2017 by including the petitioner in 2016-2017 panel, consequent to re-fixation of panel seniority order dated 08.06.2020, without reference to the disciplinary proceedings / charge memo in Ref.No.34143/SCII/2/2020 dated 20.08.2020, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

07.12.2023

Neutral Citation : Yes
Index: Yes
Speaking order
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To:

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai – 600 009.
2. The Director of Medical and Rural Services,
DMS Campus,
Chennai – 600 006.



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R.N.MANJULA ,J.

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