



W.A.No.893 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.893 of 2017

The Inspector General of Registration
100, Santhome High Road
Chennai – 600 028.

.. Appellant

Vs

S.Anbazhagan

.. Respondent

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 23.4.2014 passed by the learned Single Judge in W.P.No.27746 of 2010.

For the Appellant

: Mr.S.Silambanan
Additional Advocate General
assisted by
Mrs.S.Anitha
Special Government Pleader
and Mr.M.Babu Barveez
Government Advocate

For the Respondent

: Mr.A.Amalraj



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JUDGMENT

(Delivered by D.KRISHNAKUMAR,J.)

This writ appeal is directed against the order dated 23.4.2014 passed by the learned Single Judge in W.P.No.27746 of 2010.

2. The respondent herein filed the aforesaid writ petition to direct the appellant herein to include his name in the panel of "Junior Assistants" fit for promotion as "Assistants" for the year 1998-1999, on a par with his juniors. The writ court relying on a Full Bench decision of this court in ***The Deputy Inspector General of Police, Thanjavur Range v. V.Rani, 2011 (3) CTC 129***, allowed the writ petition holding that, after the currency of the punishment period, the government servant is entitled to be considered for promotion to the next post without having to wait for any further time on the ground of check period. Assailing the said order, the present appeal has been filed.

3. Learned Additional Advocate General, appearing on behalf of the appellant, contended that subsequent to the decision of the Full



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Bench of this court in **V.Rani**, supra, the Government vide G.O.Ms.No.22, Personnel and Administrative Reforms (S), dated 24.2.2014, amended the General Rules for the Tamil Nadu State and Subordinate Services and by virtue of the Clause (1-HH), which was given retrospective effect from 27.8.2003, the writ petitioner/respondent herein is not entitled to be considered for promotion. However, the learned Single Judge without considering the subsequent amendments brought in by the aforesaid government order has erroneously held that the concept of 'check period' has been abolished.

4. Per contra, learned counsel appearing on behalf of the writ petitioner/respondent herein placing heavy reliance on the decision of the Full Bench of this court in **V.Rani**, supra, prayed for dismissal of the writ appeal.

5. The moot question that falls for consideration in this appeal is as to whether the non-consideration of G.O.Ms.No.22, Personnel and Administrative Reforms (S), dated 24.2.2014, which was issued much prior to the judgment passed by the learned Single Judge on 23.4.2014, will have any repercussion in the instant case.



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6. In **V.Rani**, supra, the Full Bench of this court considered the legal effect of G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, and held that administrative instructions issued in the form of government order cannot supplement the Rules and in the absence of any statutory rule, the government order imposing "Check Period" and treating "Censure" as an embargo for consideration for further promotion is not sustainable and, accordingly, quashed the said government order.

7. Pursuant thereto, the government issued G.O.Ms.No.22, Personnel and Administrative Reforms (S), dated 24.2.2014, *inter alia*, inserting Clause (1-HH) in the Rules. The said provision is reproduced hereunder:

"(1-HH) 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



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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."

[emphasis supplied]

8. When a statutory provision has been incorporated, the parties are bound by it. In the case on hand, the statutory provision, supra, has been given retrospective effect from 27.8.2003. However, G.O.Ms.No.22, Personnel and Administrative Reforms (S), dated 24.2.2014, was not placed before the learned Single Judge, who passed the impugned order on 23.4.2014, a date subsequent to the issuance of the government order. On this score alone, the order passed by the learned Single Judge deserves to be set aside.

9. At this juncture, learned Additional Advocate General, appearing on behalf of the appellant, submitted that the name of the writ petitioner/respondent herein was included in panel for the year 1998-1999 on 20.10.1998 and, subsequently, he was promoted as Sub Registrar Grade-II in the year 2014-15 and as Sub Registrar



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Grade-I in the year 2018-2019. The said fact is not disputed by learned counsel for the writ petitioner/respondent herein.

For the foregoing reasons, the writ appeal is allowed and the order dated 23.4.2014 passed by the learned Single Judge is set aside. There will be no order as to costs. Consequently, C.M.P.No.12570 of 2017 is closed.

(D.K.K., J.) (J.S.N.P., J.)
26.04.2023

Index : Yes/No
Neutral Citation : Yes/No
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