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WP.No.26588/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.26588/2017

K.Subham

... Petitioner

Versus

1.The Secretary,
Department of School Education,
Secretariat, Fort St George
Chennai 600 009.

2.The Director
Directorate of School Education
Chennai 600 006.

3.The Joint Director [Service]
Department of School Education
Chennai 600 006.

4.The Chief Educational Officer
CEO Office, Pin Code 638 101
Erode District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 3rd respondent herein to grant notional promotion to the petitioner as PG



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Assistant Language Teacher [English] from the date of completion of petitioner's minor punishment, viz., 30.06.2012 and on par with the petitioner's juniors promoted as on date of completion of date of minor punishment and all other consequential monetary benefits including pension and all other retirement benefits upon retirement.

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

ORDER

- (1) This writ petition has been filed in the nature of a mandamus seeking a direction to the 3rd respondent, Joint Director [Service], Department of School Education, at Chennai, to grant notional promotion to the petitioner as P.G.Assistant Language Teacher [English] from the date of completion of the petitioner's punishment namely, 30.06.2012, on par with the juniors who had been promoted as on the date of completion of the date of the said punishment and also grant monetary benefits.
- (2) The petitioner herein was working as B.T.Assistant Language Teacher [English] at Government Girls Higher Secondary School, Sivagiri in Erode District. By proceedings dated 11.05.2011 issued



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by the 3rd respondent, the petitioner was inflicted with the punishment of one year increment cut without cumulative effect with effect from 01.07.2011. The said punishment was in force till 30.06.2012. The petitioner claims that after 30.06.2012, namely, on and from 01.07.2012, the petitioner is eligible for grant of promotion.

- (3) The stand of the respondents is that the petitioner had suffered a subsequent punishment also of cut of six months of increment. With respect to that particular aspect, it is the contention of the learned counsel for the petitioner that the petitioner had earlier filed WP.No.14303/2018. Questioning the order of a learned Single Judge dated 23.07.2019, an appeal had been filed before a Division Bench in WA.No.3861/2019. By a judgment dated 15.11.2019, the Division Bench had finally held as follows:-

"4. We have considered the submissions raised and in order to appreciate the controversy, it would be appropriate to extract Rule 54B(1) herein under:

"Rule 54-B-1. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation or compulsory retirement while under suspension, the authority



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competent to order reinstatement shall consider and make a specific order—

*(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation or compulsory retirement, as the case may be; and
(b) whether or not the said period shall be treated as a period spent on duty.”*

5. A perusal of the Rule would indicate that it mandates the passing of an order in respect of the salary and allowances admissible or otherwise during the period of suspension. Clause (b) of the said Rules separately mandates to pass an order with regard to a declaration about the period being spent on duty or otherwise. We find that the second part, namely, as contained in Clause (b), has been complied with, but there does not appear to be a speaking or a specific order with regard to the payment of salary and allowances as envisaged under Clause (a), extracted herein above. To that extent, the judgment of the learned Single Judge deserves to be modified.

6. We, accordingly, partly allow the appeal and direct the competent authority to pass a fresh order keeping in view the observations made herein above and after taking into consideration the ratio of the judgment of the Apex Court that has been extracted by



us in the present judgment, within a period of six weeks of the date of production of certified copy of the order before the said authority.

7. The writ appeal is partly allowed with the said directions. No costs."

- (4) It is thus seen that the Division Bench had granted salary and allowances to be admissible during the period of suspension and that period to be treated as 'spent on duty'.
- (5) The only issue now is with respect to the punishment which had been imposed, which was in force from 01.07.2011 to 30.06.2012.
- (6) The petitioner claims that necessary notional promotion should be given consequent to the ratio laid down by the Full Bench in the judgment reported in **2011 [3] LW 673 [The Deputy Inspector General of Police, Thanjavur Range, Thanjavur and Another Vs. V.Ranij]**. The reference before the Full Bench was as follows:-

"Whether the currency of punishment has to be treated as a bar for promotion during the period?"

- (7) After examining the entire issue, the Full bench had answered that particular reference as follows:-



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"28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:-

[1]...

[2]...

[3]...

[4]...

[5]Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period, viz., one year in the case of censure and five years in the case of other minor punishments is illegal and impermissible under the statutory rules."

- (8) It is therefore, contended by the learned counsel for the petitioner that there cannot be an embargo on the right of a Government servant to be considered for promotion for a further period after the period of minor punishment is over in the name of check period namely one year in the case of censure and five years in the case of other minor punishments.
- (9) On the side of the respondents, the very same Rule is again reiterated namely, the amendment to the Tamil Nadu Government Servants



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[Conditions of Service] Act, 2016, wherein subsequent to the Full Bench judgment, the Government had introduced an amendment with respect to the check period and very specifically, had introduced Section 11, which is as follows:-

"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."

(10) The respondents may therefore, balance all the aforementioned aspects, namely,

A)The judgment of the Division Bench reported in **2019 SCC Online Mad 35600 [K.Subham Vs. Secretary, Department of School Education and Others]**, whereby the second punishment imposed on the petitioner had been examined by the Division Bench and orders had been passed which had been extracted above.



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B)The judgment of the Full Bench reported in **2011 [3] LW-673** and the ratio of the Full Bench which had been extracted above.

C)The effect of the amendment to the Tamil Nadu Government Servants [Conditions of Service] Act, 2016, particularly with respect to Section 11 of the said Act, and thereafter may pass necessary orders.

(11) The petitioner may give a fresh representation seeking notional promotion and on the basis of such representation whenever it is given, within a period of sixteen weeks from the receipt of such fresh representation, necessary orders may be passed by the 3rd respondent.

(12) The writ petition stands **disposed of**. No costs.

08.09.2023

AP

Internet : Yes

To

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Department of School Education,



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C.V.KARTHIKEYAN, J.,

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