



W.A(MD)No.1152 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.02.2023

CORAM

**THE HON'BLE DR JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

W.A.(MD)No.1152 of 2021
and
C.M.P(MD)No.4964 of 2021

The Managing Director,
Tamil Nadu Fisheries Development Corporation Ltd.,
No.485, MTB Building,
Anna Salai, Nanthanam,
Chennai-35.

.. Appellant/ Respondent

Vs.

M.Marypushparani

.. Respondent /Respondent

Appeal filed under Clause 15 of the Letters Patent, against the order
passed by this Court in W.P(MD)No.10500 of 2014 dated 21.12.2018.

For Appellant :Mr.Ajmal Khan, Sr.Counsel
for M/s.N.Muthu Vijayan
For Respondent : Mr.S.C.Herold Singh



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JUDGMENT

DR G.JAYACHANDRAN,J.
AND
K.K. RAMAKRISHNAN,J.

This writ appeal is preferred by the Managing Director, Tamil Nadu Fisheries Development Corporation Ltd., being aggrieved by the order of the learned Single Judge, who has held that the name of the writ petitioner cannot be withhold for 5 years, after the currency of minor punishment of stoppage of increment for one year without cumulative effect.

2.The said order of the learned Single Judge is being passed, in view of the order passed by the Full Bench of this Court in the case of ***The Deputy Inspector General of Police, Thanjavur Range, Thanjavur and another-vs-V.Rani***, reported in ***2011(3) CTC 129***, holding that the embargo put on the right of the Government servant for getting promotion even after expiry of the punishment period in the name of 'check period' is impermissible. The order of the learned Single Judge is challenged on the ground that after the pronouncement of the Full Bench judgment, the State thought it fit and proper to amend the service Rules in exercise of the power under Article 309 of the Constitution. Accordingly, G.O.Ms.No.22,



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Personnel and Administrative Reforms (S), 24th February 2014, with retrospective effect from 18.10.1993, wherein rule has reiterated the 'check period' of 5 years after the expiry of currency of punishment is an embargo for considering the name of the Government Servant to be included in the promotion panel. Therefore, the Department has filed Writ Appeal to set aside the order passed by the learned Single Judge, dated 21.12.2018.

3.It is also submitted that apart from the judgment of the Full Bench rendered in Rani case (cited supra), the learned Single Judge has also taken note of the order passed by the Division Bench of this Court in W.A(MD)No.983 of 2015, wherein, G.O.Ms.No.22, P & AR Dept., dated 24.02.2014, was considered and quashed by order dated 14.09.2016, without taking note of the fact that the amendment mentioned in G.O.Ms.No.22, dated 24.02.2014 was of exercise of the power under Article 309 of Constitution and proper amendment been brought into the general Rule for Tamil Nadu State and Subordinate Service, where this was brought to the notice of the Division Bench, the order dated 14.09.2016 was recalled by the subsequent order dated 07.11.2016. Thus, as on date the amendment brought to the service rules holds good.



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4. In the light of the above fact, as vehemently submitted by the learned Senior Counsel appearing for the appellant, this Court has no doubt that the order of the learned Single Judge is based on the order recalled, cannot sustain and hence, it has to be set aside. It is also to be noted that the check period of 5 years, in case of punishment other than censure, is the law which had the field as on date. As far as the facts of the case in hand, the occurrence took place in the year 2006, the departmental proceedings has been initiated and culminated in the year 2009, the punishment of stoppage of increment for one year without cumulative effect came into force on 01.04.2010, no doubt under the general rule of Subordinate Service Rule, the check period of 5 years can be enforced only if the occurrence has taken place within 5 years of crucial date.

5. In this case, the crucial date is 01.04.2010, whereas, the occurrence is of the year 2006, in any event as on date, the respondent Mariyapushparani has attained the age of superannuation and it is also brought to the notice of this Court that while in service two punishment imposed on her one in the year 2012 and another in the year 2016.



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Therefore, in the given factual scenario, it is suffice to point out that the error made in the order of the learned single Judge, which has been passed without taking note of the order recalled by the Division Bench in W.P(MD)No.983 of 2015 and on the premise that G.O.Ms.No.22, P & AR Dept., dated 24.02.2014 is quashed, while the fact is contrary to that. Hence, the writ appeal is allowed. The order of the learned single Judge is quashed.

6.The learned counsel appearing for the respondent states that if the respondent is otherwise eligible for consideration and her name not been included, she may be considered for promotion to the post of Superintendent, notionally. This Court is not inclined to express any view on his request, however, it is open to her to make any representation which deem fit for consideration by the appellant. No costs. Consequently, connected C.M.P is also closed.

(G.J.,J.) (K.K.R.K.,J.)
21.02.2023

NCC:Yes/No
Index:Yes/No
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