



W.P.(MD)No.13415 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.13415 of 2016

and

W.M.P(MD)Nos. 10038 to 10040 of 2016

V.Esakkiammal

... Petitioner

Vs.

1.The Director,
O/o. The Director of the Public Health and
Preventive Medicine,
Chennai -600 006.

2. The Deputy Director of Health Services,
O/o. The Deputy Director of Health Services,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent passed in the proceeding in R.No. 8197/MP1/S3/2016, dated 02.07.2016 and quash the same and directing the 1st respondent herein to include the petitioner's name in the Annexure-I of the impugned order with petitioners' batch mates and grant him all consequential benefits.



W.P.(MD)No.13415 of 2016

For Petitioner : Mr.B.Vijaykarthikeyan

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader

ORDER

This writ petition is filed challenging the impugned order, dated 02.07.2016 with consequential relief to include the petitioner's name in the impugned panel list along with the petitioner's batch mates.

2. The petitioner's name was not included in the said panel list, because the petitioner was imposed with punishment of stoppage of increment for one year without cumulative effect. On appeal, it was reduced as three months without cumulative effect. The petitioner has preferred a second appeal before the Government, that was also confirmed, because of the punishment the petitioner's name was not included. In the meanwhile, the petitioner has undergone the said punishment.

3. It is seen from the records that the impugned punishment was imposed on 25.01.2013. The impugned promotion panel list of the year



W.P.(MD)No.13415 of 2016

WEB COPY

2016-2017. The respondents did not include the name of the petitioner because of “check period”. Now, the point for consideration is that the petitioner is covered under the ***Deputy Inspector General of Police, Thanjavur Range vs V. Rani***, reported in ***2011 (3) CTC 129 (In short Rani's case)*** or whether the petitioner would come under the amended provisions.

4. As far as the petitioner is concerned, the punishment was imposed on 25.01.2013 and the three months period was over by 25.04.2013. The amended provisions in G.O.Ms.No.22 Personnel and Administrative Reforms (S) Department was issued on 24.02.2014 and hence it came into effect from 24.02.2014. Hence the amended provisions and the check period would not be applicable to the petitioner’s case. Therefore, the petitioner will come under the purview of ***Rani's case***, wherein check period cannot be invoked.

5. But the contention of the respondents is that after amendment of the Service Rules, Schedule 7(1) Rules 13 & 14 of the Tamil Nadu Government State and Subordinate Services (Part II in Volume 1 of the Tamil Nadu Services Manual, 1987) will come into effect from 24.02.2014. Then the check period



W.P.(MD)No.13415 of 2016

WEB COPY

would start from 2013 retrospectively and therefore, the petitioner will come under the purview of check period. He further submitted that the check period is applicable in the present case also and he has also relied on the Judgment passed by this Court, *dated 09.04.2021 in W.A.(MD)No.909 of 2020 and Judgment dated 22.02.2019 in W.A.(MD)No.1675 of 2018*, the Hon'ble Division Bench held that the crucial date for the said panel is 01.12.2015 and the check period is applicable. Therefore, the delinquent is not entitled to consider for promotion. In the cases referred above, the facts are different and hence the said judgment is not applicable to the present case. Moreover, the promotion sought in the aforesaid case is in the year 2015, but in the present case the petitioner is entitled to be considered in the year 2013 itself, when the amended provisions are in existence.

6. The learned counsel appearing for the petitioner relied on the Judgment rendered by the Hon'ble Supreme Court in the case of *Jagan Narain Vs. Food Corporation of India and Others, reported in (2010) 4 Supreme Court Cases 558* and the relevant Paragraph No.8 is extracted hereunder:

8. *Seen in the background of the two circulars dated 13-12-2001 and 19-12-2001, it is evident that the promotion of*



W.P.(MD)No.13415 of 2016

WEB COPY

the petitioner by order dated 24-1-2005 was not the result of any oversight. It should be noticed that as on 24-1-2005, the minor penalty proceeding had come to an end by levying penalty of Rs.5000. Even as on 8-11-2004 what was pending was only a minor penalty proceeding. Therefore, having regard to the circulars dated 13-12-2001 and 19-12-2001, neither the pendency of minor penalty proceedings nor the imposition of minor penalty by way of recovery of Rs 5000 would come in the way of the employee being considered for promotion or being promoted. It therefore, follows that there was no justification for cancelling the said promotion dated 24-1-2005. If the appellant was thus entitled to promotion and the cancellation of the promotion was not warranted, the case of the appellant being considered again for the very same promotion and adoption of sealed cover procedure in view of the pendency of subsequent disciplinary proceedings will not arise (vide Delhi Jal Board v. Mahinder Singh)”.

Therefore, following the Judgment rendered by the Hon'ble Supreme Court, the petitioner is entitled for promotion.

7. At this juncture, the learned counsel appearing for the petitioner submitted that the Departmental enquiry itself is erroneous. The allegation against the petitioner is that she did not bring any male patient for Vasectomy scheme and



W.P.(MD)No.13415 of 2016

WEB COPY

has failed to achieve the target fixed for such scheme. On the very face of it, the charge can be declared as erroneous. Not achieving target cannot be termed as misconduct all. Therefore, this Court is of the considered opinion that the charge itself is erroneous. Consequently, this Court is of the considered opinion that the petitioner is entitled to promotion dehors of the punishment. The learned counsel appearing for the respondents submitted that the petitioner was not granted promotion in the year 2016, but was granted in the year 2017 and hence, the petitioner is not aggrieved. Since this Court has held that the very charge itself is erroneous, consequently, the petitioner is entitled to promotion in the year 2016.

8. By taking facts of the petitioner's case, the writ petitioner is entitled to be considered for promotion in the year 2016 itself. The petitioner's name was placed before Serial No.62, namely Paulraj. The petitioner is entitled to get notional promotion from the date where her immediate junior was granted promotion. The petitioner is entitled to all consequential benefits. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of the order.



W.P.(MD)No.13415 of 2016

WEB COPY

9. With the above said direction and observation, the writ petition is allowed. No costs.

Index : Yes / No
Internet : Yes
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To

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2. The Deputy Director of Health Services,
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W.P.(MD)No.13415 of 2016

S.SRIMATHY, J

ksa

**Order made in
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