



W.A.(MD)No.63 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.63 of 2020
and C.M.P.(MD)No.538 of 2020

1.The Agricultural Production Commissioner
and Principal Secretary to Government,
Agriculture Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Agriculture,
Chepauk, Chennai – 600 005.

... Appellants

Vs.

R.Thiruppathy

... Respondent

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 24.09.2019 made in W.P.(MD)No.16807 of 2013 on the file of this Court.

For Appellants

: Mr.N.Ramesh Arumugam
Government Advocate

For Respondent

: Mr.S.Viswalingam



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra-Court Appeal has been directed against the order passed by the Writ Court dated 24.09.2019, made in W.P.(MD)No.16807 of 2013.

2. The respondent one Thiuppathy was appointed after recruitment through TNPSC in the year 1981 as Agricultural Officer and joined the duty on 25.05.1984. Though a disciplinary action was initiated against him by the Secretary to Government on 21.09.1990 and all the process was over, it was kept pending without passing any final order from 2010 for a period of 20 years. Therefore, a Writ Petition in W.P.(MD) No.11791 of 2010 was filed, which was disposed by order dated 01.11.2011, where the charge memo itself was quashed and it was ordered that he was entitled to get all service benefits, including promotion and the said exercise shall be completed within a time frame.

3. On receipt of the orders dated 01.11.2011, his name was included in the approved list of Assistant Director of Agriculture in the year



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2010-2011 instead of 2007-2008, for which he was otherwise entitled to, on the ground that, he was inflicted with a punishment of censure on 21.05.2007.

4. Against the said order, the respondent filed the said Writ Petition which was allowed by the learned Judge through the order, against which, the present appeal has been filed.

5. Heard Mr.N.Ramesh Arumugam, learned Government Advocate, appearing for the appellants, who would submit that the crucial date for promotion to the post of Assistant Director of Agriculture for the year 2007-2008 was 01.04.2007 and the punishment of censure has been imposed on 21.05.2007, as per the Government Order i.e., G.O.No.22 P & AR (S) Department dated 24.02.2014, after the crucial date and before the actual promotion is being given, if any punishment is awarded that would be taken as a currency of punishment and for that reasons the incumbent name could not be included in the panel fit for promotion. Therefore, in this case according to the learned Government Advocate, the crucial date was 01.04.2007 and the punishment of censure awarded on 21.05.2007,



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therefore, even though it is after the crucial date but before giving actual promotion during which period the censure punishment was inflicted against him, he was not included in the panel for the year 2007-2008 and therefore, he was included in the panel for the year 2010-2011, hence, justifying the said action on the part of the appellants to include his name for the said promotion for the year 2010-2011, the learned Government Advocate would submit that, the order passed by the learned Judge, which is impugned herein finding fault with such a promotion given from the year 2010-2011 was not based on any plausible reasons or grounds and in this regard G.O. 22 though has been brought to the notice of the learned Judge, who has not accepted the said plea and therefore, in this context the order passed by the learned Judge, which is impugned herein is erroneous, he contended.

6. We have heard Mr.S.Viswalingam, learned counsel appearing for the respondent, who would submit that insofar as the punishment dated 21.05.2007 it is well after the crucial date i.e., either 31.03.2007 or 01.04.2007, on the crucial date, the respondent was eligible to be included in the panel for the year 2007-2008 as no other punishment was awarded



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and there was no currency of punishment.

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7. Subsequent punishment by way of censure, if at all has been inflicted against him on 21.05.2007 that would not take away the accrued right on the part of the incumbent i.e., the respondent, who would otherwise be entitled to get included his name on the crucial date viz., 31.03.2007 or 01.04.2007.

8. He would also submit that insofar as the entitlement of the inclusion of the panal during the check period is concerned, this issue has been covered by the Full Bench judgment of this Court reported in **2011 (3) CTC 129 (The Deputy Inspector General of Police, Thanjavur Range v. V.Rani)**, where the Full Bench at para 28 (5) held as follows:-

“(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 other minor punishments is illegall and impermissible under the Statutory Rules.”



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9. Relying upon this judgment as well as the crucial date and the subsequent issuance of G.O. No.22 P & AR (S) Department dated 24.02.2014, the learned counsel for the respondent would contend that neither of these grounds as urged by the appellants for the non inclusion of the name of the respondent in the panel fit for promotion to the post of Assistant Director of Agriculture for the year 2008 is justifiable and therefore, by the order impugned, the learned Judge having taken note of all these aspects, has allowed the Writ Petition filed by the respondent and the same is to be sustained, he contended.

10. We have considered the said submissions made by the learned counsel for both sides and have perused the materials placed on record.

11. As has been rightly pointed out by the learned counsel appearing for the respondent, the crucial date in either 31.03.2007 or 01.04.2007, as the case may be, only well after such crucial date, admittedly the punishment of censure was awarded on 21.05.2007.



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12. Even though the learned Government Advocate would bank upon the subsequent Government Order issued in the year 2014, stating that after the crucial date before the promotion date, if the punishment comes that can also be taken into account is concerned, that is the subsequent event taken place seven years after the crucial date and therefore, by no stretch of imagination the import of G.O. 22 can be imposed against the respondent / writ petitioner.

13. Moreover, prior to this Government Order, the law which was prevailing as has been declared by the Full Bench of this Court in **Rani** case (cited supra) has made it very clear that, the embargo put on the rights of Government Servant of 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.

14. Therefore, there is no check period concept as declared by the Full Bench Judgment of this Court and during the relevant point of time, since there has been no punishment awarded against the respondent as on



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31.03.2007 or 01.04.2007, absolutely there has been no impediment for consideration of the name of the respondent to be included in the panel fit for promotion to the post of Assistant Director of Agriculture for the year 2007-2008.

15. The subsequent event dated 21.05.2007, where the punishment of censure imposed against him would not stand in the way as that kind of expected action cannot stand in the way for getting the right accrued on the Government Servant for getting the promotion on the crucial date. This has been held in number of cases that, the subsequent development concept cannot be put against the employee or Government Servant for getting the lawful rights of promotion or any service benefits as per the then prevailing service regulations or law.

16. All these aspects have been considered exhaustively by the learned Judge in the order impugned and has rightly allowed the said Writ Petition filed by the respondent. Hence, we do not find any reasons to interfere with the said order, as such, the present appeal deserves to be rejected, accordingly it is rejected and hence, this Writ Appeal is dismissed.



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However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

To

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and Principal Secretary to Government,
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