



W.P.(MD).No.26513 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.26513 of 2023

and

W.M.P(MD)Nos.22795 & 22796 of 2023

D.R.Lakshmi

... Petitioner

Vs.

The Commissioner,
Madurai Corporation,
Madurai.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent vide his proceedings A1/010933/2023, dated 12.10.2023 and quash the same as illegal and consequentially to direct the respondent to promote the petitioner as Superintendent on par with her immediate junior along with monetary and service benefits.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondent : Mr.Vinayak
Standing Counsel



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ORDER

The present writ petition has been filed by an Assistant, who was working in the respondent Corporation challenging the order, dated 12.10.2023, wherein the request of the petitioner for inclusion of her name in the panel for promotion to the post of Superintendent was rejected.

2. The writ petitioner was initially appointed as a Record Clerk in the respondent Corporation on 12.06.1991 and she was promoted as an Assistant in the year 2010. She was issued with a charge memo on 07.08.2017 on an allegation that she failed to monitor the mis-appropriation done by her subordinates. After enquiry, a punishment of censure was imposed upon the writ petitioner on 06.05.2022. Challenging the said order of censure, the petitioner has filed an appeal on 22.06.2022 and the same is pending.

3. The cadre of Assistant is the feeder category for being promoted to the post of Superintendent. A panel was prepared for being promoted to the Superintendent, wherein the name of the writ petitioner was left out. Hence, she made a representation to the respondent. Under the impugned order, dated



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12.10.2023, the respondent had rejected the said request of the writ petitioner on the following grounds:

"The order of censure has been passed on 06.05.2022 and due to the subsistence of the check period, the writ petitioner's name was not included in the panel for promotion."

Challenging the said order, the present writ petition has been filed.

4. According to the learned Counsel appearing for the writ petitioner, the delinquency related to the year 2017 and a charge memo was issued on 07.08.2017. The censure order being a minor punishment and the check period has already expired, the respondent ought to have included the name of the writ petitioner in the panel for the promotion to the post of Superintendent.

5. Per contra, the learned Standing Counsel appearing for the respondent Corporation had relied upon Madurai Corporation Services (Discipline and Appeal) Rules, 1975 and contended that the punishment of censure is a minor penalty. The said penalty has been imposed on the writ petitioner on



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06.05.2022. The crucial date for preparing the panel is 01.04.2023. On the said date, one year period has not expired and the check period was subsisting. Therefore, the name of the writ petitioner was not included in the panel. He further relied upon Clause 13 of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and contended that when the delinquency is five years prior to the crucial date and the member of service is not undergoing such punishment on the crucial date alone, the name of the member could be considered. However, in the present case, though the delinquency is five years prior to the crucial date, the punishment of censure was imposed only on 06.05.2022 and therefore, one year period had not expired on 01.04.2023. Hence, he prayed for dismissal of the writ petition.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. The petitioner has been issued with a charge memo on 07.08.2017 and a punishment of censure has been imposed upon the writ petitioner on 06.05.2022. The crucial date for preparation of the panel for promotion from



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the post of Assistant to the post of Superintendent is 01.04.2023. These facts are not in dispute.

8. The short question that arises for consideration is whether the imposition of punishment of censure would operate as a bar for inclusion of the name of the petitioner in the panel for promotion, when the delinquency was committed five years prior to the crucial date.

9. Clause 14 of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is extracted as follows:

"14. The punishment of 'Censure' imposed on a member of service within a period of one year preceding the crucial date shall not be held against a member of service, if the delinquency in respect of which such punishment is imposed had occurred prior to five years preceeding the crucial date. In such cases the name of the member of service shall be considered for inclusion in the approved list."

10. In the present case, the charge memo is dated 07.08.2017 and therefore, this Court can safely arrive at a conclusion that the delinquency was committed in the year 2017. The order of censure has been passed on 06.05.2022. As per Clause 14 referred above, even though one year period has



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not expired from the date of order of censure, if the delinquency committed by a member of service had occurred prior to five years preceeding the crucial date, the same cannot be held against the member and her name could be considered for inclusion in the approved list.

11. On the crucial date, namely, 01.04.2023 already five years period has expired from the date of delinquency committed by the writ petitioner. Therefore, the punishment of censure would not be a bar for the respondent Corporation to consider the name of the writ petitioner for inclusion in the panel for the promotion to the post of Superintendent. The impugned order has been passed without considering the fact that the delinquency had happened five years prior to the crucial date. In otherwords, in all cases, where a punishment of censure is imposed upon a member of service, the check period of five years should be calculated only from the date / period of delinquency and not from the date of order of censure.

12. In view of the above said deliberations, the order impugned in the writ petition is set aside. The respondent is directed to promote the writ petitioner with effect from the date on which her juniors were promoted and



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confer all consequential monetary benefits. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

13. With the above said observation, this writ petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

07.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Commissioner,
Madurai Corporation,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

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