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W.A.Nos.1581, 1582, 1588, 1589 and 1595 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Writ Appeal Nos.1581, 1582, 1588, 1589 and 1595 of 2019
and
C.M.P.Nos.10804, 10798, 5908, 10862, 10867 and 10920 of 2019 &
1387, 1390 and 1393 of 2024

1. The Commissioner / Special Officer,
Corporation of Greater Chennai,
Ripon Building, Chennai- 600 003.

2. The Assistant Commissioner (GA & P)/
Corporation of Greater Chennai,
Ripon Building, Chennai – 600 003.

..... Appellants / Respondents
[common in all W.As.]

Vs.

A. Arumugam S/o. C. Alagesan

..... Respondent / Petitioner
[W.A. No.1581 of 2019]

P. Manickavelu S/o. T. Pachaiyappan

..... Respondent / Petitioner
[W.A. No.1582 of 2019]

B. Saravanan S/o. M. Balaraman

.... Respondent / Petitioner
[W.A. No.1588 of 2021]



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Mohammed Khaleelullah

S/o. Mohammed Aleemullah

.... Respondent / Petitioner

[W.A. No.1589 of 2021]

S.P. Velavan S/o. S. Paramathuman

... Respondent / Petitioner

[W.A. No.1595 of 2021]

COMMON PRAYER: The Writ appeals are filed under Clause 15 of the Letters Patent to set aside the common order passed by the learned Judge in W.P. No.26498 of 2017, W.P. No.25620 of 2017, W.P. No.25619 of 2017, W.P. No.25621 of 2017 and W.P. No.26497 of 2017 dated 29.10.2018.

For Appellants: Mr. P. Kumaresan,
Additional Advocate General
Assisted by Ms. Aswini Devi.V.R
[in all W.As]

For Respondents: No appearance
[in W.A. Nos.1581 and 1582 of 2019]

Mr. G. Sankaran, Senior Counsel
For Mr. J. Ashok [in W.A. Nos.1588,
1589 and 1595 of 2019]

COMMON J U D G M E N T

(Judgment of the Court was delivered by S.M.SUBRAMANIAM, J.)

A batch of intra-court appeals on hand have been instituted challenging the common order dated 29.10.2018 passed in W.P. Nos.1581 of 2019, 1582



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of 2019, 1588 of 2019, 1589 of 2019 and 1595 of 2019.

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2. The Writ relief sought for was to include the names of the respondents in the panel for promotion to the post of Assessor in Greater Chennai Corporation in the panel year 2015 – 2016 based on the crucial date of 01.02.2015 along with the monetary benefits.

3. It is not in dispute that the names of the respondents were not considered for inclusion in the panel years 2015-16, 2016-17 and 2017-18. However, the names of the respondents were included in the panel year 2018-19 and they were promoted to the post of Assessor.

4. The learned Senior Counsel Mr. G. Sankaran appearing on behalf of the respondents would submit that there is no infirmity in respect of the findings made in the Writ orders. In the panel year 2015-16, admittedly no juniors to the respondents were promoted. Therefore, the respondents cannot claim any promotion. But in the 2016-17 panel, the names of the respondents ought to have been included for promotion to the post of Assessor on the ground that the punishment of stoppage of increment for one year was modified to that of censure and the punishment of censure has no check

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period of one year. Thus, the appellants ought to have included the names of the respondents in the panel of the year 2016-17 for promotion to the post of Assessor.

4(i) In support of the contention, Mr. G. Sankaran, learned Senior Counsel would rely Schedule XI [Section 7(1)] of Tamil Nadu Government Servants [Conditions of Service] Act, 2016. Clauses 11 and 12 to Schedule XI stated 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.

12. A member of service whose name has not been included in the approved list for a punishment shall not be overlooked in the subsequent years’ list for the same punishment or punishments, provided the member of service is not undergoing any punishment on the crucial date for preparation of approved list”.



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Relying on the above Clauses in the Schedule, Mr. G. Sankaran would contend that the case of the respondents cannot be overlooked twice in the panel of the years 2016-17 and 2017-18. The punishment of stoppage of increment was modified as censure and the respondents' names were overlooked based on the punishment of stoppage of increment in the panel of the year 2016-17 and again on the modified punishment of censure, their names cannot be overlooked in the panel of the year 2017-18. Thus, the Writ order is to be confirmed.

5. Mr. P. Kumaresan, the learned Additional Advocate General, appearing on behalf of appellant, Chennai Corporation would submit that the learned Single Judge has proceeded based on the erroneous interpretation of Rules applicable to the facts on hand. The admitted fact is that the names of the respondents were not considered, since their juniors were not promoted in the panel of the year 2015-16. Further, in the year 2016-17, the respondents were suffering the punishment of stoppage of increment for one year without cumulative effect. Subsequently, during the pendency of the appeal, the panel for the year 2017-18 was prepared. Thus, the names of the respondents were not included in the panel. However, the respondents were not



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exonerated from the charges, but the punishment was modified to that of 'Censure'. Thus, the names of the respondents were again deferred in the panel of the year 2017-18 and in the subsequent panel of the year 2018-19, the respondents were promoted.

6. With reference to the procedures contemplated in Schedule XI- Clause XII, it is unambiguously stated that "a member of service, whose name has not been included in the approved list for a punishment shall not be overlooked in the subsequent years' list for the same punishment". The very purport of the Clause is to ensure that in the event of imposing a punishment of stoppage of increment and based on that punishment, a member of service has been denied promotion in the panel year, again on the same punishment, he cannot be overlooked in the subsequent panel. However, Clause XII further proceeds by stating that, "provided the member of service is not undergoing any punishment on the crucial date for preparation of approved list".

7. Therefore, while considering the name of an employee in the subsequent panel, he should not suffer any punishment or currency of



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punishment. However, in the present case, the names of the respondents were overlooked in the panel of the year 2016-17 on account of the punishment of stoppage of increment for one year without cumulative effect. They preferred appeal and in the appeal, the punishment was modified to that of censure. While approving the panel of the year 2017-18, the respondents were suffering the punishment of censure. Therefore, as on the crucial date of preparation of the approved list, they were suffering the punishment and thus the said punishment was taken into consideration for deferring the name of the respondents.

8. It is not in dispute that the punishment of censure imposed, will have the effect for one year. In the present case, the modified punishment of censure was in force during the relevant point of time, when the panel for the year 2017-18 was prepared. However, in the next panel of the year 2018-19, the respondents were promoted to the post of Assessor.

9. The learned Single Judge made a finding that 2016-17 panel, the respondents were suffering the punishment of stoppage of increment for one year without cumulative effect. Thus, they were disqualified. However, the



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learned Single Judge found that on the date of punishment of Censure, the punishment dies on the very date of punishment. Such a proposition is running counter to the effect of punishment of Censure as contemplated under rules. The punishment of Censure will have the effect for one year and during the currency of the said punishment, the name of an employee can be overlooked for promotion. In the present case, during the panel of the year 2017-18, the respondents were suffering the punishment of Censure, it cannot be construed as deferring promotion twice.

10. Disciplinary proceedings are to be construed as 'continuing cause'. A member of service, during the pendency of grave charges, is not entitled for promotion. However, if the charges are for minor punishment, then his name may be considered for promotion during the pendency of minor charges. As far as the punishment is concerned, it is not the same punishment in the present case, based on which, the promotion was deferred twice. Therefore, we are not in agreement with the findings made by the learned Single Judge that the punishment of Censure dies on the very date of punishment. The punishment of Censure will not die on the date of punishment, it will have effect for one year and during the said period, the



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names of respondents were not considered for inclusion in the panel of the year 2017-18. But subsequently they were promoted in the panel of the year 2018-19. Thus, we are inclined to interfere with the order impugned. Consequently, the common order dated 29.10.2018 passed in W.P. No.26498 of 2017, W.P. No.25620 of 2017, W.P. No.25619 of 2017, W.P. No.25621 of 2017 and W.P. No.26497 of 2017 are set aside.

11. Accordingly, the Writ appeals are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

[S.M.S.J.] [C.K.J.]
14.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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