IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.08.2024	Pronounced on : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.23069 and 22964 of 2008

P.Anandakrishnan ... Petitioner in both Writ Petitions

Vs.

1. The Secretary to Government,
   Finance Department, Fort St.George,
   Chennai – 9.

2. The Director of Treasuries and Accounts,
   Panagal Building, Saidapet,
   Chennai – 15. ... Respondents in both Writ Petitions

Prayer in W.P.No.23069 of 2008: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to include the name of the petitioner in the panel of the year 2003-04 for promotion to the post of Sub Treasury Officer/Superintendent and promote him in accordance with his seniority with monetary benefits in the event of quashing of the punishment or in alternate, direct the respondents to include the name of the petitioner in the panel of the year 2004-05 for promotion to the post of Sub Treasury officer/Superintendent and promote the petitioner with retrospective effect with all monetary benefits and consequential service benefits.

Prayer in W.P.No. 22964 of 2008: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 2nd Respondent in proceeding Na.Ka.No.23249/2002/Q3-1 dated 19.07.2002 and the Appellate order passed by the 1st Respondent in G.O.(2D) No.21 Finance (Treasury Accounts-I) Department dated 15.04.04 and the Review order issued in G.O.(2D).No.58 Finance (K.K.2) Department dated 03.06.08 and quash these orders and consequently direct the Respondents to pay all the eligible increments to the Petitioner with interest.

In Both Writ Petitions

For Petitioner : Mr.M.Sivavarthanan

For Respondents : Mr.R.Vigneshwaran

COMMON ORDER

These two writ petitions are filed at the instance of the same petitioner and are inter-linked and as such, they were taken up for consideration together and are being disposed of by this common order.

2. The brief facts that are relevant for disposal of these writ petitions are as under:-

2.1. While the petitioner was working as a 'Selection Grade Accountant' in the office of the Deputy Treasury, Thiruvallur, he was subjected to disciplinary proceedings by initiating proceedings under Rule 17(a) of the Tamil Nadu Government Servants (Discipline and Appeal) Rules, 1955 by issuing a charge-memo dated 23.04.2002, by making an allegation of misconduct under Rule 12 of the Tamil Nadu Government Servants' Conduct Rules, 1973, on the ground that the petitioner has made a communication to the press, criticising the policy of the Government in connection with the closure of Sub-Treasury Offices at Nandanam and Saidapet with effect from 31.03.2002, thereby criticising the policy of the Government. In response to the said charge-memo, the petitioner submitted his explanation dated 24.06.2002, contending that the petitioner has not criticised the policy of the Government, but only explained the fact situation, as the Association of the petitioner viz., Treasuries and Accounts Service Association, bearing Registration No.178/MDS/92, Thiruvallur District is opposing the closure of the Sub-Treasury Offices at Nandanam and Saidapet, in the capacity of the President of the said Association of which the petitioner happens to be the President. Thus, the petitioner denied the charge of having criticising the State on its policy.

2.2. It was thereafter, the Respondent No.2, having considered the explanation submitted by the petitioner, passed an order dated 19.07.2002, imposing the punishment of "*stoppage of increment for a period of two years without cumulative effect*" on the petitioner. Aggrieved by the said order dated 19.07.2002, the petitioner filed an appeal before the Respondent No.1 and the Respondent No.1, through G.O (2D) No.21, Finance Department, dated

15.04.2004, rejected the said appeal. Thereafter, the petitioner filed a Review Petition before the Respondent No.1 and the said Review Petition was also dismissed by issuing G.O (2D) No.58, Finance Department, dated 03.06.2008. It is aggrieved by the said orders, dated 19.07.2002, as confirmed by the orders dated 15.04.2004 and 24.05.2004, the petitioner filed W.P.No.22964 of 2008.

2.3. In the meanwhile, the petitioner became eligible for consideration of his case for promotion to the post of 'Superintendent/ Sub-Treasury Officer', as on 01.04.2003 and also fell within the zone of consideration, but his case was not considered due to currency of the punishment imposed through order dated 19.07.2002, withholding the increment for a period of two years. However, subsequently, the case of the petitioner was considered during the panel year 2007-2008, the crucial date being 01.04.2007, he was also promoted to the post of 'Superintendent'. As the petitioner has challenged the punishment that was imposed through order dated 19.07.2002 and the said writ petition is pending before this court, once again the petitioner approached this court by filing W.P.No.23069 of 2008, seeking a direction to include the name of the petitioner for the panel year 2003-2004 for promotion to the post of 'Sub-Treasury Officer/ Superintendent', in the event of his success in W.P.No.22964 of 2008 and also sought for an alternative direction to consider his case for inclusion in the panel

2004-2005 for promotion.

3. Heard Mr.M.Sivavarthanan, learned counsel for the petitioner and Mr.R.Vigneshwaran, learned counsel for the respondents.

4. A copy of the press note, which is the basis for issuing a charge-memo dated 23.04.2002 is placed before this Court. A perusal of the said press note would disclose that the same was issued on the letterhead of Treasuries and Accounts Service Association, which is a registered Association. The said press note was signed by the petitioner in the capacity of President of the said Association and another person by name Mr.P.Nithyanandam, in the capacity of Secretary of the said Association. From the same, it is evident that the said press note was not issued in the name of the petitioner, but was issued in the name of the Association and the same was signed by the petitioner only in the capacity of a President and another person in the capacity of Secretary. The disciplinary proceedings that were initiated against the petitioner under Rule 17(a) of the Tamil Nadu Government Servants (Discipline and Appeal) Rules, 1955 are for the alleged misconduct under Rule 12 of the Tamil Nadu Government Servants' Conduct Rules, 1973.

5. In this connection, it is necessary to notice the scope and ambit of the

said Rule 12 of the Tamil Nadu Government Servants' Conduct Rules, 1973, which reads as follows:-

> *"**12. Criticism of Government***
>
> *(1) No Government servant shall in any radio broadcast or in any document published anonymously or in his own name or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion -*
>
> *(i) which has the effect of an adverse criticism of any Current or recent policy or action of the Central Government or a State Government, or*
>
> *(ii) which is capable of embarrassing the relations between this State Government and any other Government; or*
>
> *(iii)which is capable of embarrassing the relations between the Central Government and the Government of any foreign State;*
>
> *Provided that nothing in this rule shall apply to any statement made or views expressed by a Government servant in his official capacity or in the due performance of the duties assigned to him :*

Provided further that in the case of any Government servant nothing contained in this rule shall apply to bonafide expression of views by him as an office bearer of any recognised association of Government servants for the purpose of safeguarding the conditions of service of Government servants or for securing an improvement thereof.

(2) A Government servant shall not, except in the discharge of his official duties, preside over, or take part in the organisation of or occupy a prominent position at or address, any non-official meeting or conference at which it is likely that speeches may be made or resolutions may be proposed or passed criticising the action of the Government or requesting the Government to take certain action other than to make grants admissible under Government rules or orders in support of educational or similar institutions. Explanation - Regularly convened meetings for the transaction of their legitimate business, of district boards, municipal councils and similar bodies established by law or created by the Government and of associations of Government servants recognised by the Government and of committees or branches of such bodies or associations and meetings called by the Sheriff of Madras are not

"nonofficial" meetings for the purposes of this rule.

(3) A Government servant who intends to publish any document or to make any communication to the press or to deliver any public utterance containing statements in respect of which any doubt as to the application of the restrictions imposed by this rule may arise, shall submit to the Government a copy of draft of the document which he intends to publish or of the utterance which he intends to deliver, and shall thereafter act in accordance with such orders as may be passed by the Government.

(4) This rule shall apply to the Government Pleaders, Public Prosecutors and other officials who are not full-time officers but are engaged by the Government to do specified work without prejudice to the regular exercise of their professions in other respects; but this rule shall not apply to the Special Public Prosecutors and Pleaders engaged to do Government work generally in specified local areas or specially in any particular case or class of cases."

From the above, it is evident that the said Rule creates a restriction on a Government Servant. No doubt, the petitioner herein is a Government Servant. But, as already noted above, the press note in question was issued by an Association of which the petitioner happens to be the President. The said press note was signed by two persons, but there is nothing on record to show that any proceedings were initiated against the Secretary of the said Association, who is also one of the signatories to the press note in question.

6. Second Proviso to Sub-Rule 1 of Rule 12 provides that nothing contained in Sub Rule (1) of Rule 12 shall apply to bonafide expression of use by Government Servant, as an Office Bearer of any recognized association of Government Servants for the purpose of safeguarding the conditions of service of the Government Servants or for securing an improvement thereof. Thus, it is evident that a Government Servant, who acts in his capacity, as an Office Bearer of any recognized Association of Government Servant does not fall within the scope of Sub-Rule (1) of Rule 12, if the expression made is bonafide expression, as an Office Bearer of a recognized Association.

7. It is not in dispute that the petitioner herein is the President of the Treasuries and Accounts Services Association and the press note in question was issued by him along with another in the capacity of Office Bearer of an Association only. However, it is contended by learned Government Advocate that the said Association, of which the petitioner happens to be the President, is not a recognized Association and therefore, the exemption provided under Second

Proviso has no application to the case of the petitioner herein.

8. This court has carefully considered the said submission but is not inclined to accept the said contention for the reason that the misconduct contemplated under Rule 12 is only by the Government Servant, but not of an Association. If the intention of the legislature is otherwise, the language should have been “Government Servant or any Office Bearer of any Association”. Thus, it is evident that the scope and ambit of Rule 12 does not take into its purview the Associations or Office Bearer of the Associations when the alleged misconduct is committed in the capacity of Office Bearers of the Association. Though, the said Association of which the petitioner happens to be the President is not a recognized Association, that hardly makes any difference. The word ‘recognized’ used in the Second Proviso cannot be given a restricted meaning of ‘recognition by the Government’. Instead, it should be construed liberally as the Association that is registered. If such a liberal construction is made, the petitioner herein would definitely be entitled for the benefit of exemption provided under Second Proviso to Rule 12. If once that is available, the entire charge that is levelled against the petitioner coupled with the stand taken by the petitioner in his explanation as well as in the affidavit that he has only made factual position clear and has not criticised the State or its policy would fall to

ground.

9. Be that as it may, as against the specific stand of the petitioner that he has not criticised the State or its policy on the behalf of the Association expressed its concern and opinion on the decision of the Government to close down the Sub-Treasury Offices at Nandanam and Saidapet, but the Respondent No.2, without adverting to the said contention and without enquiring into the matter any further, jumped to impose the punishment of "*Stoppage of increments for a period of two years without cumulative effect*" on the petitioner.

10. No doubt, in case of disciplinary proceedings initiated under Rule 17(a) of the Tamil Nadu Government Servants (Discipline and Appeal) Rules, 1955, no detailed enquiry is contemplated, but when the charge is denied emphatically, it is not open for the Disciplinary Authority to proceed to impose the punishment without bringing home the charge with appropriate evidence.

11. In the light of the above, the entire disciplinary proceedings that were initiated against the petitioner resulting in imposing the punishment of

"*Stoppage of increments for a period of two years without cumulative effect*" on the petitioner is liable to be declared as illegal and arbitrary. When the petitioner filed an appeal and review before the Respondent No.1, the Respondent No.1 has acted in a mechanical manner and rejected the same by passing orders dated 24.05.2004 and 03.06.2008, confirming the orders passed by the Respondent No.2. As the orders passed by the Respondent No.2 itself was found to be unsustainable, the impugned orders passed by the Respondent No.1 are also unsustainable for the very same reason.

12. Then, coming to the relief sought in W.P.No.23069 of 2008 is concerned, the respondents have not filed any counter-affidavit.

13. It is the case of the petitioner that his case came up for consideration for promotion to the post of 'Sub-Treasury Officer/ Superintendent' during the panel year 2003-2004, the crucial date of the panel being 01.04.2003, but the same was not considered because of the currency of the punishment imposed by order dated 19.07.2002. Consequent upon declaring the order dated 19.07.2002 as illegal and arbitrary, the petitioner would automatically become entitled for the consequential relief for consideration of his case for promotion from the panel

year 2003-2004 and for consequential promotion in case, if any of the juniors of the petitioner were promoted during the said panel year 2003-2004.

14. In the light of the above, the impugned orders dated 19.07.2002, 15.04.2004 and 03.06.2008 in W.P.No.22964 of 2008 are hereby quashed, further directing the respondents to consider the case of the petitioner for inclusion of his name for the panel year 2003-2004 for promotion to the post of 'Sub-Treasury Officer/ Superintendent'. In case, if the name of any of the Junior of the petitioner was included during the said panel and promoted, to extend notional promotion to the petitioner from the date on which his immediate junior was promoted to the post of 'Sub-Treasury Officer/ Superintendent' and extend all other consequential benefits, including monetary benefits within a period of three months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions, if any, shall stand closed.

15. Accordingly, both the writ petitions are allowed. No costs. Connected miscellaneous petitions, if any shall stand closed.

29.11.2024

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Index : Yes / No

Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1. The Secretary to Government,
   Finance Department, Fort St.George,
   Chennai – 9.

2. The Director of Treasuries and Accounts,
   Panagal Building, Saidapet,
   Chennai – 15.

MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in W.P.Nos.23069 and 22964 of 2008

29.11.2024