



WEB COPY



W.P.No.1938 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.1938 of 2012

P.Albert

... Petitioner

Vs.

1.The Director of Employment and Training
Guindy, Chennai – 600 032.

2.The Joint Director (Employment)
Directorate of Employment & Training
Guindy, Chennai – 600 032.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to Pro.No.Nir.3/9904/11(1) dated 18.04.2011, to quash the same to the limited extent of non-inclusion of the name of the petitioner therein and to issue consequential direction to include the name of the petitioner in the appropriate place in accordance with his seniority and to promote him with retrospective effect from the date of promotion of his immediate junior with all consequential benefits.



W.P.No.1938 of 2012

For Petitioner : Ms.T.Subhiksha
for Mr.M.Ravi

For Respondents : Mr.Abishek Murthy, GA

ORDER

The Writ Petitioner challenges the order dated 18.04.2011. By the said order, the employees in the cadre of Assistants were transferred and posted as Junior Employment Officers in the higher scale of pay. However, while granting appointment to 29 Officers, the impugned order states that in respect of 8 persons, they are not included in the panel. The name of the petitioner finds place in Serial No.8.

2. It is the case of the petitioner that even though the petitioner is fully qualified to be appointed as Junior Employment Officer, upon transfer as per the Recruitment Rules, he was not considered only on account of minor punishment of stoppage of increment for a period of three months being issued against him. As a matter of fact, the said order was passed on 30.03.2010 and the currency of punishment was over as early as 30.06.2009, therefore, the present impugned order relating to the panel for the year 2011 - 2012 ought



W.P.No.1938 of 2012

not to have overlooked the petitioner.

WEB COPY

3. The learned Government Advocate appearing on behalf of the respondents would submit that apart from currency of punishment, if there is any punishment during the check period, the same will also be taken into account and accordingly, the petitioner's name was not considered. This apart, the petitioner also neither filed any appeal within the prescribed period of three months nor approached this Court directly.

4. Considered the rival submissions made on either side and perused the material records of the case.

5. On perusal of records it is seen that even as per the impugned order, the exercise was made for the year 2011 - 2012. The minor punishment of increment cut for a period of three months was imposed on the petitioner on 30.03.2009 and as such the currency was over by 30.06.2009. Only for the fact that it was within the check period of three years, the petitioner was not considered for promotion. The said aspect of non consideration of promotion



W.P.No.1938 of 2012

for any punishment during check period came to be considered by the Full Bench of this Court in *the Deputy Inspector General of Police and anr., Vs. V.Rani*¹ and it has been held that the said Government orders are illegal and impermissible and are not in accordance with the statutory rules. As such when there is no other statutory rule empowering the Government to overlook the employee, merely because the punishment was imposed during the check period, the action of the respondents is unsustainable.

6. In the result, this Writ Petition stands allowed with the following directions,

(i) The impugned order dated 18.04.2011 is quashed;

(ii) The respondents are directed to reconsider the case of the petitioner and notionally appoint him on transfer as Junior Employment Officer with effect from the date of appointment of his juniors, with all monetary and other service benefits;

(iii) The said exercise shall be carried out by the respondents within a period of four (4) months from the date of receipt of a copy of this order.

¹ 2011 3 CTC 129



W.P.No.1938 of 2012

(iv) There shall be no order as to costs.

WEB COPY

29.02.2024

Jer

Index: Yes

Speaking Order: Yes

Neutral Citation: Yes

To

1.The Director of Employment and Training
Guindy, Chennai – 600 032.

2.The Joint Director (Employment)
Directorate of Employment & Training
Guindy, Chennai – 600 032.



WEB COPY



W.P.No.1938 of 2012

D.BHARATHA CHAKRAVARTHY, J.,

Jer

W.P.No.1938 of 2012

29.02.2024