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W.P.No.8323 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.8323 of 2020

and

W.M.P.No.21517 of 2020

A.Sathik Basha

...Petitioner

-Vs-

1.The Director of Sericulture,
Salem -1, Salem District.

2.The Assistant Director of Sericulture,
Erode, Erode District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in Rc.No.20193/E2/2019-3 dated 17.02.2020 and quash the same and direct the first respondent to include the petitioner' name in the panel for promotion to the post of Assistant Inspector of Sericulture for the year 2019-2020 issued by the first respondent in Proc.No.20193/E2/2019 dated 17.02.2020 at the appropriate place with reference to his seniority and grant his all consequential and attendant benefits and pass such further orders.



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For Petitioner : Mr.P.Rajendiran
For Respondents : Mr.M.Rajendiran
Additional Government Pleader

ORDER

This petition is filed seeking to quash the impugned order of the first respondent in Rc.No.20193/E2/2019-3 dated 17.02.2020 and direct the first respondent to include the petitioner's name in the panel for promotion to the post of Assistant Inspector of Sericulture for the year 2019-2020 issued by the first respondent in Proc.No.20193/E2/2019 dated 17.02.2020 at the appropriate place with reference to his seniority and grant his all consequential and attendant benefits.

2. The case of the petitioner is as follows:

2.1 The petitioner was working as Junior Inspector of Sericulture at the Office of the Assistant Director of Sericulture, Thalavadi, Erode District. He was initially appointed as Junior Inspector of Sericulture on 28-08-2014. The next avenue of promotion is to the post of Assistant Inspector of Sericulture. The petitioner was fully qualified for promotion to the said post.



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2.2 On 20-04-2017, a show cause notice was issued to the petitioner by the second respondent under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner submitted his explanations on 30.06.2017. Thereafter, the second respondent issued an order on 22.09.2017 imposing the minor punishment of Stoppage of Increment for 6 months without cumulative effect. The punishment was effected. Hence, the petitioner preferred an appeal to the Director of Sericulture, Salem (the first respondent herein) on 18.12.2017 and the Director passed an order on 30.05.2019 modifying the punishment as "Censure" Thereafter the six months increment stopped earlier and was restored.

2.3 A Panel for promotion to the post of Assistant Inspector of Sericulture for the year 2019-2020 was issued by the first respondent in Proc. No.20193/E2/2019 dated 17.02.2020. In the said panel his name was not included. His seniority number is 1319. The petitioner's immediate junior Tmt.A.Meenakshisundari (Seniority No.1320) was included against Sl.No.8 in the panel. The petitioner was informed by the Proceedings of the first respondent in Rc.No.20193/E2/2019-3 dated 17.02.2020 (the impugned order) that his name was considered for inclusion in the panel and that



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punishment of Censure has been issued against him on 30.05.2019, that is, within one year prior to the crucial date and therefore the petitioner's name has been deferred from inclusion in the said panel. Aggrieved by the impugned order, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that punishment of censure was imposed by the Appellate Authority on 30.05.2019, i.e., within one year prior to the crucial date. The crucial date is 15.04.2019. The punishment of censure was issued on 30.05.2019 i.e., after the crucial date and not before the crucial date. He would further submit that it is a settled law that once a punishment is modified, the modified punishment will take effect from the date of the original punishment. In this case, the original punishment of stoppage of increments for 6 months without cumulative effect was imposed on 22.09.2017 and it was in force till 22.03.2018. It was modified as censure on 30.05.2019.

Therefore, the censure will take effect from 22.09.2017 under SCHEDULE – XI PART-A-II- Consideration of members for inclusion in the approval lists- clause(11) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 it has been specifically stated as follows:

"(11) Any punishment (other than 'Censure') imposed on a member of service within a period of five years



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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"

In the present case Censure takes effect from 22-09-2017 as explained above. It is neither within one year prior to the crucial date, namely, 15-04-2019 or after the crucial date. Therefore it cannot be held against the Petitioner and he is entitled to be included in the panel and given all consequential and attendant benefits as prayed for in this Writ Petition. The impugned order is therefore liable to be set aside.

4. Learned counsel would further submit that at the time of admission of the writ petition on 16.06.2020, this Court directed the respondents to keep one post of Assistant Inspector of Sericulture vacant until further orders.

5. Learned counsel further submitted that since the order of censure was passed by the Appellate Authority on 30.05.2019, it goes back to the original date of punishment, i.e., 22.09.2017 for a period of one year, which gets over on 22.09.2018. As on the crucial date 15.04.2019 no punishment was in currency against the petitioner and the petitioner's name ought to have been included in the panel of the year 2019-2020 for promotion to the post of



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Assistant Inspector of Sericulture where his junior Tmt.A.Meenakshisundari (Seniority No.1320) was included against Sl.No.8 in the panel and other persons who were junior to the petitioner were included in the panel for promotion.

6. Learned counsel for the petitioner submitted that the petitioner was promoted to the post of Assistant Inspector of Sericulture for the panel of the year 2022-2023 and the same was approved by the first respondent vide proceedings No.9523/E2/2023 dated 20.06.2023. But whereas the petitioner should have been promoted when his juniors were promoted on 17.02.2020.

7. Learned counsel for the petitioner relied on the order passed by the learned Single Judge of this Court in **W.P.No.12882 of 2016 dated 19.07.2021** following the judgment of the Division Bench of this Court in the case of **Arokiadoss V.s The Commissioner of Police in W.A.No.673 of 2003 dated 30.04.2009**, wherein this Court held that “the law is well settled that when once in the disciplinary proceedings the ultimate authority passes an order modifying the original punishment, certainly the modified punishment goes back to the original date of punishment”.



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8. In this case, the original punishment is dated 22.09.2017 and the punishment period of censure is for one year and the same got over on 22.09.2018. Hence on the crucial date that is on 15.04.2019 for the panel of the year 2019-2020 there is no currency of punishment against the petitioner.

9. A counter affidavit was filed on behalf of the second respondent 20.09.2020.

10. Learned Additional Government Pleader appearing for the respondents submitted that the proposals were called for for preparation of panel for the year 2019-20 and the Particulars of the petitioner were also called for the preparation of panel for promotion to the next higher post of Assistant Inspector of Sericulture as per seniority. Based on the appeal Petition of the Petitioner, the punishment of "Censure" was awarded by Regional Joint Director of Sericulture, Erode vide Proc.No.2395/B/2018 dated 30.5.2019. The punishment is valid for one year period, However his name will be considered for the next year panel that is 15.04.2020.

11. Learned Additional Government Pleader further submitted that the panel was examined and prepared as per the instructions issued in



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G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated:

18.10.1993. The crucial date of the panel was 15.04.2019.

12. As per the Tamilnadu Government Servants (Conditions of Service) act 2016 act no. 14 of 2016 Schedule-XI Part -A II (11) (13) (17) it is clearly stated as follows:

"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 within a period of one year prior to the crucial date should 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.

If a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion.

Any punishment imposed on a member of service under rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over.

After taking into consideration of the above facts, The temporary list of Assistant Inspectors of Sericulture fit for promotion for the year 2019- 2020 was prepared and the 1st Respondent issued orders in Proc. No.20193/E2/2019 dated



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17.2.2020. The petitioner was awarded the punishment of "Censure" the petitioner was not considered for promotion Therefore the petitioner is not fit for inclusion in the approved list for promotion to the post of Assistant Inspector of Sericulture.

13. Learned Additional Government Pleader further submitted that the original punishment of stoppage of increments for 6 months without cumulative effect was modified as censure by the Appellate Authority by order dated 30.05.2019. Since the period of censure is for one year, it will take effect from 30.05.2019 and will be over only on 30.05.2020 and is within one year of the crucial date. Since the panel of names of Assistant Inspectors of Sericulture fit for promotion for the year 2019 - 2020 was prepared and the 1st Respondent issued orders in Proc.No.20193/E2/2019 and on that date the punishment was in currency, hence the petitioner name was not included in the said panel and the same is in accordance with law.

14. Heard both sides and perused the materials available on record.

15. In the case on hand, originally the petitioner was imposed with the punishment of stoppage of increment for 6 months without cumulative effect on 22.09.2017 by the second respondent. Thereafter, the petitioner preferred an appeal on 18.12.2017 and 22.02.2018 before the Regional Joint



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Director of Sericulture, Erode. The Appellate Authority modified the punishment of stoppage of increment for 6 months without cumulative effect to that of censure by order dated 30.05.2019. Once in the appeal proceedings, when the Authority passes an order modifying the original punishment, the modified punishment goes back to the original date of punishment.

16. The original date of punishment imposed on the petitioner is 22.09.2017 and the crucial date for the year 2019-2020 is 15.04.2019. Hence on the crucial date, there is no currency of punishment against the petitioner and his name ought to have been included in the panel of the year 2019-2020 fit for promotion to the post of Assistant Inspector of Sericulture on par with his juniors who have been promoted by the first respondent vide proceedings in Rc.No.20193/E2/2019-3 dated 17.02.2020. In regard to the Appellate Authority modifying the punishment imposed by the original Authority, the punishment goes back to the original date of punishment.

17. Learned counsel for the petitioner relied on the order passed by the learned Single Judge of this Court in **W.P.No.12882 of 2016 dated 19.07.2021** following the judgment of the Division Bench of this Court in the



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case of *Arokiadoss V.s The Commissioner of Police* in W.A.No.673 of

2003 dated 30.04.2009, wherein this Court held as follows:

“3. It is a settled proposition of law that whenever the appellate authority modifies the original order of punishment into a lesser punishment, such modified punishment will take into effect from the date when the original punishment was imposed. Such a proposition is not only legal but also logical. In other words, what is modified by the appellate authority is the original order of punishment and barring the modification, all other findings in the original punishment will remain intact and therefore, such modification has to necessarily be given effect from the date of the original punishment only.

4. This proposition has been reiterated in many decisions, including the decision of the Hon'ble Division Bench of this Court in the case of *Arokiadoss Vs. The Commissioner of Police* in a judgment dated 30.04.2009 passed in W.A.No.673 of 2003. The relevant portion of the order reads thus:

"13. In the present case, the claim of the appellant, as submitted by the learned Senior Counsel, is that he should be given promotion notionally as Grade I Police constable from the year 1992 instead of giving it from the year 1993. This vital aspect, that the modified punishment will be given effect to from the original date of punishment, has not been considered by the learned Single Judge. The learned single Judge has proceeded on the pretext that from the date of dismissal on 09.02.1988 till the appellant was reinstated 25.07.1994, he was out of employment and therefore, the reduction of time scale of pay by two stages for a period of two years cannot be notionally fixed, which, in ut view, is not the correct legal position. The law is well settled that when once in the disciplinary proceedings the ultimate authority passes an order modifying the original punishment, certainly the modified punishment goes back to the original date of punishment."

18. The main contention of the respondents is that since the Appellate Authority order modifying the original punishment is dated 30.05.2019. The period of punishment will commence from 01.06.2019 and will be over by 30.05.2020 whereas the panel of names of Junior Assistants



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of censure fit for promotion to the post of Assistant Inspectors for the panel of the year 2019-2020 was approved on 17.02.2020 and the period of punishment got over only on 30.05.2020 and as on date, there was currency of punishment against the petitioner.

19. This Court at the time of admission on 16.06.2020 has granted an interim order that “the respondents are directed to keep one post of Assistant Inspector of Sericulture, vacant until further orders” and the same is in force till date and not vacated by this Court”.

20. It is pertinent to note that in para 4 of the counter affidavit, it is stated that the name of the petitioner will be considered for the next year panel i.e. 14.04.2020, the crucial date for 2020-2021 panel. **In this case, the juniors of the petitioner were promoted on 17.02.2020 and since the panel for the year 2019-2020 was belatedly approved on 17.02.2020 there is no impediment for the respondents to include the name of the petitioner in the said panel since there is no currency of punishment against the petitioner on that date since punishment of censure for one year commencing from 22.09.2017 got over on 22.09.2018.**



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21. Having regard to the admitted facts and the ratio laid down by the Division Bench of this Court followed by the learned Single Judge of this Court in W.P.No.12882 of 2016, this Court is of the considered view that the name of the petitioner has to be included in the panel of the year 2019-2020 where his juniors were promoted to the proceedings in Rc.No.20193/E2/2019-3 dated 17.02.2020.

22. The first respondent is directed to include the petitioner's name in the panel for promotion to the post of Assistant Inspector of Sericulture for the year 2019-2020 issued by the first respondent in Proc.No.20193/E2/2019 dated 17.02.2020 at the appropriate place with reference to his seniority and settle his all consequential and attendant benefits. The above exercise shall be completed within the period of two months from the date of receipt of a copy of this order.

23. In the result, the writ petition stands allowed with the above observations and directions. No costs. Consequently, connected miscellaneous petition is closed.

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cda

Index : Yes/No

Speaking/Non Speaking order



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To

- 1.The Director of Sericulture,
Salem -1, Salem District.
- 2.The Assistant Director of Sericulture,
Erode, Erode District.



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