



W.P.No.8267 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.8267 of 2015

M.Marthanda Boopathy

...Petitioner

Vs.

1.The Director of Fire and Rescue Services
1, Greams Road, Chennai 6.

2.The Assistant Director of Fire and Rescue Services,
Central Zone, Trichy.

3.The Divisional Fire and Rescue Services Officer,
Nagapattinam District, Nagapattinam.

...Respondents

Prayer: Writ Petition is filed under Article 226 to issue a Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned order passed by the 1st respondent in



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Na.Na.No.3100/B1/2014 dated 15.07.2014 and quash the same and direct the respondents to consider the claim of the petitioner for promotion as Station Officer (Transport) and promote him as Station Officer (Transport) and grant him all consequential service and monetary benefits.

For Petitioner : Mr. Venkataramani
Senior Counsel.
For Mr. M.Muthappan

For Respondents : Mr. V.Jeevagiridharan
Additional Government Pleader.

ORDER

The petitioner seeks to quash the order dated 15.07.2014 passed by the 1st respondent and direct the respondents to consider the claim of the petitioner for promotion with all consequential service and monetary benefits. The facts which have compelled the petitioner to approach this Court are as follows:



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2. The petitioner entered the service of the respondents as a Fireman through selection conducted by the Department. He was appointed on 01.04.1993 in Madurai Division. He was transferred to Nagapattinam division in the year 1984. He was promoted as a Driver Fireman on 13.07.1996 by seniority and merits and once again promoted as Driver (Mechanic) vide orders of respondents dated 01.01.2004.

3. The petitioner would submit that his next avenue of promotion is Station Officer (Transport). The petitioner was fully qualified for the said post. The 1st respondent had published a seniority list dated 06.06.2014 in respect of Drivers (Mechanic) who are fully qualified by merit and seniority for consideration of the claim for promotion as Stations Officers (Transport) and in this list the petitioner was at S.No.1. However, when the appointments were made, the petitioner was not considered and his juniors were promoted. The vacancy position for the said post was 18 and the petitioner being at S.No.1



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ought to have been promoted.

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4. The petitioner would submit that the reason for overlooking him would be on the ground that he had suffered a punishment in Na.Ka.No.4395/B1/2012 dated 06.09.2012, wherein, he was imposed with the punishment of stoppage of increment for 2 years without cumulative effect. The petitioner had appealed against the said punishment and the 2nd respondent by order dated 04.02.2013 had modified the same to the one of censure.

5. The petitioner would submit that the original punishment was given effect to and the petitioner was re-promoted after it was modified into one Censure from 04.01.2013. Subsequently, the 2nd respondent by order dated 12.05.2014 had cancelled the entire punishment stating that the petitioner did not come to adverse notice for a period of 6 months from the date of imposing the punishment and hence the punishment of censure imposed on the petitioner dated 04.02.2013 was canceled. Therefore, the petitioner would submit that he was eligible to be



considered for promotion and his name should have been included in the memo dated 06.06.2014.

6. In the light of the above, the petitioner had filed W.P.No.23002 of 2014 for a direction to the respondents to consider his claim for promotion. Accordingly, direction was issued vide order dated 25.08.2014 to consider the petitioner's representation within a period of 6 weeks from the date of receipt of a copy of the order. The respondent by order dated 15.07.2014 has rejected the request of the petitioner, against which the petitioner has come forward with the present Writ Petition.

7. The 3rd respondent has filed a counter after setting out various positions held by the petitioner. Though petitioner's name was at S.No.1 in seniority list as per the proceedings of the promotion committee, the promotion cannot be given since the petitioner's punishment was still in force.



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8. Mr.Venkataramani, Senior Counsel appearing on behalf of the learned counsel for the petitioner would submit that the reasoning given by the respondents for rejecting the petitioner's claim is totally without any basis.

9. The learned senior counsel would submit that the original punishment of stoppage of increment for 2 years without cumulative effect was ordered on 06.09.2012 and in an appeal it had been modified as one of censure on 04.02.2013. Therefore, the punishment would relate back to the original date of punishment, namely 06.09.2012. Even if it taken that the punishment of censure has currency of one year, the one year period came to an end on 04.02.2014.

10. The list for promotion for the period 2013 – 2014 had been finalised on 17.06.2014 when the petitioner's punishment had come to an end. He would rely upon the Judgment of the Full bench of this Court reported in **2011 (3) CTC 129 – The Deputy Inspector General**



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of Police Vs. V.Rani.

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11. He would also submit that G.O.Ms.No.22, P & AR (S) Department dated 22.04.2014 was notified to get over the Full Bench Judgement. This GO was set aside by orders of this Court in W.A.No.983 of 2015 dated 14.09.2016 by Division Bench of this Court. Thereafter, a clarification was sought and by order dated 07.11.2016, the Division Bench had recalled the said order. The learned senior counsel would submit that the order in W.A.No.983 of 2015 had been recalled only on 07.11.2016 and when the promotion list had been finalised, the earlier Government Order, G.O.Ms.No.22, P & AR (S) was in force.

12. The learned Additional Government Pleader would submit that once the order is recalled then the provisions of G.O.Ms.No.22, P & AR (S) has to be given effect to, once that is given effect to the petitioner would not qualify for being considered. Further, during finalisation of the seniority, list the petitioner's appointment was still in



force. He therefore sought for the dismissal of the Writ Petition.

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13. Heard the learned counsels and perused the records.

14. The admitted case is that the petitioner's original punishment dated 06.09.2012 had been modified into one of censure dated 04.02.2013. On modification of the order the punishment dated back to the original date, namely, 06.09.2012. Therefore, even assuming that the currency of censure was for one year though the Full Bench has held otherwise, the punishment comes to an end on 06.09.2013.

15. The Full Bench in the Judgement reported in **2011 (3) CTC 129 – The Deputy Inspector General of Police Vs. V.Rani** has held as follows:

“5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period viz., one year in the



case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules.

This order had been challenged before the Hon'ble Supreme Court where SLP was dismissed. Therefore, the order attained finality.

16. To overcome this Judgment it appears that the Government had notified G.O.Ms.No.22, P & AR (S) Department dated 22.04.2014. Even this Government Order was set aside by orders of this Court in W.A.No.983 of 2015. Therefore, on the date when the promotion list was finalised i.e., 17.06.2014 the petitioner's punishment had come to an end and there was no impediment whatsoever for adding the petitioner's name for promotion. The reasons for the rejection therefore is without any basis.

17. It is informed that the petitioner had retired. Therefore, he would be entitled to service and monetary benefits notionally.



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18. Accordingly, the Writ Petition is allowed. No costs.

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Index : Yes/No
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To

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