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W.A.No.3267 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2024

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.3267 of 2023
and
C.M.P.No.26590 of 2023

1. The Commissioner & Principal Secretary to Government,
Agriculture Department,
Secretariat, Chennai - 9.
 2. The Commissioner and
Principal Secretary to Government,
Agriculture Marketing Department,
Guindy, Chennai - 32.
 3. The Secretary,
Erode Market Committee,
Erode.
- Appellants

..

Versus

M.S.Subburaman
Respondent

..

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 08.02.2023 made in WP.No.17575 of 2020.

For Appellants : Mr.A.Selvendran
Special Government Pleader

For Respondent : Mr.R.Vijayakumar, Senior Advocate
for Mr.K.N.Pandian



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JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal has been filed by the State challenging the order passed by a learned Judge in W.P.No.17575 of 2020 on 08.02.2023.

2.The respondent herein preferred the aforesaid writ petition praying for issuance of a Writ of Mandamus directing the appellants to promote him as Superintendent of Market notionally in the panel year 2008-09 and to further promote him to the post of Market Committee Secretary in the panel year 2012-2013 and consequently, pay the attendant benefits to him.

3.The case projected in the writ petition was that the respondent herein was appointed as Junior Assistant in Erode Marketing Committee on 04.12.1986 and he was promoted as Supervisor on 08.07.2002. While so, he was issued with a charge memo on 18.06.2004 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for which, he submitted his explanation. Subsequently, an Enquiry Officer was appointed and he submitted his report holding that the charges were proved against the respondent. After issuing a show cause notice and upon receipt of the explanation from the respondent, the second



appellant passed an order on 30.12.2006 imposing the punishment of stoppage of increment for a period of one year with cumulative effect with effect from 01.01.2007. As against the said order, an appeal was filed by the respondent before the first appellant and it was rejected by G.O.(3D)No.147, Agriculture Department, dated 19.07.2011. Aggrieved by the same, the respondent filed W.P.No.11099 of 2012 and it was allowed by an order dated 17.04.2018, which was also affirmed by a Division Bench, vide judgment dated 14.11.2018 passed in W.A.No.2527 of 2018 preferred by the State. Since the punishment inflicted on the respondent was set aside by this Court, the respondent made a representation dated 19.02.2019 seeking notional promotion as Superintendent of Market in the panel year 2008-09 and further promotion as Market Committee Secretary in the panel year 2012-13 and for consequential reliefs. Since the said representation was not considered, the aforesaid writ petition came to be filed by the respondent.

4.It was put forth on the side of the third appellant before the learned Judge that in W.P.(MD)No.2622 of 2004 on 19.07.2007 and in W.A.(MD)No.387 of 2008 on 16.06.2008 and in Rev.Aplc.(MD)(SR)No.8118 of 2009 on 12.01.2011, the second appellant was directed to prepare State-wide seniority with effect from 16.08.1995 as per G.O.No.449, Agriculture Department dated 16.08.1995. On implementing the directions issued by this Court and considering



the State-wide seniority, the respondent would be eligible for promotion to the post of Superintendent of Market only in the panel 2010-11 and due to the same, he was promoted with effect from 01.04.2010. Subsequently, the respondent completed the Market Secretary Training on 31.10.2011. On fulfilling the requirement of completion of five year service in the post of Superintendent of Market on 31.03.2015, the respondent became eligible for getting promotion as Market Committee Secretary i.e., on 01.04.2015. However, no vacancies arose in the post of Market Committee Secretary. Hence, the respondent could not be accommodated to that post and he retired from service on 31.01.2020, on attaining the age of superannuation.

5.After hearing both sides, the learned Judge allowed the writ petition filed by the respondent, *vide* order dated 08.02.2023. While so, it was observed that in the panel prepared for the year 2008 for promotion to the post of Superintendent, the respondent was placed at S.No.7 just below one Ms.A. Muthulakshmi, who also joined in the service on the same day when the respondent joined; that the said Ms.A.Muthulakshmi was promoted in the year 2008 with effect from 01.04.2008 and that the name of the respondent was not included in the final list of promotion to the post of Superintendent since there was currency of punishment at that point of time. It was further observed that



only because there was currency of punishment, the name of the respondent was not included in the panel 2008-2009 and that had the respondent's name been included in this panel, he would have become the Superintendent of Market on 01.04.2008 and would have been further promoted as Market Committee Secretary on par with the said Ms.A.Muthulakshmi and that he was deprived of these benefits only due to the currency of punishment. It was specifically held that once the punishment is set aside by this Court, the respondent is entitled to all the benefits, as if there was no punishment against him at the time when the authorities prepared the panel during 2008-09 and as a consequence, he is entitled to promotion as Superintendent of Market notionally in the panel year 2008-09 and he is also entitled to further promotion in the panel year 2012-13 to the post of Market Committee Secretary and hence, he will be entitled to all the attendant benefits. Holding so, the learned Judge directed the authorities to consider the representation made by the respondent and grant him all the benefits. Aggrieved, this appeal came to be filed by the State.

6.Heard the learned counsel on either side and perused the records carefully and meticulously.



7.The learned Special Government Pleader appearing for the appellants submitted that the respondent had purchased a house site without getting permission from the second appellant and hence, charges were framed against him, on 13.09.2000 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, which ended in passing of the final order by the disciplinary authority imposing punishment of stoppage of increment for one year with cumulative effect. The appeal made by the respondent against the said order of punishment, also ended in failure. Due to the currency of punishment, the respondent's name was not considered in the panel for promotion to the post of Superintendent of Market as on 01.04.2008. After the expiry of the punishment period, his name was considered in the 2010-11 panel for promotion and he was granted promotion as Superintendent of Market on 01.04.2010. It was further submitted by the learned Special Government Pleader that the respondent had given an undertaking stating that he will not claim any right about his promotion in future at that point of time. But, after getting promoted purely on temporary basis, he claimed further promotion, that too, notionally.

8.According to the learned Special Government Pleader, as per State-wide Seniority list, the respondent was promoted as Superintendent of Market with effect from 01.04.2010 after the expiry of his punishment period; he had



completed Market Secretary Training from 01.08.2011 to 31.10.2011 and he had completed 5 years of service in the post of Superintendent of Market on 31.03.2015 and hence, he was eligible for getting promotion as Market Committee Secretary only on 01.04.2015; and that there was no vacancy in the post of Market Committee Secretary and therefore, the respondent was not given further promotion to the said post thereafter. Without properly appreciating all these factors, the learned judge erred in directing the appellant authorities to favourably consider the claim of the respondent by the order impugned herein. Stating so, the learned Special Government Pleader prayed for allowing this appeal by setting aside the order of the learned Judge.

9.Per contra, the learned senior counsel for the respondent submitted that the order passed by the learned Judge is a well considered one and it has been passed on the premise that once the punishment is set aside by this Court, the respondent is entitled to all the benefits as if there was no punishment against him at the time when the authorities prepared the panel during 2008-09 and as a consequence, he is entitled to promotion as Superintendent of Market notionally in the panel year 2008-09 and he is also entitled to further promotion in the panel year 2012-13 to the post of Market Committee Secretary and accordingly, he will be entitled to all the attendant benefits. Thus, according to the learned counsel, the order impugned herein does not require any interference by this court.



10.It is seen that the departmental proceedings initiated against the respondent ended in the order of punishment of stoppage of increment for a period of one year with cumulative effect, against which, the respondent filed appeal before the Government and the same was also dismissed. However, the writ petition filed by the respondent was allowed by setting aside the order of punishment, by order dated 17.04.2018 in WP No.11099 of 2012, which was affirmed by the Division Bench, vide judgment dated 14.11.2018 in WA No.2527 of 2018. Thus, the respondent is entitled to all the benefits as if there was no punishment against him at the relevant point of time, i.e., preparation of the panel during 2008-2009. Taking note of the same, the learned Judge has observed that one Ms.A.Muthulakshmi, who also joined in the service on the same day when the respondent joined, ie., on 08.07.2002, was promoted in the year 2008 with effect from 01.04.2008 and the name of the respondent was not included in the final list of promotion to the post of Superintendent of Market, since there was currency of punishment at that point of time and that, had there been no punishment against the respondent at the relevant point of time, he would have been considered on par with the said Muthulakshmi. Observing so, the learned Judge has allowed the writ petition by directing the appellant authorities to consider the claim of the respondent and grant all the reliefs.



11.This court is of the opinion that once the order of punishment imposed on the respondent was quashed in the writ petition, which order was also upheld by the Division Bench, he is entitled to be considered for promotion with effect from the date on which his juniors were promoted, as if there was no punishment during the relevant point of time, and that right of the respondent cannot be curtailed by the appellant authorities, without any legally sustainable reason. In this regard, it is apropos to refer to the decision of the Hon'ble Supreme Court in ***G.Muthuraj v. State of Tamil Nadu and another [(2013) 11 SCC 648]***, the ratio laid down wherein is squarely applicable in all its fours to the instant case. The relevant paragraphs of the said decision are usefully quoted below:

"12.The pleadings of the parties show that the appellant had been denied promotion to the post of Executive Engineer only on account of pendency of the departmental proceedings. Indeed, it is neither the pleaded case of the respondents nor any material has been placed before this court to show that he was passed over / superseded on account of adverse remarks recorded in the annual confidential records or any other adversity in the service record. Therefore, once the order of punishment was quashed by the learned Single Judge, the appellant automatically became entitled to be considered for promotion with effect from the date persons junior to him were promoted to the post of Executive Engineer. However, that right of the appellant has been stultified by the direction contained in the impugned judgment which, in our view is legally unsustainable because the Division Bench has not assigned any reason for directing that the appellant shall not be entitled to notional promotion or promotional benefits.

13.In Sulekh Chand and Salek Chand v. Commr. of Police [1994 Supp(3)SCC 674: 1995 SCC (L&S) 196:(1994)28 ATC 711], this Court held that after his acquittal in the criminal case filed under the Prevention of Corruption Act the employee was entitled to be promoted with effect from the date his juniors were promoted because the factor which was responsible for his non-promotion had become non-existent.

16.In view of the propositions laid down in the aforementioned judgments, we hold that the Division Bench of the High Court committed an



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error by directing that the appellant shall not be entitled to notional promotion or promotional benefits.

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17.The dismissal of the review petition filed by the appellant is also unsustainable because the Division Bench had erroneously invoked Order 41 Rule 33 CPC to justify the direction given by it on the issue of the appellant's right to be considered for promotion to the next higher post.

18.In the result, the appeals are allowed, the impugned orders are set aside and the respondents are directed to consider the appellant's case for promotion to the post of Executive Engineer from the date his juniors were promoted. This exercise shall be completed by the authorities concerned within three months from today. If the appellant is found suitable for promotion as per the criteria applied in the cases of his juniors, then he shall be given promotion from the date his juniors were promoted as Executive Engineers and be given all consequential benefits including retiral benefits."

(Emphasis supplied)

Thus, this court finds no reason to interfere with the order so passed by the learned Judge.

12.Accordingly, this writ appeal stands dismissed. The appellant authorities are directed to comply with the order of the learned Judge, within a period of twelve weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

J.]

Index : Yes / No

Internet : Yes / No

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[R.M.D., J.] [M.S.Q.,
17.05.2024



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To

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Agriculture Department,
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2. The Commissioner and
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3. The Secretary,
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Erode.



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