



WP(MD) No.16530 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.16530 of 2024

and

WMP(MD)Nos.14311, 14312, 14313 & 14315 of 2024

R.Maheswaran

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government,
Department of Labour Welfare and Skill Development,
Chennai - 600 005.

2. The Commissioner,
Department of Employment and Training,
Ghindi,
Chennai - 32.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Madnamus, calling for the records pertaining to the impugned G.O(2D)No.54 dated 02.07.2024 passed by the 1st respondent and quash the same and subsequently directing the respondents to include the petitioner to the panel to the post of Additional Director of the Department of



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Employment and Training by regularizing service of the petitioner.

For Petitioners : Mr.S.Ramsundarvijayraj

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioners for issuance of a Writ of Certiorarified Madnamus, to quash the impugned G.O(2D)No. 54 dated 02.07.2024 passed by the 1st respondent and subsequently direct the respondents to include the petitioner in the panel to the post of Additional Director of the Department of Employment and Training by regularizing service of the petitioner.

2. Heard Mr.S.Ramsundarvijayraj, learned counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondents.

3. The petitioner is now serving as the Regional Joint Director, Department of Employment and Training, Madurai. The petitioner was issued with a charge memo dated 26.03.2023 on the allegation that when



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the petitioner was working as Regional Joint Director, Department of Employment and Training, Chennai, the petitioner had allowed Earned Leave benefit and half pay benefit for 90 days to one E.Sankaran, who was issued with the punishment of compulsory retirement in the year 2006.

4. The said Sankaran has filed a writ petition in W.P.No.8792 of 2006 by claiming the benefits like arrears of surrender leave salary and other monetary benefits. But the same was dismissed on 28.04.2011. However, the said Sankaran had preferred an appeal in W.A.No.2209 of 2011 and that was disposed on 08.11.2017. In the said writ appeal, the following order was passed:

"12.Taking note of the submission made by the learned counsel for the petitioner, the order passed by the respondent, imposing the punishment of compulsory retirement is modified as follows:

The respondent shall take into consideration the entire period of the petitioner's service i.e, till the date of actual retirement of the petitioner, had he not been compulsorily retired, only for the limited purpose of pensionary benefits. However, it is made clear that he is not entitled to any backwages for the period, during which, he was not working,



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applying the principles of 'no work no pay'.

5. As the above order was not complied, the said Sankaran has preferred contempt application in Cont.P.No.1099 of 2019 by impleading the Secretary to Government, Labour and Employment Department, Chennai as a party. During that compulsive period, the petitioner had issued a proceedings on 30.10.2019 allowing the individual to get the benefit of encashment of 240 days Earned Leave along with 90 days half pay leave. Since the individual is not entitled to get 240 days of EL and 90 days of half pay leave, the petitioner has been given with a charge memo on 23.05.2023. At the conclusion of the enquiry proceedings, the petitioner has been given with the punishment of 'Censure'.

6. In the meanwhile the sanctioned amount, has been recovered from the persons who were instrumental for sanctioning the above undue monetary benefit. As the petitioner has been imposed with the punishment of Censure and it deprives him to get included in the promotion panel for the post of Additional Director. Hence, he has challenged the same.



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7. The learned counsel for the petitioner submitted that the appropriate authority did not consider the fact that the petitioner was under compulsive situation in view of the pending contempt proceedings at the time of sanctioning the leave encashment. Even though contempt proceedings might be pending before the Court, the person concerned has to ascertain the leave credit from the account of the individual employee before sanctioning him the leave encashment. In the instant case, probably the petitioner's subordinates who moved the file with a wrong note, the petitioner had accorded sanction. It is not known whether any action has been initiated against all those who are responsible for sanctioning the encashment of EL and other monetary benefits to the said Sankaran.

8. Eventhough the punishment of Censure has got no currency, Schedule XI, Part-A, Rule 11 of the Tamilnadu Government Servants (Conditions of Service) Act, 2016, would state that even the punishment of Censure would be held against the individual for one year for the purpose of promotion panel of the said year.



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9. The petitioner has submitted that through out his entire service period, he has rendered unblemished service and now in view of the punishment of 'Censure', the petitioner's name has not been included in the panel and his junior is about to be given with the promotion. The petitioner has not filed any review against the order of punishment and he has filed this writ petition directly.

10. In the impugned order of punishment, it appears that no consideration has been shown to the past unblemished services of the petitioner, though liberal punishment of Censure has been given by taking into consideration of no loss of revenue to the Government. Since the punishment places hurdle in the service progress of the petitioner, the petitioner is at liberty to file review petition before the appropriate authority by taking up the same grounds which now pleaded before this Court. On receipt of the same, the first respondent shall consider and pass orders before according any promotion to any of the persons included in the impugned panel for promotion to the post of Additional Director. In the event of petitioner getting a positive order, the petitioner's name shall also be included in the panel for considering him also for the promotion to the post of Additional Director. The petitioner



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shall file the review petition within a period of two weeks from the date of receipt of a copy of this order and on such filing, the first respondent shall pass orders within a period of four weeks thereafter.

11. With the above direction, this writ petition is **disposed of**. No Costs. Consequently, connected miscellaneous petitions are closed.

23.07.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
PJJ

To

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Chennai - 600 005.

2. The Commissioner,
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R.N.MANJULA, J.

PJL

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