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W.P. No. 12868 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 12868 of 2018
and
W.M.P. No.15122 of 2018

T. Elango

... Petitioner

Vs.

1.Tamil Nadu Civil Supplies Corporation Limited,
represented by its Chairman – cum – Managing Director,
No. 42, Thambusamy Road, Kilpauk, Chennai – 600 010.

2.The General Manager (Admn),
The Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road, Kilpauk,
Chennai – 600 010.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent order dated 20.04.2018 bearing Ref.No.AE15/45800/2017 and quash the same and consequently to include the name of the petitioner in the panel for promotion to the post of Assistant Engineer (Mech.,).

For Petitioner : Mr. R. Saravanan,
for Mr. T. Sai Krishnan

For Respondents : Dr. K. Thirugnanam,
Standing Counsel



ORDER

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Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and carefully perused the materials available on record.

2. The case of the petitioner is that, he was appointed as Shift Engineer in the respondent Corporation by order dated 04.06.1993. In the year 2013, the respondent initiated disciplinary proceedings against the petitioner vide proceedings dated 10.11.2014 and he was awarded with a punishment of stoppage of increment without cumulative effect for six months. Thereafter, he awaiting for promotion to the post of Assistant Engineer (Mech.). A panel of Assistant Engineers to consider them for the promotion to the post of Assistant Engineer (Mech.) for the year 2017 was issued by the respondent vide impugned order dated 20.04.2018 including three names. In that list, the petitioner's name is not included. Due to the reason that, he was awarded with a punishment of stoppage of increment for a period of six months without cumulative effect and as though, the punishment is falling in the 5 years of check period for the promotion panel for the year 2017. Aggrieved by the action of the respondents in not including the name of the petitioner in the promotion panel for Assistant Engineer (Mech.) post for the year 2017, he constrained to file the present writ petition.



3. On behalf of the respondents, a counter affidavit has been filed. It is averred in the counter that, the estimated vacancy of the post of Assistant Engineer in the year 2017 was arrived as 3 (Three) and the respondents have considered 13 numbers of Shift Engineers for consideration for preparing the panel of Assistant Engineer (Mech.,) for the year 2017. It is further averred that, as per the instructions given by the Government vide Letter No.248, Personnel & Administrative Reforms (S) Department dated 20.10.1997 wherein, it is stipulated that if any punishment other than Censure imposed within a period of 5 years prior to the crucial date, the concerned Officer's name has to be passed over in the eligible panel to the next year. In the present case, against the petitioner, a punishment of stoppage of increment without cumulative effect for six months was imposed on 10.11.2014 and as such, till completion of 5 years check period, the petitioner's name cannot be included in the panel for Assistant Engineer (Mech.,). Due to that reason, his name was not included in the panel for the year, 2017.

4. Learned counsel for the petitioner would submit that, while it is true that the pendency of punishment can be certainly a ground for the Government to deny the promotion till the completion of period of punishment, it can never be said that even after the period of punishment is over, in between the date of crucial date and the date of punishment there must be one year in case of Censure and 5 years in other



cases as disqualification period. He further contends that, the punishment of stoppage of increment for a period of six months is a minor punishment. As on date of preparing the panel and the crucial date of punishment is not in the currency and the postponement period of one year for minor punishment is also over by the year 2015, as such, the punishment cannot be a bar for not including the petitioner in the panel.

5. Learned counsel for the petitioner has also placed a reliance on the judgment of the Full Bench Court of this Court in The Deputy Inspector General of Police, Thanjavur Range, Thanjavur and Another vs. V. Rani reported in (2011) 4 Mad LJ 1 (FB) and would submit that already the issue involved in the present writ petition has been considered by a Full Bench of this Court and as per the proposition of law laid down in the said judgment, the action of the respondents in not including the name of the petitioner in the panel for the year 2017, is illegal and liable to be quashed.

6. On the other hand, the learned Standing Counsel appearing for the respondents would submit that due to punishment awarded against the petitioner on 10.11.2014 within the check period of 5 years prior to the crucial date of service and as such, the petitioner's name shall not be considered in approved list. Learned



Standing Counsel further contends that, the crucial date of panel of Assistant Engineer (Mech.) is 01.10.2017 and the punishment awarded within the check period of 5 years i.e., 01.10.2012 to 30.09.2017. As such, the petitioner name was not included in the list of panel of Assistant Engineer for the panel year, 2017.

7. Learned Standing Counsel further contends that, as per the panel guidelines and service regulations of respondent corporation, there is no illegal and violation in preparing of panel of Assistant Engineer (Mechanical) for the year 2017. There is no overlooking in the list of eligible Shift Engineers and the petitioner is not promoted as Assistant Engineer (Mech.) till 26.09.2019. Learned Standing counsel would submit that the petitioner's name was rightly placed in the name of ineligible Shift Engineer due to punishment falling in the 5 years of check period for the panel year of 2017, as per the Service Regulations, 1989 and panel guidelines inforce. He further submits that the petitioner was promoted subsequently as Assistant Engineer (Mech.) on 26.09.2017. Considering all these aspects, the learned Standing Counsel sought to dismiss the writ petition.

8. Having heard the respective counsel and on examination of the materials available on record, the issue to be considered in this writ petition is, whether the action of the respondents in not including the name of the petitioner to consider



promotion for the post of Assistant Engineer (Mech.) for the panel year 2017 on the ground that, the punishment awarded on 10.11.2014 against the petitioner is within the check period of 5 years prior to the crucial date of service is legal or not.

9. Admittedly, the respondents imposed punishment of stoppage of increment without cumulative effect for six months. He suffered the said punishment till May 2015. The crucial date for preparing the panel of Assistant Engineer(Mech.) for the panel year 2017 is 01.10.2017. But his name was not included in the panel for consideration for promotion, due to the reason that the punishment awarded on 10.11.2014 was within the check period of 5 years.

10. As per the learned counsel for the petitioner, the punishment imposed against the petitioner is already over by May 2015, his name has to be included in the panel of the year 2017. As per the learned Standing Counsel, the punishment imposed against the petitioner was within a period of 5 years prior to the crucial date, he is not entitled to include his name in the panel, for promotion, in the year 2017.

11. As rightly submitted by the learned counsel for the petitioner, the issue



involved in the present writ petition is no longer *res integra*. Already, on perusal of the judgment of the Full Bench of this Court stated supra, already the issue was dealt in detail. The relevant paragraphs of the said judgment are extracted herein under, for proper adjudication of this case: -

“24. While it is true that the pendency of punishment can be certainly a ground for the Government to deny the promotion till the completion of the period of punishment, it can never be said that even after the period of punishment is over, in between the date of crucial date and the date of punishment there must be one year in case of censure and five years in other cases as disqualification period. The above said impediment in the name of 'check period' can never be imposed on a Government servant. Even though it has not been issued as statutory rules under the proviso to [Article 309](#) of the Constitution of India, the said letter stating the currency of punishment as an embargo for considering for further promotion during the period of punishment cannot be said to be antithesis to the principles of law. The embargo imposed in respect of further period as stated above can never be said to be authorized under the statutory rules. The said Government letter can be treated as a circular issued by the Secretary to Government to all departments. This letter, as correctly submitted by the learned senior counsel Mr.G.Rajagopal, cannot supersede the statutory rules.

28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:



1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in *Subramanian v. Government of Tamil Nadu* rep. by its Secretary, Chennai and others [2008 (5) MLJ 350] stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

2) If any benefit has been conferred on the party to the judgment rendered by the Division Bench in *Subramanian v. Government of Tamil Nadu* rep. by its Secretary, Chennai and others [2008 (5) MLJ 350], the same shall not be affected by the judgment of this Bench since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

3) The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to *Article 309* of the Constitution of India and it can utmost be administrative instructions issued under *Article 162* of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.



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4) *The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso [Article 309](#) of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.*

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.”*

12. On perusal of the Full Bench judgment stated supra, the Full Bench has given clear finding stating that 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 of other minor punishments is illegal and impermissible under the statutory rules. The finding of the Full Bench is squarely applicable to the present case. As such, it is held that the action of the respondents in not including the name of the petitioner in the promotion panel for the post of Assistant Engineer (Mech.,) for the panel year 2017 is illegal and contrary to the judgment of the Full



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Bench of this Court, as stated supra and accordingly, it is liable to be quashed.

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13. Accordingly, this Writ petition is allowed with the following direction: -

i) the order dated 20.04.2018 of the first respondent in Ref.No.AE15/45800/2017 is hereby quashed.

ii) In the light of the quashing the order dated 20.04.2018 of the first respondent all other consequential actions pursuant to the same are quashed.

iii) The first respondent shall prepare a panel afresh including the name of the petitioner for the panel year 2017 and take all consequential steps accordingly.

14. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.01.2025

Index :Yes/No

Neutral Citation :Yes/No

AT

To

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BATTU DEVANAND, J.

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