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W.P.No.27050 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2025

PRONOUNCED ON : 28.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE T.VINOD KUMAR

W.P.No.27050 of 2019

R.Balamurugan

... Petitioner

vs

1. The State
Rep by its Secretary
Home (Transport) Department,
Fort St.George,
Chennai – 600 009.

2.The Transport Commissioner,
Ezhilagam, Chepauk, Chennai – 600 005.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified Mandamus to call for the records pertaining to impugned order of the 2nd respondent passed in proceedings No.RP1/25294/2018 dated 02.08.2019 and quash the same and consequently direct the respondents to promote the petitioner on par with his immediate junior Mr.Ch.Prabhakaran, with all monetary, service and attended benefits.



For Petitioner : Mr.V.Vijayshankar

For Respondents : Mrs.V.Yamuna Devi, Spl.GP

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents and perused the records.

2. Briefly put the case of the petitioner is that he was appointed as Junior Assistant on 19.10.2001 and on successful completion of probation, his service was regularised; that he was issued with a charge memo dated 04.01.2005 alleging there occurred a shortage of Rs.51/- during the surprise inspection; and that based on the enquiry held into the aforesaid charge the 2nd respondent passed order dated 23.10.2008 visiting him with punishment of removal from service.

4. The petitioner contended that aggrieved by the aforesaid order of removal from service he had filed an appeal to the 1st respondent, and the 1st respondent by an order dated 09.03.2011 modified the order of removal from service, to one into stoppage of increment for two years without cumulative effect; and that pursuant to the aforesaid order passed by the 1st



respondent, modifying the punishment awarded, the petitioner was reinstated into service w.e.f. 13.05.2011; and that the period of absence i.e., from the date of removal from service till the date of reinstatement i.e, from 16.11.2008 to 12.05.2011 was treated as absence and the said period would not count for any purposes.

5. It is the further contention of the petitioner that the 2nd respondent thereafter included his name in the panel for promotion to the post of Assistant for the year 2009-2010 vide proceedings dated 30.01.2014; that the first respondent thereafter vide GO.Ms.No.80 dated 20.01.2017 had drawn up a panel for promotion to the post of Superintendent for the panel year 2014-2015; that eventhough his name was mentioned at Sl.No.1, in the said list, he was not granted promotion to the post of Superintendent, while other candidates whose names were mentioned in the list were promoted to the post of Superintendent. Thus, it is contended that he was excluded from consideration for promotion to the post of Superintendent.

6. The petitioner further contended that the 1st respondent thereafter by the impugned proceedings dated 02.08.2019 cancelled the earlier proceedings dated 31.01.2014, whereby the petitioner name was included in



the panel for promotion to the post of Assistant for the year 2009-2010 claiming that his name was wrongly included and that the petitioner will be eligible for promotion to the post of Assistant only in the panel year 2016-2017, which action it is contended as highly illegal and arbitrary.

7. The petitioner contended that the respondents cannot be allowed to claim that the order of the 1st respondent modifying the punishment, would take effect only from the date of his reinstatement into service, on the order by which he was visited with punishment of removal from service was set aside and modified to one of stoppage of increment for two years without cumulative effect, being a minor penalty.

8. In support of the aforesaid contention reliance is placed on the decision of the Hon'ble Apex Court reported in (i) **(2015) 2 SCC 610 – Union of India and others v. P.Gunasekaran** and decision of the Coordinate bench of this Court in (ii) **WP.No.646 & 647 of 2016 dated 07.02.2022 – S.Durai v. The Superintendent of Police, Villupuram.**

9. Counter affidavit on behalf of the respondent is filed.



10. The respondents by the counter affidavit contended that the petitioner was issued with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 (for short "Rules, 1955") for shortage of Rs.51/- during the surprise visit conducted by the Officials of Directorate of Vigilance and Anti Corruption on 14.07.2004; that in the enquiry held as it is found that the charge as proved, the 2nd respondent awarded the petitioner with punishment of removal from service; that aggrieved by the aforesaid order, the petitioner had filed an appeal to the 1st respondent; and that the 1st respondent by his order dated 09.03.2011 modified the order of punishment of removal from service, to one of stoppage of increment for a period of two years without cumulative effect and issued GO.(D).No.231 dated 09.03.2011.

11. The respondents further contended that on punishment awarded being modified, the petitioner was reinstated into service vide 2nd respondent order dated 05.05.2011; that the petitioner joined duty on 13.05.2011; that on account of reinstatement, the period of absence on account of removal from service from 16.11.2008 to 12.05.2011 was regularised as "no work no pay" vide 2nd respondent proceedings dated 05.05.2011.



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12. The respondents by the counter affidavit also contended that against the order dated 05.05.2011, the petitioner had filed an appeal before the Government with a request to set aside the said order; that the Government in GO.(D).No.605 dated 05.08.2013 rejected the appeal and thus the said order of the 1st respondent had attained finality.

13. By the counter affidavit it is contended by the respondents that under Section 7(i) of Tamil Nadu Government Servant (condition of services) Act, 2016 and Schedule XI thereto (for short Act, 2016), no member of service shall be promoted or appointed to a post if the member is undergoing any punishment imposed under rule 8 of the Rules 1955, either on the crucial or on the date of consideration for actual promotion.

14. The respondents further contended that on a representation submitted by the petitioner seeking his promotion from the post of Junior Assistant to Assistant and to include his name in the panel year 2008-2009; the 2nd respondent had called for panel proforma; that the Regional Transport Officer, Coimbatore (Central) has made an endorsement to consider the name of the petitioner for the above said panel year; that while



making the aforesaid endorsement the Regional Transport Officer did not make any reference about the currency of the punishment in the above panel year; that for the said reason the petitioner was placed at Sl.No.11 in the panel year 2009-2010 of qualified Junior Assistants to be promoted to Assistant vide 2nd respondent proceedings dated 31.01.2014; and that based on the aforesaid proceedings the petitioner was promoted from the post of Junior Assistant to Assistant vide proceedings dated 05.08.2014, pursuant to which the petitioner had joined duty as Assistant on 08.08.2014.

15. The respondents by the counter affidavit further contended that the 1st respondent thereafter had called for the proforma particulars to the post of Superintendent on promotion from the post of Assistant for the year 2015-2016 and during scrutiny of service qualification of the petitioner, it was noticed that the petitioner had acquired the required service qualification to the post of Assistant only for the panel year 2015-2016; that due to administrative reasons the panel year 2015-2016 was a “Nil” panel; that for the said reasons petitioner cannot be placed in the panel for promotion from the post of Junior Assistant to Assistant; and that the seniority of the petitioner has been restored in the panel year 2016-2017 vide proceedings of the 2nd respondent dated 02.08.2019; and that



consequent upon restoration of the seniority of the petitioner in the panel year 2016-2017, the proceedings issued by the 2nd respondent on 31.01.2014 was set aside.

16. By the counter affidavit it is further contended that the petitioner by his representation dated 24.04.2019 requested to include him in the panel year 2014-2015 to the post of Assistant to Superintendent and it is during the scrutiny by the 1st respondent, it was noticed that the petitioner would be eligible for being considered for the post of Assistant only in the panel year 2016-2017 and accordingly, restored the petitioner's seniority and placed him in the panel year 2016-2017, as he would not qualify and not entitled to the post of Assistant in the panel year 2011-2012; and that the petitioner has not fulfilled the service qualification required for the promotion to the post of Superintendent for the year 2014-2015 and thus, the petitioner was not considered for promotion.

17. It is further contended by the respondent that since, by the proceedings dated 05.05.2011, the petitioner having been categorically informed that the punishment of stoppage of increment for a period of two years without cumulative effect as ordered by the first respondent shall be



effective w.e.f. the date of rejoining of the petitioner in service as Junior Assistant and the said order having attained finality, the petitioner cannot after a lapse of eight years claim of he being entitled to be included in the panel to the post of Superintendent in the year 2014-2015. Contending as above, the respondents seek for dismissal of the writ petition.

18. In reply, the petitioner contended that though by the proceedings dated 05.05.2011, the respondents had claimed that the punishment of stoppage of increment for a period of two years without cumulative effect would take effect from the date of petitioner joining back into the service on 13.05.2011, the 2nd respondent having included the name of the petitioner for promotion to the post of Assistant by the proceedings dated 31.01.2014 by which time, the period of punishment as awarded has been completed, the 1st respondent cannot set aside the said proceedings after a lapse of 5½ years therefrom.

19. I have taken note of the respective contentions urged.

20. The 1st respondent by the impugned proceedings dated 02.08.2018 while rejecting the claim of the petitioner for being considered for inclusion



of his name in the panel year 2014-2015 for promotion to the post of Superintendent had taken up revision of the order of the 2nd respondent dated 31.01.2014, after a lapse of more than 5½ years, during which period the name of the petitioner was included in the panel for promotion to the post of Assistant for the year 2009-2010 which was also approved by the Principal Secretary / Transport Commissioner vide proceedings dated 03.02.2010 and the petitioner having been promoted to the said position and discharging his duties.

21. Though by the proceedings dated 05.05.2011 issued under the signature of the 1st respondent, it is stated that the punishment of stoppage of increment for a period of 2 years without cumulative effect as ordered by the Government in GO.(D).No.231 dated 09.03.2011 would be effected w.e.f. the date of rejoining of the petitioner as Junior Assistant, the petitioner having been reinstated into service on 13.05.2011 and the respondents thereafter having considered the name of the petitioner for being included in the panel year 2009-2010 for promotion to the post of Assistant, the period of modified punishment of two years would end only during the panel year 2010-2011, the respondents having promoted the petitioner from Junior Assistant to Assistant under the proceedings issued in



the year 2014, as relating to panel year 2009-2010 cannot by merely claiming the said proceedings as wrongly issued, cannot by exercising the powers of revision, set aside the same after a lapse of 5 ½ years.

22. Further, Rule 36 of Rules, 1955, confers powers on the Government / higher authority to exercise the powers of the revision “at any time”. The mere absence of / or non mention of time frame in the Rules, cannot be construed as the authority being vested with the power at any time. It is settled position of law that wherever the rules do not prescribe any time frame for exercising the power of review, the said power is to be exercised within a reasonable period of time and what constitute a reasonable time would vary from case to case depending on the facts of each case.

23. The Hon'ble Apex Court had categorically held, that in absence of prescribed period of limitation cannot be exercised within a reasonable time. (See - (i) *State of Gujarat V. Patel Raghav Natha – (1969) 2 SCC 187* and (ii) *Mansaram V. S.P.Pathak – (1984) 1 SCC 125*)



24. Though, the first respondent by the impugned proceedings while rejecting the claim of the petitioner for being included in the panel list for promotion to the post of Superintendent in the year 2014-2015 having examined the proceedings by which he was promoted from Junior Assistant to Assistant, had come to a conclusion that the name of the petitioner could not have been included in the panel year 2009-2010 and the petitioner would become eligible for promotion only in the panel year 2016-2017.

25. However, the 1st respondent by the impugned proceedings passed in exercise of the revisionary power conferred on him under the Rules and setting aside the proceedings dated 31.01.2014 of the 2nd respondent, did not give any notice to the petitioner, but on his own volition concluded that the petitioner would be eligible for being included in the Assistant selection list for the year 2016-2017 by holding that the modified punishment of stoppage of increment for a period of two years without cumulative effect would take effect from the date of the petitioner joining back service. The effect of the aforesaid decision taken by the first respondent by the impugned order amounts to *double jeopardy*, as the petitioner initially on being awarded with punishment of removal from service vide order dated 23.10.2008, being out of service which order was modified to one of stoppage of



increment for a period of two years without cumulative effect by the 1st respondent vide order dated 09.03.2011, and the said period between 23.10.2008 till petitioner was reinstated into service being treated as “no work no pay” results in petitioner being punished for a period of more than 5 years, which is not permitted under law.

26. The Hon'ble Supreme Court in the case of ***Union of India and others v. P.Gunasekaran*** reported in ***(2015) 2 SCC 610*** held that whenever a punishment imposed has been altered / substituted necessarily it has to be from the date of the punishment awarded initially, thus, the claim of the 1st respondent in the impugned proceedings of the petitioner becoming eligible for being included in the panel list of the year 2016-2017 cannot be held as valid being contrary to law laid down by the Hon'ble Apex Court.

27. Further, a Coordinate bench of this Court in ***WP.No.646 & 647 of 2016 dated 07.02.2022 – S.Durai v. The Superintendent of Police, Villupuram*** by following the law laid down by the Hon'ble Apex Court having held that the date of giving effect to lesser punishment would revert to the date of original punishment, the order of the 1st respondent in holding that the petitioner is not entitled for being considered for promotion to the



post of Assistant is to be considered for the post of Assistant from the post of Junior Assistant for the panel year 2016-2019 and setting aside the proceedings of the 2nd respondent dated 31.01.2014 without issuing any notice to the petitioner and more so also after a lapse of 5½ years from the date of said proceedings having been issued cannot be held as valid exercise of power under Rule 36 of the Rules, for countenancing the action of the 1st respondent or sustaining the impugned proceedings.

28. In the result, the writ petition is allowed; the order of the 1st respondent dated 02.08.2019 is set aside. However, the first respondent is at liberty to initiate proceedings afresh to determine the eligibility of the petitioner to the post of Assistant, pursuant to the order by which the original punishment of removal from service has been modified, by issuing notice to the petitioner and taking further action in accordance with law. No order as to costs.

28.11.2025

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

1. The State
Rep by its Secretary
Home (Transport) Department,
Fort St.George,
Chennai – 600 009.
- 2.The Transport Commissioner,
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T. VINOD KUMAR, J.



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Pre-Delivery Order in

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