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Court : Chennai

Decided On : Jul-10-2012

Judge : D.Hariparanthaman, J.

Acts : Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, 1955. - Rule 17 (a),; [Constitution of India](#) - Articles 226, 309, 162

Appeal No. : Writ Petition (MD) No.10549 of 2011

Appellant : P.Shanthi Rani

Respondent : The Director of Elementary Education Collage and ors.

Advocate for Def. : Mr.V.Muruganandam, Adv.

Advocate for Pet/Ap. : Mr.A. Thirumurthy, Adv.

Judgement :

Petition filed under Article 226 of the [Constitution of India](#) praying for the issuance of writ of mandamus to direct the respondent to promote the petitioner to the post of Middle School Head Master by including the petitioner name in the panel for the year 1/1/2011 in the appropriate place and to grant all service and monetary benefits.

ORDER

1. The petitioner was appointed as a Secondary Grade Teacher in Backward Class & Minorities Welfare School, Appanur. On 13/6/2000, she was promoted as Head Master and posted in the Panchayat Union Primary School, Kamarajapuram, Mudukulathur Union, Ramanathapuram District.

2. Whiles, he was issued with a charge memo dated 7/7/2010 under Rule 17 (a) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, 1955. Another charge memo dated 29/9/2010 was issued on the same lines making the same allegations. The petitioner submitted an explanation on 20/10/2010 denying the charges. However, the second respondent passed an order dated 15/2/2011 imposing the punishment of stoppage of one increment for a period of three months without cumulative effect. The punishment was over by 30/6/2011. Furthermore, the petitioner filed an appeal before the first respondent against the punishment order and the same is pending.

3. In the said circumstances, the third respondent entered in the service register of the petitioner that the name of the petitioner could not be included in the panel for promotion to the post of Middle School Head Master for a period of five years from 15/2/2011. In view of the same, the petitioner was not called for counselling that took place on 16/9/2011. This forced him to file the present writ petition, seeking for a direction from the respondents to promote him to the post of Middle School Head Master by including the name of the petitioner in the panel for the year 1/1/2011 in the appropriate place and grant all service and monetary benefits.

4. Heard both sides.

5. Mr.V.Muruganandam, Additional Government Pleader has made his submissions based on instructions.

6. The learned counsel appearing for the petitioner has heavily relied on a Full Bench decision in 1. THE DEPUTY INSPECTOR GENERAL OF POLICE, THANJAVUR RANGE, THANJAVUR AND 2. THE DIRECTOR GENERAL OF POLICE, TAMIL NADU, CHENNAI 4 Vs. V.RANI reported in 2011 (3) CTC - 129 and submits that the currency of punishment was over by 30/6/2011 and thereafter, there is no bar for the petitioner to participate in the counselling.

7. On the other hand, the learned Additional Government Pleader submits that as per the letter No.248 (P & AR) Department, dated 20/10/1997, the petitioner could not be permitted to participate in the counselling for five years, in view of the punishment.

8. I have considered the submissions made on either side.

9. As rightly contended by the learned counsel appearing for the petitioner, there is no bar after 30/6/2011 for considering the petitioner for the post of Middle School Head Master as held by the Full Bench of this Court in 1. THE DEPUTY INSPECTOR GENERAL OF POLICE, THANJAVUR RANGE, THANJAVUR AND 2. THE DIRECTOR GENERAL OF POLICE, TAMIL NADU, CHENNAI 4 Vs. V.RANI reported in 2011 (3) CTC - 129. Paragraph 28 (5) of the Full Bench judgment in this regard is extracted hereunder and the same squarely applies to the facts of this case.

"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.

(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."

10. Further, this Court issued an interim order dated 15/9/2011, permitting the petitioner to participate in the counselling that took place on 16/9/2011. In view of the pendency of the writ petition, it is stated that the result of the counselling was not made known.

11. Since there is no embargo for the petitioner to participate in the counselling after 30/6/2011, as per the Full Bench judgment of this Court, the respondents shall make known the result of the counselling and it is made clear that the petitioner is entitled to be considered for the promotion to the post of Middle School Head Master after 30/6/2011.

12. The writ petition is disposed of in the above terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.