

(2009) 09 MAD CK 0330

In the Madras High Court

Case No : Writ Petition No. 7008 of 2007

A. Sundarraj

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Citation : (2009) 09 MAD CK 0330

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; C.K. Vishnupriya, Additional Govt. Pleader, for the Respondent

Judgement

D. Hariparanthaman, J.—The Original Application in O.A.765 of 2002 is now the present Writ Petition before this Court.

2. Heard the submissions made by the learned Counsel for the petitioner and the learned Additional Government Pleader for the respondents.

3. The petitioner was appointed as an Assistant Supervisor in Industrial Co-Operatives on 19.10.1983, under the Director of Sericulture, Salem-1, the 2nd respondent herein.

4. According to him, on completion of ten years on 19.10.1983, he is entitled to Selection Grade pay. But the same was denied to him pursuant to the disciplinary proceedings that was pending in a Charge Memo dated 14.12.1992.

5. The disciplinary proceedings culminated in passing of the order dated 22.07.1998, imposing stoppage of increment for 3 months without cumulative effects. He preferred the appeal to the 2nd respondent and the 2nd respondent rejected the appeal, by an order dated 05.02.2001. He filed a review against the said order, before the 1st respondent and the revision application was dismissed in the order dated 01.10.2001. After the punishment was imposed in the order dated 22.07.1998, he was granted Selection Grade, with effect from 01.01.1999,

by an order dated 15.09.2000.

6. The petitioner filed an O.A. No. 765 of 2002 (W.P. No. 7008 of 2007) to quash the order dated 22.07.1998, imposing punishment of stoppage of increment for a period of 3 months without cumulative effect and the appellate order dated 05.02.2001 and the revisional order dated 01.10.2001 and also the order dated 15.09.2000 of the 2nd respondent granting Selection Grade with effect from 01.01.1999 instead of 19.10.1993.

7. The learned Counsel for the petitioner states that he does not press the prayer relating to the order of punishment dated 22.07.1998, imposing the punishment of stoppage of increment for a period of 3 months without cumulative effect and the appellate and revisional order confirming the same.

8. The learned Counsel states that the pendency of disciplinary proceedings and the currency of punishment were impediments for the grant of Selection Grade, as per G.O.Ms. No. 68, Personnel and Administrative Reforms (Per-M) Department, dated 23.01.1986. The learned Counsel further submits that the said impediments were removed pursuant to the later G.O.Ms. No. 276 Public and Administrative Reforms (Personnel.S) Department, dated 07.08.1992.

9. The learned Counsel has brought to my notice the impediments that were placed in G.O.Ms. No. 68 and the same being removed in subsequent G.O.Ms. No. 276 and both are extracted hereunder:

G.O.Ms. No. 68 Personnel and Administrative Reforms (Per-M) Department:

The Government, after careful consideration, have decided to accept the above recommendation of the Tamil Nadu Fourth Pay Commission. They accordingly direct that the guidelines already issued in the Government Orders 3 to 11 read above be superseded and the following fresh guidelines be followed hereafter. While moving the Government employees to Selection/Special Grades.

(i) For advancement to Selection Grade/Special Grades, all employees, who have put in 10/20 years of satisfactory service and who satisfy all the qualifications prescribed under the Special Rules/Adhoc Rules for promotion to the higher post shall be eligible.

(ii) All other normal criteria for promotion to a higher post viz., seniority, good or satisfactory record of service, the nature of punishments imposed on the employee and the lapses for which the punishments were imposed, the pendency of charges of disciplinary proceedings or enquiry, by Director of Vigilance and Anti-Corruption, qualifications/tests prescribed under the Special/Adhoc Rules for the higher post etc. should be followed while moving the employees to the Selection/Special Grade.

(iii) (a) For the purpose of advancement of Selection/Special Grades, a panel of all eligible employees, who will be completing ten years/twenty years of service between 1st January to 31st December in a year, shall be prepared before the

15th December of the preceding year and got approved by appointing authority in accordance with the guidelines issued in Sub-para (i) and (ii) above. The actual orders of appointment to Selection/Special Grade of the employees concerned shall be issued immediately after the date on which the individual completes 10/20 years of service.

(b) If an employee, who, at the time of preparation of panel, does not possess the qualification required but subsequently acquires the qualification before the actual date of completion of 10/20 years of service, the appointing authority shall have the power to include his name in the panel and move him to the Selection/Special Grade.

(c) Punishment suffered in between the period of approval of panel and advancement to Selection/Special Grade may be taken due note of by the appointing authorities before actual issue of orders, moving the persons to the Selection/Special Grades.

(iv) A copy of the approved panel of names for advancement to Selection/Special Grade shall be communicated to the employees whose names were considered (including those whose names have not been included in the panel) within a month from the date of the approval of the panel. The person whose name has not been included shall be entitled to prefer an appeal to the next higher authority, within two months from the date of receipt of the communication of the panel;

(v) The cases of persons whose names have not been included in the panel, shall be reviewed, while preparing subsequent panels.

(vi) Service rendered in lower post on other duty should not be taken into account as qualifying service in the higher post for advancement to the Selection/Special Grade. The service rendered in an equivalent or higher post on other duty alone should be taken into account for advancement to Selection/Special Grade, to the extent he should have acted in his original post in the parent department but for his deputation.

G.O.Ms. No. 276 Public and Administrative Reforms (Personnel.S) Department:

In the Government Order read above guidelines for advancement to Selection/Special Grade posts were laid down. It has been ordered therein that the criteria as for promotion should form the basis for granting Selection/Special Grade, on completion of 10/20 years of service.

In the meeting convened by the Hon^{ble} Chief Minister, with the Service Associations on 01.08.1992, it was represented that the criterion that one should possess all the qualifications for promotion to next higher post for awarding Selection/Special Grade should be removed. The Hon^{ble} Chief Minister announced that this request will be considered.

The Government after careful consideration of the request of Service Associations

and in partial modification of the orders in the Government Order first read above and the clarifications issued thereon from time to time, direct that the criterion that one should possess the qualifications and pass the tests, if any, prescribed for next higher posts need not be insisted upon for movement to Selection/Special Grade.

All other conditions and guidelines contained in the Government Order first read above will remain unchanged.

10. I have perused both the G.O.Ms. No. 68, Personnel and Administrative Reforms (Per-M) Department and G.O.Ms. No. 276, Public and Administrative Reforms (Personnel.S) Department. In view of the G.O.Ms. No. 276, Public and Administrative Reforms (Personnel.S) Department, the petitioner is entitled to Selection Grade with effect from 19.10.1993, as the pendency of disciplinary proceeding is not bar for the grant of Selection Grade.

11. I am of the considered view, that after the issue of G.O.Ms. No. 276, Public and Administrative Reforms (Personnel.S) Department, the petitioner is entitled to Selection Grade from 19.10.1993 on completion of 10 years of service irrespective of pendency of disciplinary proceedings as on 19.10.1993.

12. Hence, while rejecting the prayer of the writ petitioner, relating to the quashing of the punishment of stoppage of increment, for a period of 3 months without cumulative effect, the prayer relating to the granting of Selection Grade with effect from 19.10.1993 is allowed, and a direction is issued to the 2nd respondent to grant the petitioner Selection Grade as Assistant Supervisor of Industrial Co-operatives with effect from 19.10.1993, within a period of four weeks from the date of receipt of the copy of this order, with all the consequential benefits.

13. With the above direction, the writ petition is disposed. No costs.