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(2011) 12 MAD CK 0180

In the Madras High Court

Case No : Writ Petition No. 48365 of 2006

K. Ramachandran APPELLANT

Vs

State of Tamil Nadu and Another RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17, 27, 3.1

Citation : (2012) 2 MLJ 556

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : R. Muthukumar, for the Appellant; V. Subbiah, Special Government Pleader, for Respondents, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The petitioner was working as an Assistant Executive Engineer in the Public Works Department during the year 1995-96 and his name was not included in the panel of the Assistant Executive Engineer for the year 1995-96 for promotion to the post of Executive Engineer. The reason for non inclusion of his name is that a charge memo dated 17.12.1994 issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was pending against him at that time. The 17(b) proceedings resulted in imposition of punishment of stoppage of increment for two years with cumulative effect by an order in G.O. (2D) No. 42, Public Works, dated 9.4.1997. The petitioner successfully challenged the same before the Tamil Nadu Administrative Tribunal and the Tribunal by an order dated 3.3.2000 in O.A. No. 3284 of 1997, quashed the punishment order.

2. Based on the order dated 3.3.2000 in O.A. No. 3284 of 1997, the Government issued G.O. Ms. No. 277, Public Works (A1) Department, dated 30.5.2000 including the name of the petitioner in the panel of Assistant Executive Engineer for the year 1995-96 at appropriate place for promotion to the post of Executive Engineer. He was placed below one Mr. K. Singaralingam and above one Thiru.

Velusamy.

3. Pursuant to the same, the petitioner was also included by the same G.O. by including his name in the panel of Executive Engineer fit for promotion to the post of Superintending Engineer for the year 1999-2000 and he was placed below one Mr. Singaralingam and above one Mr. Velusamy.

4. Thereafter, the Government issued G.O. (Ms) No. 278, Public Works (A1) Department dated 30.5.2000 promoting the petitioner from the date on which his immediate junior Mr. Velusamy was promoted as Executive Engineer. Thiru. Valusamy was promoted as Executive Engineer and assumed charge on 8.11.1996. Based on the same, the petitioner was also promoted as Executive Engineer with effect from 8.11.1996.

5. Likewise in G.O. Ms. No. 278, he was promoted as Superintending Engineer and joined the said post on 31.5.2000 and he retired from service on 31.5.2000 on reaching the age of superannuation.

6. While granting promotion as Executive Engineer and Superintending Engineer in G.O. Ms. No. 278, it is stated in para-6 of the G.O. that the pay of the petitioner in the promoted posts namely, Executive Engineer and Superintending Engineer shall be regulated as per Ruling 17 under Fundamental Rules 27.

7. Accordingly, consequential orders were issued by the Chief Engineer (Buildings), Chennai dated 28.6.2000. In the said order dated 28.6.2000, the pay was fixed taking into account the fact that the petitioner was promoted as Executive Engineer with effect from 8.11.1996. He was also given the pay of Superintending Engineer. But, it is stated that the petitioner is not entitled to arrears of pay.

8. He made an appeal dated 20.7.2000 to the Secretary to Government, Public Works Department, for arrears of pay in the promoted post, namely, Executive Engineer and Superintending Engineer.

9. But the Government rejected his appeal by an order dated 24.4.2001. Challenging the same, the petitioner has filed the Original Application in O.A. No. 6054 of 2001 before the Tamil Nadu Administrative Tribunal, seeking to quash the aforesaid order dated 28.6.2000 of the Chief Engineer and the order dated 24.4.2001 of the Government.

10. The respondents have filed a reply affidavit refuting the allegations.

11. Heard both sides.

12. The learned counsel for the petitioner submits that the respondents have not assigned any reason for declining the arrears of pay in the promoted post. He relies on a judgment of the Division Bench of this Court dated 23.12.2010 in W.P. No. 7437 of 2009.

13. On the other hand, the learned Special Government Pleader seeks to sustain

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the impugned orders stating that the petitioner did not actually work in the promoted posts and therefore, he is not entitled to arrears.

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

15. The first respondent directed the second respondent for fixation of pay in the promotional post under Ruling 17 under Fundamental Rules 27. Rule 17 under Fundamental Rules 27 is extracted hereunder:

(17) In case where a Government Servant has been overlooked for promotion/ appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post, from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19.9.1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19.9.1981, arrears shall be admissible only with effect from the above post.

16. Based on the aforesaid Fundamental Rules, the second respondent passed the impugned order dated 28.6.2000, fixing the pay of Executive Engineer with effect from 8.11.1996. While so, the second respondent denied the arrears of pay by the following ultimate order which is extracted hereunder:

Thiru. K. Ramachandran joined duty on 31.5.2000 F.N. as Joint Chief Engineer (Buildings) P.W.D. Chennai-5 and retired on 31.5.2000 A.N. on superannuation. He is not entitled for arrears of pay.

17. When the petitioner made an appeal to the first respondent, the first respondent rejected the appeal by the impugned order dated 24.4.2001. The order of the first respondent dated 24.4.2001 is also extracted hereunder:

I am directed to refer your appeal cited and to state that your appeal has been examined by the Government in detail. It has been observed that based on the orders of the Tamil Nadu Administrative Tribunal dated 3.3.2000 in O.A. No. 3284 of 1997 orders were issued for your appointment in the post of Executive Engineer and Superintending Engineer. You joined duty in the post of Superintending Engineer on 31.5.2000 F.N. and retired from service on the after-noon of 31.5.2000. Thus you have actually acted in the post of Superintending Engineer for a day only. Even then your pay has been regulated from the post of Executive Engineer with effect from 8.11.1996 on par with your junior which has enhanced your retirement benefits. You are not entitled for arrears of pay and allowances in the post of Executive Engineer as you have not actually acted in

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that post. Your appeal is accordingly rejected.

18. Both the first and second respondents have stated that the petitioner is not entitled to arrears of pay and that he is entitled to notional promotion that would have an effect of enhanced pension.

19. Though the Ruling 17 under FR27 does not provide for payment of arrears, but, Ruling 17 under FR 27 does not cover this situation. Ruling 17 under FR 27 is relating to restoration of seniority on departmental appeal. The proviso therein relates to inclusion in the panel due to dropping of charges after the retirement. But here is the case wherein, the punishment is set aside by the Tribunal. Hence, the aforesaid Ruling could not be relied on by the first and second respondents to regulate the pay to the petitioner in the promoted post.

20. It is relevant to note that FR17 states that the Government servant is entitled to draw the pay and allowances attached to the post when he assumes the duties of the post. FR17 is extracted hereunder:

17. A Government servant shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties.

21. A similar provision is also there in the Fundamental Rules applicable to the Central Service that came for consideration before the Apex Court in Jankiraman''s case. The Apex Court in Union of India Vs. K.V. Jankiraman, etc. etc., has held as follows:

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an

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employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after Clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/ criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.

Awarding of censure, therefore is a blameworthy factor. A bare reading of Rule 3.1 as noted above makes the position clear that where any penalty has been imposed, the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course. Having regard to the penalty imposed on him, undisputedly the respondent has been given promotion with effect from 26.11.2001. His claim for promotion with effect from 1.11.1999 was clearly unacceptable and, therefore, the Tribunal and the High Court were not justified in holding that he was entitled to be promoted with effect from 1.11.1999. The order of High Court affirming the view taken by the Tribunal cannot be sustained and is, therefore, set aside.

As per the aforesaid judgment of the Apex Court, the issue as to the arrears of pay has to be decided based on the circumstances of each case.

22. As rightly contended by the learned counsel for the petitioner, a Division Bench of this Court wherein I was a party to the judgment dated 23.12.2010 in W.P. No. 7433 of 2009 K. Manickaraj v. Regisrar, Hon. Central Admin. Tribunal, Madras Bench, Chennai -600 104 has held in para 24 that the authority shall consider the facts of the case to decide as to whether the Government employee is entitled to arrears of pay or not. Para 24 is extracted hereunder:

24. The Honourable Apex Court has clearly laid down that the employees are not entitled to backwages in all the cases automatically, where disciplinary proceedings or criminal proceedings exonerated the employees. The Honourable Apex Court categorically held that the concerned authority has to take into account the entirety of the circumstances, as to whether the proceedings ended in favour of the delinquent employee was based on benefit of doubt or on account of non availability of evidence due to the acts attributable to the employees etc., or it was on merits. The law was laid down in the following words by the Honourable Apex Court in the judgment in Union of India and Others v. A.N. Mohan made in Civil Appeal No. 2020 of 2007 (decided on 18.4.2007).

However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if

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so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/ criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons fordoing so.

23. Therefore, the respondents 1 and 2 shall consider the entire circumstances of the case before denying the arrears of pay, particularly, when the punishment was set aside by the Tribunal by an order dated 3.3.2000 in O.A. No. 3284 of 1997. The respondents have not given any reason for denying the arrears to the petitioner. Without giving reasons, the petitioner shall not be denied the arrears in the promoted post, when the punishment was ultimately set aside by the Tribunal. Hence, the impugned orders are set aside and the first respondent is directed to pass appropriate orders relating to the payment of arrears in the promoted post in the light of decision dated 23.12.2010 in W.P. No. 7433 of 2009 within a period of eight (8) weeks from the date of receipt of a copy of this order. The writ petition is allowed in the above terms. No costs.

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