

(2009) 10 MAD CK 0203
In the Madras High Court
Case No : Writ Petition No. 11875 of 2007

S. Shiyamala

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 08-10-2009

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2009) 10 MAD CK 0203

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; C.K. Vishnu Priya, Additional Government Pleader, for the Respondent

Judgement

D. Hariparanthaman, J.—The Original Application in O.A. No. 2929 of 2002 before the Tamil Nadu Administrative Tribunal (hereinafter referred to as "the Tribunal") is now Writ Petition in W.P. No. 11875 of 2007 before this Court.

2. The petitioner was appointed as a Community Nutrition Instructress on 16.08.1982. Later, she was promoted as Assistant District Social Welfare Officer in the year 1995. She was temporarily appointed as a Child Development Project Officer by the Proc.Rc. No. 21480/Ad.I (1)/95 dated 30.05.1995 by the second respondent, which is the promotional post to the Assistant District Welfare Social Officer.

3. While so, the petitioner was issued with a charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, dated 13.01.1994. The second respondent passed an order dated 07.06.1995 imposing the punishment of stoppage of increment for the period of six months without cumulative effect and also recovering Rs. 3,000/- from the salary of the petitioner.

4. The first respondent issued panel for the year 1996-1997 for the Child Development Project Officer by G.O.Ms. No. 63, Social Welfare and Nutritious

Meal Programme Department, dated 06.05.2002. The name of the petitioner was not included in the panel. She was not included in the panel, in view of the aforesaid order dated 07.06.1995 of the second respondent imposing the punishment of stoppage of increment for six months without cumulative effect.

5. The petitioner filed an Original Application in O.A. No. 2929 of 2002 (W.P. No. 11875 of 2007) praying for a direction to the respondents to include her name in the panel for the year 1996-97 for Child Development Project Officer approved in G.O.Ms. No. 63 of the first respondent dated 06.05.2002 at an appropriate place and consequently to promote her to the said post with retrospective effect from the date of promotion of her immediate junior.

6. Heard Mr. M. Ravi, learned Counsel for the petitioner and Mrs. C.K. Vishnu Priya, learned Additional Government Pleader for the respondents.

7. The learned Counsel for the petitioner submits that in a similar case, this Court passed an order dated 09.01.2009 in W.P. No. 23751 of 2008, holding that the minor punishment of stoppage of increment for two years without cumulative effect could not be an hindrance for including the concerned Government employee in the panel for promotion. The said judgment is based on a Division Bench judgment of this Court in Subramanian v. Government of Tamil Nadu rep. By its Secretary, Chennai and Ors. reported in 2008 (5) MLJ 350.

8. On the other hand, the learned Government Advocate submits that since the petitioner suffered the minor punishment, she is not entitled to be included in the panel.

9. The learned Counsel for the petitioner states that the petitioner will be satisfied, if she is included in the approved panel in G.O.Ms. No. 63, Social Welfare and Nutritious Meal Programme Department, dated 06.05.2002, at an appropriate place and an consequential order is passed giving promotion from the date of which her immediate junior was promoted, giving all the notional benefits, though she prayed for payment of actual benefits.

10. I have considered the submissions made by the learned Counsel on both sides. Paragraph 11 of the judgment in W.P. No. 23751 of 2008, dated 09.01.2009, which was relied upon by the learned Counsel for the petitioner, is extracted here-under:

11. The learned Counsel for the petitioner would further submit that consequential prayer made in the writ petition for a direction to include the name of the petitioner in the panel for promotion may be granted. He would submit that as per law laid down by a Division Bench of this Court in Subramanian v. Government of Tamil Nadu, rep. By its Secretary, Chennai and Ors. 2008 (5) MLJ 350, when the employee is imposed upon a punishment of stoppage of increment for two years without cumulative effect which could be construed only as a minor punishment, he could not be denied further promotion solely based on the same, if he is otherwise fit for promotion. The law laid down by the Division Bench is

squarely applicable to the facts of the present case. Therefore, the petitioner is entitled for his name to be included in the panel for promotion for the post of Deputy Inspector General or Registration provided he possess the other qualifications and if he satisfies the other legal retirements.

11. The judgment extracted above makes it clear that it applies to this case squarely. Hence, a direction is issued to the first respondent to include the name of the petitioner in the approved panel for Child Development Project Officer issued in G.O.Ms. No. 63, Social Welfare and Nutritious Meal Programme Department, dated 06.05.2002, at an appropriate place and to issue a consequential order promoting her from the date on which her immediate junior was promoted, with notional benefits. The first respondent is also directed to undertake the above said exercise within a period of 12 weeks from the date of receipt of copy of this order.