

(2009) 09 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No. 32755 of 2006 and O.A. No's. 2001 and 2171 of 1998

S. Soundararajan

APPELLANT

Vs

Commissioner, Hindu Religious and Charitable Endowments
Administration Department

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

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

Citation : (2009) 09 MAD CK 0066

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ravi, for the Appellant; T. Chandrasekaran, Spl. GP, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. These writ petitions arose out of O.A. Nos. 2001 and 2171 of 1998 filed by the petitioners before the Tamil Nadu Administrative Tribunal. In

view of the abolition of the Tribunal, they were transferred to this Court and were renumbered as W.P. Nos. 32755 and 34457 of 2006

respectively.

3. The petitioners sought for the issuance of a writ of certiorarified mandamus to quash the proceedings of the respondent issued in his Na.Ka. No.

49226/97-2/B5 dated 19.2.98 insofar as the applicants are concerned and to direct the respondent to include the applicants' name in the panel for

promotion as Inspectors drawn in proceedings No. 49226/97-1/B5 dated 19.2.98 by the respondent herein in the appropriate place with due

seniority and consequently, to direct the respondent to promote the applicants as Administrative Inspector and Inspector (HR&CE) respectively

with effect from the date of promotion of his immediate junior with all consequential monetary and service benefits.

4. In the first OA No. 2001 of 1998, the petitioner S.Soundararajan was informed by the impugned order that his name was not included in the

panel fit for promotion to the post of Inspector for the year 1997-98 for the reason that he had been imposed with a punishment of six months

stoppage of increment without cumulative effect by order, dated 24.9.93 and the said order came to be issued in terms of the Government

guidelines in G.O.Ms. No. 368, P&AR Department, dated 18.10.93 read with letter No. 248 P&AR Department, dated 20.10.97. The petitioner

was also informed that his name will be considered for inclusion in the panel for the year 1998-99. 5. Similarly, in the second OA No. 2171 of

1998, the petitioner (M. Nagarajan) was informed that he was not included in the panel since he was proceeded under Rule 17(b) of the Tamil

Nadu CS (D&A) Rules and by a final order, dated 1.7.94, he was imposed with a punishment of stoppage of increment for a period of three

months without cumulative effect.

6. In both cases, it was indicated that since the punishment was within the check period of five years, their inclusions were passed over. In the first

case after the punishment period was over, the petitioner was given with increment from 1.10.94 onwards. In the second case, the punishment was

over by 1.7.94.

7. A reply affidavit was filed in O.A. No. 2001/98 by the respondent. A reliance was placed upon G.O.Ms. No. 368, P&AR Department, dated

18.10.93 for superseding the case of the petitioner, since the petitioner had punishment during the check period of five years. But there is no

reference to the clarifications issued vide letter No. 248, P&AR Department, dated 20.10.97. While granting clarification, the Government had

stated as follows:

Any punishment, other than "Censure" imposed on an Officer within a period of Five years prior to the crucial date and a punishment of "Censure"

within a period of one year prior to the crucial date (or censure imposed after the crucial date, but before actual promotion) should be held against

the Officer. In such a case the Officer's name should be passed over.

8. Notwithstanding the above circular guideline issued by the State Government and which is also not under challenge before this Court, the

learned Counsel for the petitioners relied upon the following passage found in paragraphs 3 and 5 of the judgment of the Supreme Court in Union

of India and others Vs. K. Krishnan, , which reads as follows:

3. The learned Counsel for the appellants has relied on the provisions of Rule 157 of the Post and Telegraph Manual - Volume III, which inter alia

provides that even where the competent authority considers the candidate fit for promotion in spite of punishment in a departmental proceeding, the

promotion shall not be given effect to during the currency of the penalty. The learned Counsel for the respondent in reply reiterates the ground

mentioned in the impugned judgment.

....

5. It has been stated by the learned Counsel for the parties that except for the above punishment, the respondent is fit for promotion and that the

currency of the penalty will expire on September 14, 1990. In that view he may be promoted immediately thereafter with effect from September

15, 1990, provided he is not otherwise disqualified for promotion by incurring some other disqualification. The appeal is accordingly allowed but

without costs.

9. The learned Counsel also referred to the decision of the Supreme Court in L. Rajaiah Vs. Inspector General of Registration and Stamps,

Hyderabad and Others, and also referred to the following passage found in paragraph 4 of the said judgment, which is as follows:

4. ...Consequently, when the promotion to the post of Senior Assistant is on the basis of merit and ability under special rules, fitness is one of the

considerations for the purpose. Since he was undergoing punishment during the relevant period, he is not eligible for consideration for promotion.

Therefore, his juniors have stolen march over the appellant as Senior Assistants. He cannot thereby have any grievance. However, he is entitled to

be considered for promotion according to rules after 1-3-1994.

10. These two decisions referred to by the counsel cannot be said to be laying down general propositions of law. In the present case, in the

absence of any challenge to the Government guideline regarding the check period, the relief claimed by the petitioners cannot be granted by this Court. Hence both the writ petitions stand dismissed. No costs.