A STATE OF TAMIL NADU

v.

THIRU K.S. MURUGESAN AND ORS.

FEBRUARY 28, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service law—Tamil Nadu Statistics Service Rules—Rule 8—Promotion to post of Deputy Director of Statistics on grounds of merit and ability—Currency of punishment based on previous record an impediment—Unless period C *of punishment gets expired by efflux of time, claim for consideration during the said period cannot be taken up—Doctrine of double jeopardy—Not applicable—Non consideration not violative of Art. 21 or Art. 14r/w 16 of Constitution of India.*

Constitution of India—Arts 14, 16, 21—Doctrine of double jeopardy— D *Promotion on grounds of merit and ability—Currency of punishment based on previous record an impediment—Claim for consideration during the said period cannot be taken up—Doctrine of double jeopardy not applicable—Non-consideration is violative of neither Art 21 or Art. 14 r/w 16.*

E **The State initiated proceedings against the respondent for misconduct in the year 1978 while he was working as Assistant Statistical Officer. By order dated 6.12.1982 punishment of stoppage of three increments without cumulative effect was imposed. On appeal, it was set aside and re-enquiry was directed. On fresh enquiry, the same punishment was imposed by proceedings dated 6.9.1984. For consideration of promotion to** F **the post of Deputy Director of Statistics, which was to be made on grounds of merit and ability, during the year 1983-84, the name of the respondent was not included in the approval list as required under Rule 8 of the Tamil Nadu Statistics Service Rules. The respondent challenged non-inclusion of his name before the Administrative Tribunal. The Tribunal set aside the** G **order and directed reconsideration w.e.f. 1983-84. The Tribunal found that having imposed the penalty of punishment of stoppage of three increments, the promotion could not be withheld on that account as the same amounted to 'double jeopardy' offending Article 21 of the Constitution.**

In appeal to this court, the respondent contended that under Rule 8 H **of the Rules, the relevant date to be considered for inclusion in the list of**

the approved candidates for promotion was 1st September of the year of consideration. In 1984, when the respondent's claim was to be approved, there was no punishment in the eye of law and that, therefore, non-consideration of his case was vitiated by error of law. A

Allowing the appeal, this Court B

HELD: When promotion is under consideration, the previous record forms the basis and when promotion is on merit and ability, the currency of punishment based on previous record stands as an impediment. Unless the period punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Doing otherwise would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, the doctrine of double jeopardy had no application and non-consideration was violative of neither Article 21 nor Article 14 read with Article 16 of the Constitution. [390-B-C] C

D

Union of India v. Jankiraman, **AIR (1991) SC 2010, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3432-33 of 1995.

From the Judgment and Order dated 16.6.93 of the Tamil Nadu Administrative Tribunal, Madras in T.A. No. 6/91 (W.P. No. 11465/84) and O.A. No. 138 of 1991. E

R.K. Jain, A. Mariarputham, Ms. Aruna Mathur and Ajay Kapoor for the Appellant. F

D.K. Pandey and S. Nanda Kumar for the Respondents.

The following Order of the Court was delivered :

Leave granted. G

While the respondent was working as Assistant Statistical Officer, the State had initiated proceedings against him for misconduct in the year 1978 and by order dated 6.12.82 punishment of stoppage of three increments without cumulative effect was imposed. On appeal, it was set aside in August 1984 and re-enquiry was directed. On fresh inquiry, the same H

A punishment was imposed by proceedings dated 6.9.84. For consideration of promotions to the post of Deputy Director during the year 1983-84, the name of the respondent was not included in the approval list as required under Rule 8 of the Tamil Nadu Statistics Service Rules (for short, 'the Rules'). The respondent filed O.A. No. 138/91 in the Administrative Tribunal, Madras. The Tribunal by the impugned order dated 16.6.93 B allowed the O.A., set aside the order and directed reconsideration with effect from 1983-84. It would appear that subsequently his case was considered and he was promoted with effect from 31.8.88.

The only question is whether non-consideration of the respondent's C promotion for the year 1983-84 is in accordance with law. The Tribunal found that having imposed the penalty of punishment of stoppage of three increments, the promotion cannot be withheld on that account which otherwise amounts to "double jeoparty" offending Article 21 of the Constitution and that, therefore, it is arbitrary exercise of power violating Article 14 read with Article 16 of the Constitution.

D

It is contended by Mr. Pandey, learned counsel for the respondent, that under Rule 8 of the Rules, the relevant date to be considered for inclusion in the list of the approved candidates for promotion is 1st September of the year of consideration. In 1984 when the respondents' E claim was to be approved by the Government, there was no punishment in the eye of law and that, therefore, non-consideration of his case is vitiated by error of law.

We find no substance in the contentions. It is already seen that on December 6, 1982, the punishment of stoppage of two increments was F imposed and it was in vogue on 6.11.84, when the list was approved by the Government. The punishment was reiterated after fresh inquiry. Rule 3 of the Rules provides that "promotion to the posts of Director of Statistics, Deputy Director of Statistics shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately G equal". In other words, the claim of Asstt. Statistical Officer for promotion to Dy. Director shall be considered on grounds of merit and ability alone. Unless the seniority is approximately equal, seniority has no role to play and need to be relegated to the background.

A Bench of three judges of this Court in *Union of India* v. *K.V.* H *Jankiraman*, AIR (1991) SC 2010 at 2018, para 8, considered thus :-

"According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary form reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-

A paragraph after clause (iii) of paragraph 3 of the said memorandum. We, therefore, set aside the said findings of the Tribunal."

It would thus be clear that when promotion is under consideration, the previous record forms basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands an B impediment. Unless the period of punishment gets expired by afflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impressible under the Rules and it would be a premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of C double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with 16 of the Constitution.

The appeals are accordingly allowed. The order of the Tribunal is set aside. O.A. stands dismissed. No. costs.

A.G. Appeals Allowed.