

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.6.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.243 of 2015 and
M.P.No.1 of 2015

K.Rajalakshmi

... Petitioner

vs.

1.The Principal Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.

2. The Director of Government Examinations,
College Road, Chennai-600 006.

3. The Joint Director (Personnel)
Of Government Examinations,
College Road, Chennai-600 006.

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records of the 3rd respondent dt. 12.12.2014 in Na.Ka.No.027435/E1-1/2014 and quash that order by issue of a writ of Certiorarified Mandamus or any other appropriate writ/order/direction directing the respondents to include petitioners name from the list of Superintendents of Directorate of Government Examinations of the 3rd respondent dt. 16.05.2014 into the promotion list for 2014-15 of Regional Secretary to the Deputy Director of Government Examinations in Sl.No.9 below S.No.8 Sailakshmi and above S.No.10 A.Anbazhagan as petitioners period for 6 months ended on 31.03.2012.

For Petitioner : Mr.M.Kalyanasundram for
Mr.R.Vasudevan

For Respondents : Mr. M.E.Rani Selvam AGP

O R D E R

Petitioner is a superintendent in School Education Department. The next promotional avenue to the Superintendent is Regional Secretary to the Deputy Director to Government Examinations.

2. The grievance of the petitioner is that the petitioner was not included in the panel for promotion to the aforesaid post of

Regional Secretary to the Deputy Director to Government Examinations for the year 2014-15 by the impugned order dated 12.12.2014 issued by the third respondent.

3. This writ petition is to quash the aforesaid order dated 12.12.2014 of the third respondent.

4. The impugned order is based on G.O.Ms.No.248, P & AR Department dated 20.10.1997. The said Government Order disqualifies a person for promotion if he suffered any punishment other than censure within a period of 5 years prior to the crucial date.

5. The third respondent has filed a counter affidavit stating that the petitioner face a proceeding under Rule 17(a) of Tamil Nadu Civil Services (D & A) Rules and the same resulted in the order dated 02.05.2010 imposing punishment of stoppage of one increment without cumulative effect for one year.

6. It is also stated by the third respondent in the counter affidavit that the petitioner faced another proceedings under 17(b) of Tamil Nadu Civil Services (D & A) Rules and the same has ultimately resulted in the imposition of punishment of stoppage of increment without cumulative effect for a period of six months by order dated 02.5.2012 by the Appellate Authority, namely, Director of Government Examinations.

7. Heard both sides.

8. The learned Senior Counsel has relied on a Full Bench Judgment reported in 2011 (3) CTC 129 (The Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani) and has submitted that the Full Bench has held that G.O.Ms.No.248, P & AR Department dated 20.10.1997 has no statutory force. Hence, the same cannot be relied upon to deny promotion.

9. On the other hand, the learned Government Advocate has produced G.O.Ms.No.22, P & AR Department, dated 24.2.2014 amending the statutory rules and G.O.Ms.No.248, P & AR Department dated 20.10.1997 is in fact has been incorporated in the amended rules. The rule came into force retrospectively from the date on which G.O.Ms.No.248 was introduced, namely, 20.10.1997. The relevant passage of G.O.Ms.No.22, P & AR Department, dated 24.2.2014 is extracted hereunder.

G.O.Ms.No.22 , Personnel and Administrative Reforms (S) Department dated 24.2.2014 (f) after item (1-H) as so inserted, the following item shall be inserted, namely:-

"(1-HH) Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date

shall be held against the member of service and his name shall not be considered for inclusion in the approval list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment."

10. In view of the statutory rule, any punishment other than censure imposed on an officer within a period of five years prior to crucial date is a disqualification for promotion. In this case, the crucial date is 01.9.2013.

11. The punishment of stoppage of increment falls within the period of five years. Hence, the petitioner is disqualified as per the aforesaid G.O.Ms.No.22, P & AR Department, dated 24.2.2014.

12. In the circumstances, I do not find any infirmity in the impugned order. Hence, writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The Principal Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.

2. The Director of Government Examinations,
College Road, Chennai-600 006.

3. The Joint Director (Personnel)
Of Government Examinations,
College Road, Chennai-600 006.

1 cc to Mr.R.Vasudevan, Advocate, Sr. 27347

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