IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.07.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.5945 of 2011

S.V.Srinivasan .. Petitioner

Vs

1.The State of Tamilnadu Rep., by its
Special Commissioner and
Secretary to Government,
Revenue Department,
Fort St., George,
Chennai -9.

2.The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk,
Chennai -5.

3.The District Collector,
Villupuram District,
Villupuram. .. Respondents

Prayer:-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the respondents to promote the petitioner as Deputy Collector by including the petitioner's name in the panel fit for promotion as Deputy Collector for the year 1992 with all consequential benefits based on the orders of the Court, dated 18.12.2007 in W.P.No.2941 of 2006.

For Petitioner .. Mr.G.Elanchezhiyan

For Respondents .. Mr.R.Vijayakumar AGP for RR1to3

O R D E R

Heard the learned counsels appearing on either side and perused the materials placed on record. By consent of the learned counsels on either side, the writ petition is taken up for final disposal.

2. The petitioner seeks for a direction to promote the petitioner as Deputy Collector by including his name in the panel fit for promotion for the year 1992 with all consequential benefits.

3. The relief sought for by the petitioner is for notional promotion and this is based on the order passed by this Court in W.P.No.2941 of 2006. The petitioner initially filed an Original Application before the Tamil Nadu Administrative Tribunal in O.A.No.2653 of 1994, challenging G.O.Ms.No.250, Revenue Department, dated 24.03.1994, and for a further direction to include his name in the temporary list of Deputy Collector for the year 1992 in the appropriate place. On the abolition of the Tribunal, the case was transferred to this Court and renumbered as W.P.No.2941 of 2006 (T). This Court considered the submissions made on behalf of the petitioner as well as the stand taken by the respondents and held that only currency of punishment is a bar for consideration of promotion and from the counter affidavit it was seen that the punishment for the said charge was imposed only in the year 1994. It was further held that overlooking the name of the petitioner for the list drawn for the year 1991-92 is contrary to the Government Letter dated 28.12.1989. Ultimately, the impugned Government Order dated 24.03.1994, was set aside and the Writ Petition was allowed.

4. It is noteworthy to mention that the Government Order in G.O.Ms.No.250, dated 24.03.1994, which was impugned in the earlier Writ Petition, was in respect of claims made by the several persons including the petitioner against non-inclusion of their names in the temporary list of Deputy Collectors for the year 1992 and the only reason being that there were certain punishments pending and there were certain charges which were being enquired into. This Government Order was set aside by this Court and the Writ Petition was allowed and an observation was made to the effect that the petitioner was entitled for consequential retirement benefits. Thus, this Court is of the view that if the reasons assigned in G.O.Ms.No.250, were found to be unsustainable, then it has to be seen as to whether what would be the nature of consequential benefits, which would accrue to the petitioner. In order to appreciate this issue, it would be necessary to take note of the operative portion of the order passed in the earlier Writ Petition which reads as follows:-

> 7.It is an admitted fact that on the crucial date, i.e., 31.12.1991, the disciplinary proceedings was pending against the petitioner. But as per the instruction of the Government issued in the letter No.687 dated 28.12.1989, pendancy of disciplinary proceedings is not a bar. Only the currency of punishment is a bar. As per the counter filed by the respondent department, the punishment for the above said charges was imposed only in the year 1994. At that relevant point of time, there was no punishment as against the petitioner. Even in the counter there is no whisper with regard to the currency of any other punishment and as per the counter also, basing on the pendancy of the above said charge memo, the petitioner's claim was overlooked.

8.In view of the government order passed in G.O. letter No.687 dated 28.12.1989 overlooking the petitioner's claim for inclusion of his name in the list drawn for the year 1991 and 1992 is contrary to the instructions given by the Government on 28.12.1989 and as per the counter, by relying on G.O.Ms.No.367 dated 12.11.1992, the petitioner is not entitled for inclusion of his name in the list in question. But, admittedly, this G.O., has been issued only on 12.11.1992 whereas the crucial date was 31.12.1991. As such, relying on this government order, the petitioner's claim cannot be overlooked. Also, no other government order or rule has been brought to the notice of this Court by the learned Additional Government Pleader to show that the pendancy of the disciplinary proceedings is a bar for inclusion of name in the panel to that effect.

9.Hence, the Impugned order passed by the first respondent in G.O.Ms.250 Revenue [B2] Department dated 24.03.1994 is set aside. The writ petition is allowed. The petitioner is entitled for the consequential retirement benefits. No costs. Consequently connected miscellaneous petitions are closed.

5. A reading of the above would clearly disclose that the non-inclusion of the petitioner's name was faulted and the Court has assigned reasons. Therefore, consequential benefits such as entitlement for notional promotion for fixing in appropriate place and other monetary benefits may flow there from. In this regard, the petitioner has submitted a representation dated 01.02.2011, which is now pending before the respondents and in this regard the second respondent shall submit an appropriate proposal to the first respondent taking note of the earlier orders passed by this Court in W.P.No.2941 of 2006. This direction shall be complied with by the second respondent, within a period of three months from the date of receipt of a copy of this order. On receipt of the report, the first respondent shall consider and pass appropriate orders, within a period of two months thereafter.

6. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1.The Special Commissioner & Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 9.

2. The Principal Commissioner of Commissioner of Revenue Admn.
Chepauk, Chennai - 5.

3. The District collector,
Villupuram District.
Villupuram.

+1 cc to M.G.Elanchezhiyan, Advocate, sr.37211
+1 cc to The Government Pleader, sr.37073.

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