

In the High Court of Judicature at Madras

(Orders reserved on 06.10.2016)

Dated : 18.11.2016

Coram

The Honourable Mr.Justice R.SUBBIAH

W.P.No.29112 of 2014
and
M.P.Nos.1 & 2 of 2014

S.Vimala

.... Petitioner

..vs..

1.The Principal Secretary /
Commissioner of Rural Development,
and Panchayat Raj (TRG) and
Director of Rural Development and
Panchayat Raj (FAC),
Panagal Building,
Saidapet, Chennai-600 015.

2.The District Collector,
Dharmapuri District,
Dharmapuri-636 705.

3.The Secretary,
Departmental Promotion Committee /
The Principal Secretary to Government,
R.D. & P.R. Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

..Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings No.24333/12/EE2-2, dated 23.09.2014 on the file of the 1st respondent and to quash the same, insofar as the rejection of the name of the petitioner under Annexure-II (S.No.2) is concerned, and to direct the 1st respondent to include the name of the petitioner in the promotional panel for the year 2012-2013 for the post of Assistant Engineer (RD) in the appropriate place as per her seniority, within a time frame.

For Petitioner : Mr.K.K.N.Ganeshan

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents : Mr.S.Gunasekaran, AGP

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorari Mandamus, to call for the records relating to the proceedings No.24333/12/EE2-2, dated 23.09.2014 on the file of the 1st respondent and to quash the same, insofar as the rejection of the name of the petitioner under Annexure-II (S.No.2) is concerned, and to direct the 1st respondent to include the name of the petitioner in the promotional panel for the year 2012-2013 for the post of Assistant Engineer (RD) in the appropriate place as per her seniority, within a time frame.

2.The brief facts of the case of the petitioner are as follows:-

2-1.While the petitioner was earlier working as the Union Overseer in Karimangalam Panchayat Union, the 2nd respondent issued a show cause notice in Na.Ka.No.17373/2011/K4, dated 23.07.2011, leveling four charges against her under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner had submitted her explanation vide letter dated 02.09.2011. As the explanation was not found to be satisfactory and upon perusal of the records, the 2nd respondent vide his proceedings in Rc.No.17373/2011 K4, dated 17.5.2012 imposed a punishment on the petitioner, withholding her increment for a period of three months, without cumulative effect. The period of punishment of withholding her increment for a period of three months without any cumulative effect, taking effect from 17.5.2012 to 16.08.2012, has already come to an end.

2-2.Further, the 2nd respondent again by his proceedings in Rc.No.13789/2014/K4, dated 21.3.2014, on a charge under Rule 17(a) of Tamil Nadu Civil Servants (Discipline and Appeal) Rules, imposed a punishment of censure on the petitioner and as against the said order dated 21.03.2014, the petitioner had preferred an appeal through proper channel namely the 2nd respondent and she is yet to receive the communication on the Memorandum of Appeal preferred by her as against the order dated 21.3.2014.

2-3.Insofar as the petitioner's promotion to the post of Assistant Engineer (RD) is concerned, on the selection through the Department Promotion Committee, her name was forwarded to the 1st respondent; but, on the panel prepared by the 3rd respondent, the 1st respondent passed the final order in proceedings No.24333/12/EE2-2, dated 23.09.2014, in which the petitioner's name was found place under the caption "II. Candidates found Not fit by the Department Promotion Committee", assigning the reason 'Punishment under Currency'; thus, the petitioner's name was not considered for the next promotion in the said panel. Challenging the same, the petitioner has come forward with the present writ petition.

3. When the matter was taken up for consideration, the learned counsel appearing for the petitioner made a detailed argument by adverting to the contentions raised in the affidavit

filed in support of the writ petition, specifically stating that the punishment of withholding increment for a period of three months without cumulative effect based on the order dated 17.05.2012 passed by the 2nd respondent, came to an end as early as on 16.08.2012 itself. So far as the second charge-memo is concerned, by the proceedings of the 2nd respondent dated 21.03.2014, only a punishment of censure was imposed on the petitioner. According to the learned counsel for the petitioner, when the currency of the punishment came to an end as early as on 16.08.2012, there cannot be any impediment in including the name of the petitioner in the panel for promotion to the post of Assistant Engineer (RD) for the year 2012-2013. Thus, the learned counsel for the petitioner sought for quashing the impugned order and for a suitable direction to the respondents.

4. But, countering the submissions made by the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents, by filing a detailed counter, would contend that the petitioner was issued with two charge-memos one dated 23.07.2011 leveling four charges against her under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and another charge-memo dated 29.07.2011 leveling five charges against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In respect of the first charge-memo, after conducting enquiry, the punishment of withholding increment for three months without cumulative effect was imposed on the petitioner by the 2nd respondent vide order dated 17.05.2012. In respect of the 2nd charge-memo, after conducting enquiry, the petitioner was imposed with a punishment of censure by the 2nd respondent vide order dated 21.03.2014. The learned Additional Government Pleader would further submit that the name of the petitioner was deferred by the Department Promotion Committee in the Assistant Engineer (RD) panel for the year 2012-2013 due to pendency of the proceedings under Section 17(b) of TNCS (D&A) Rules, framed by the 2nd respondent. However, the name of the petitioner was included by the Department Promotion Committee in the Assistant Engineer (RD) panel for the year 2014-2015. Based on the decision of Department Promotion Committee, the petitioner's name was included in the panel of Assistant Engineer for the year 2014-2015 in Proc.No.17054/2015/EE-2-3, dated 15.09.2016 of Director of Rural Development and Panchayat Raj Chennai and the petitioner was promoted as Assistant Engineer in Krishnagiri District where she joined in Kelamangalam Block as Assistant Engineer on 24.09.2016 FN. Thus, the learned Additional Government Pleader sought for dismissal of the writ petition.

5. Heard the submissions made on either side and perused the materials available on record.

6. It is the case of the petitioner that the punishment of withholding increment for three months without cumulative effect imposed on her in respect of the first charge-memo dated 23.07.2011 came to an end as early as on 16.08.2012 itself. So

far as the second charge-memo dated 29.07.2011 is concerned, only censure was awarded to the petitioner. According to the learned counsel for the petitioner, there is no provision for any check period in any of the statutory Rules framed under Article 309 of Constitution of India; hence, there cannot any impediment in including the name of the petitioner in the promotion panel for the year 2012-2013, as the punishment imposed on the petitioner came to end on 16.08.2012 itself.

7. But, I find that even after the expiry of the punishment imposed on the petitioner under the first charge-memo, the petitioner was facing enquiry in another charge-memo dated 29.07.2012 issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and on completion of enquiry, the punishment of censure was imposed on the petitioner by the 2nd respondent vide order dated 21.03.2014. Since the enquiry in respect of the second charge-memo was pending, the petitioner is not entitled for inclusion of his name in the promotion panel for the year 2012-2013. As contended by the learned Additional Government Pleader, since the enquiry was pending against the petitioner on the crucial date for the preparing the promotion panel for the year 2012-2013 as well as on the date of consideration of inclusion of name in the said panel, the petitioner's name was correctly shown in the list under the caption "II. Candidates found Not fit by the Department Promotion Committee". As per Rule 4(a) of the General Rules for the Tamil Nadu State and Subordinate Services (which was incorporated vide G.O.(Ms.).No.22 Personnel & Administrative Reforms (S) Department, dated 24.02.2014), no member of service shall be promoted or appointed to a post if any punishment imposed under Rule 8 of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, either on the crucial date or on the date of consideration for actual promotion. In the instant case, as observed above, even after the expiry of the punishment imposed on the petitioner under the first charge-memo, the petitioner was facing the enquiry in respect of the second charge-memo issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and on completion of enquiry, the punishment of censure was imposed on the petitioner by the 2nd respondent on 21.03.2014. Therefore, the petitioner is not entitled for inclusion of her name in the promotion panel for the year 2012-2013. Under such circumstances, I do not find any infirmity in the impugned order passed by the 1st respondent, warranting interference from this Court and the writ petition is liable to be dismissed.

In fine, the writ petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

To,

1.The Principal Secretary /
Commissioner of Rural Development,
and Panchayat Raj (TRG) and
Director of Rural Development and
Panchayat Raj (FAC),
Panagal Building,
Saidapet, Chennai-600 015.

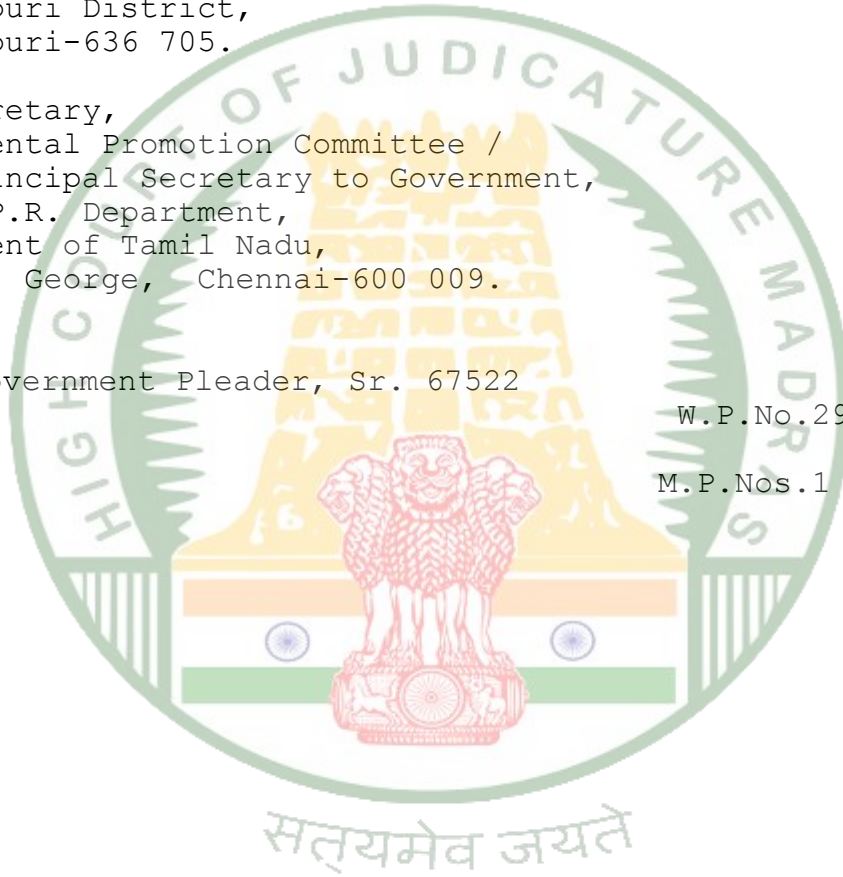
2.The District Collector,
Dharmapuri District,
Dharmapuri-636 705.

3.The Secretary,
Departmental Promotion Committee /
The Principal Secretary to Government,
R.D. & P.R. Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

1 cc to Government Pleader, Sr. 67522

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LRS (CO)
kk 29/12



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