

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.4530 of 2015

R.N.Manjula

...Petitioner

Vs.

1 The Registrar General
High Court, Madras
Chennai 104

2 State of Tamilnadu
Rep by the Secretary to Government
Home(Courts) Department
Government of Tamilnadu
Fort St.George
Chennai 600 009

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records from the 1st respondent pertaining to the proceedings dated in R.O.C.No.1/2005-Con.B2 dated 01.06.2010 confirmed by the communication in R.O.C.No.1/2005-Con.B2 dated 01.02.2012 and by a further communication in R.O.C.No.2/2013-Con.B2 dated 24.12.2014 issued by the first respondent and quash the orders dated 01.06.2010 01.02.2012 and 24.12.2014 and consequently direct the respondents to forbear from relying upon adverse entries communicated vide proceedings dated 01.06.2010 and make appropriate entries to this effect in the petitioner's personal file.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel for Mr.U.Nirmala Rani

For Respondents : Mr.C.T.Mohan for R1
Mr.P.S.Sivashanmugasundaram,
Spl.Govt.Pleader for R2

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Heard Mr.AR.L.Sundaresan, learned Senior counsel appearing for the petitioner, Mr.C.T.Mohan, learned counsel for the 1st respondent and Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing for the 2nd respondent.

2. The case of the Petitioner is as follows:-

(i) The Petitioner joined the Tamil Nadu State Judicial Service in the year 1995 as a Civil Judge (Junior Division) and worked in various capacities and in several places, subsequently, promoted as Sub-Judge and District Judge and at present working as the Presiding Officer, Principal Labour Court at Vellore in the rank of District Judge.

(ii) The challenge in the writ petition is to the adverse remarks in the Annual Confidential Report, 2004 for the period from 14.07.2004 to 31.12.2004 dated 01.06.2010 in R.O.C.No.1/2005-Con.B2 and confirmed by the communication dated 01.02.2012 in R.O.C.No.1/2005-Con.B2 and by a further communication dated 24.12.2014 in R.O.C.No.2/2013-Con.B2.

(iii) During the tenure of the petitioner at Uthamapalayam, the superior officer of the petitioner viz., Principal District Judge, Madurai, had written ACR of the petitioner to the following effect:-

Period	Report
18.02.2004 30.04.2004	to Promptitude in disposal of cases (old) : "Poor"
01.01.2005 30.04.2005	to I) Promptitude in disposal of Cases a) Current : Poor b) Old

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Period	Report
	II) a) Industry b) Aptitude for hard\heavy work : c) Readiness to take up responsibility : Poor III) Supervision and Control -On Office Staff : Poor III Reputation as to :- a) Honesty : b) Integrity : Poor c) Impartiality : IV) Overall view : Poor
(1) 01.01.2004 30.04.2004 (2) 01.01.2005 30.04.2005	to NIL remarks to NIL remarks
14.07.2004 31.12.2004	to I) Promptitude in disposal of cases b) Old : Poor II) Conduct and Dignity : b) Outside Court : Poor III. Reputation as to b) Integrity : Poor IV) Overall view : Poor.

(iv) Against the adverse reports, the petitioner submitted representations and the same were duly considered and the High Court accepted the petitioner's explanation and expunged the adverse remarks made against her for the relevant period.

(v) The petitioner stated to have disposed of 395 original suits, 96 Rent Control Applications, 227 Small Cause Cases, 10 Other Original Petitions, 17 Original Petitions, 1635 Interlocutory Applications and achieved good number of disposal of cases by following the instructions of the Principal District Judge, who also appreciated her work, but somehow had chosen to report adverse remarks against her.

(vi) The petitioner submits that the remark "Poor" in Overall view, during the reporting period between 14.07.2004 to 31.12.2004 is not warranted and for the said period, unfortunately, the High Court rejected her representation and the 1st respondent's decision was communicated vide official memorandum in R.O.C.No.1/2005-Con.B2 dated 01.02.2012, however, no reasons were given for the said rejection.

(vii) The petitioner, seeks to set aside the impugned order of the 1st respondent dated 01.06.2010, 01.02.2012 and 24.12.2014.

3. The learned Senior counsel for the petitioner submits that similar representations given by the Petitioner with regard to adverse remarks had been expunged in favour of the petitioner, however, the the representation given by the petitioner as against the remark "Poor" in Overall view during the reporting between 14.07.2004 to 31.12.2004 was rejected, which adverse remark was communicated with delay of 6 years, and is against the judgment of the Supreme Court in Bishwanath Pratap Singh Vs. State of Bihar reported in 2001(2) SCC 305, wherein, the time schedule prescribed under the ACR Rules has been emphasized. The learned Senior counsel appearing for the petitioner further submits the impugned report would come in the way of career of the petitioner and therefore, the same may be set aside.

4. On a perusal of the records, it is seen that the communication of the adverse remarks against the petitioner and the related process was completed with the delay of 6 years. Further, it reached the petitioner very belatedly, and as such, the right of representation as against the Annual Confidential Record has been affected.

5. Insofar as explanation to the remarks given by the petitioner is concerned, it is subject to further verification by the very same Officer who made such remarks. The Officer will go through the petitioner's conduct and on overall satisfaction of all aspects, it is his discretion to accept the explanation offered or not and thereafter, the High Court, would consider the representation and take a decision either to confirm or expunge the remarks. However, we could able to notice herein that the Principal District Judge, Madurai had given consecutive appreciative remarks in the monthly review as against the petitioner.

6. Mr.C.T.Mohan, learned counsel appearing for the 1st respondent submits that as far as the challenge herein made to the rejection of the representation of the petitioner against the adverse remarks is concerned, it will not come in the way of

the career of the petitioner. He further submitted that the said adverse remarks were not taken for consideration at all for the promotion of the petitioner and on her merits, she has already been promoted to District Judge.

7. We have gone through the records placed before this court, wherein, we could find that the petitioner on the basis of merit through Limited Competitive Examination, got selected for the post of District Judge. Further, the reporting Officer has given "Good" remarks for the disposal of cases during the monthly review for the reporting period between 14.07.2004 to 31.12.2004, but written as "Poor" in Annual Confidential Report, hence, we are of the considered view that the same shall be treated as "satisfactory"/"good", rather treating the remark as "poor". We are also of the considered view that the petitioner improved herself in the overall manner and further Registry has not taken note of the earlier remarks and has not given importance for such adverse remarks.

8. As regards the grounds raised in the Writ Petition on the aspect of belated communication of the adverse remarks to the petitioner is concerned, it is seen that it was communicated with the delay of 6 years, as such, the reasonable period for completing the process as contemplated in Rule 7 of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995 exceeded, wherein, it is stated that it should be communicated within 3 months from the date on which the Confidential Record is completed. In such circumstances, we hold that the said remarks cannot be treated as adverse one against the petitioner as there is no prompt communication so as to afford a right of representation and accordingly, it can be treated as "closed".

9. We also deem it fit to state that instead of treating the adverse remarks against the petitioner as adversary, the petitioner could view it as advisory. The respondents shall also take note of the petitioner's merit, her performance towards disposal of cases and all other attendant statistics while recording Reports and further scrutiny for approval.

10. With the above observation, the Writ Petition is disposed of. No costs.

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Sd/-
Asst.Registrar

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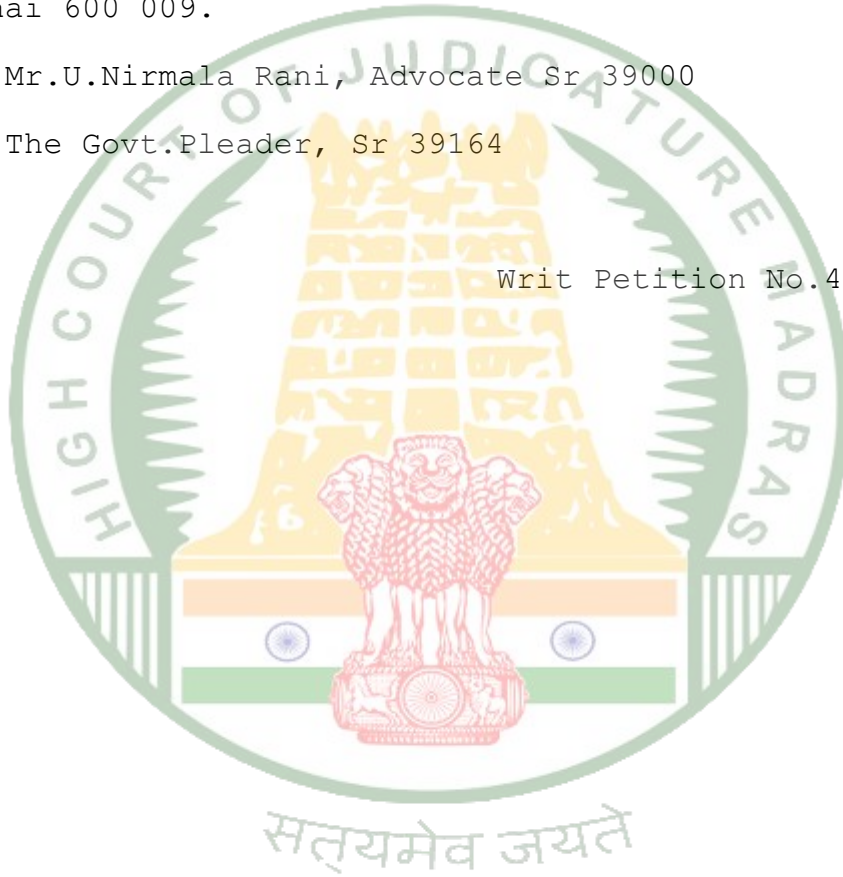
Sub Asst. Registrar

To

- 1 The Registrar General
High Court, Madras, Chennai 104.
 - 2 State of Tamilnadu
Rep by the Secretary to Government
Home(Courts) Department
Government of Tamilnadu, Fort St.George,
Chennai 600 009.
- + 1 cc to Mr.U.Nirmala Rani, Advocate Sr 39000
+ 1 cc to The Govt.Pleader, Sr 39164

KR/5/8/16

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