IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.4640 of 2016
and
W.M.P.Nos.4022 & 4023 of 2016

Smt.T.Shanthi ... Petitioner

Vs.

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

2.The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk,

3.The District Collector,
Salem District. ... Respondents

Writ Petition 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 1st respondent in his G.O.(2D).No.810, Revenue (Ser.1) Department, dated 31.12.2013, in respect of non-inclusion of the petitioner's name in the panel of Deputy Collector for the year 2010 and to quash the same and consequently, to direct the 1st respondent to include the petitioner's name in Sl.No.30A above K.Arjunan and below A.Sundararajan in the panel of Deputy Collector for the year 2010 vide., Government Letter No.55866/Ser.3/2010-d, dated 10.02.2011.

For Petitioner : Mr.S.Vijayakumar

For respondents : Mr.S.Gunasekaran, AGP

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ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders of the 1st respondent in G.O.(2D).No.810, Revenue (Ser.1) Department, dated 31.12.2013, in respect of non-inclusion of the petitioner's name in the panel of Deputy Collector for the year 2010 and to quash the same and consequently, to direct

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the 1st respondent to include the petitioner's name at Sl.No.30A above K.Arjunan and below A.Sundararajan in the panel of Deputy Collector for the year 2010 vide., Government Letter No.55866/Ser.3/2010-d, dated 10.02.2011.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner was appointed as a Junior Assistant on 20.01.1981 and allotted to Salem District. Later, she was promoted to the post of Assistant on 14.02.1984 and after putting in 19 years of service, she was promoted to the post of Deputy Tahsildar, in the year 09.06.2003 at Salem District and later, promoted to the post of Tahsildar on 20.04.2008 at Salem District and lastly promoted to the post of Deputy Collector on 01.08.2012 (Special Security Scheme , Tiruvanamalai District). The petitioner is now presently working as P.A.(G) to Collector, Krishnagiri. She has put in 35 years of unblemished services and she has not given any room for any complaint whatsoever in the past. She became due for his promotion to the post of Deputy Collector for the year 2010.

2-2.During the year 2008, the petitioner was served with a charge memo under Rule 17(a) vide Roc.No.57274/2008(J3), dated 10.12.2008. In response to the said charge memo, the petitioner submitted her explanations on 23.12.2008. The Disciplinary Authority, (3rd respondent herein) in his proceedings No.57274/2009/J3, dated 05.06.2009 awarded punishment of stoppage of increment for a period of 6 months without cumulative effect and the said order was communicated to the petitioner by her superior (as he then was) viz.,Assistant Commissioner (Excise) Salem, vide Roc.No.18737/2009(AB3) dated 17.06.2009. Aggrieved over the order of punishment, the petitioner preferred an appeal to the 2nd respondent through proper channel within the stipulated period and the same is still pending.

2-3.While so, the 3rd respondent herein called service details for drawal of panel for promotion to the post of Deputy Collectors vide proceedings No.Roc.77/2010(A2), dated 09.08.2010. In pursuance of the same, the petitioner submitted his proposal through the Revenue Divisional Officer, Sankari in the format prescribed by the government, as she became due for her promotion for the year 2010-2011. In the meanwhile, the proposals received from the Collectors for drawal of panel for the post of Deputy Collector for the year 2010 were examined by the 1st respondent and ultimately G.O.Ms.No.47, Revenue, dated 10.02.2011 was issued promoting 188 Tahsildars as Deputy Collector for the year 2010-2011. To her shock and surprise, the petitioner found that her name was not included in the list and that no reasons were adduced in the government order for non-inclusion of her name. Hence, the petitioner submitted a representation on 20.07.2011 to the

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1st respondent for inclusion of her name in the panel for Deputy Collectors for the year 2010-2011. In the meanwhile, the 1st respondent issued a letter No.55866/Ser.3/2010-4 dated 10.02.2011 informing that her name was not included presumably on account of the currency of punishment by the third respondent in his proceedings No.Roc.57274/2008(J3) dated 05.06.2009.

2-4.It is further stated by the petitioner that the 3rd respondent awarded the punishment of stoppage of increment for six months with cumulative effect in his proceedings No.Roc.5727A/2008(J3), dated 05.06.2009. The said order was communicated to the petitioner on 17.06.2009. Hence, the currency of punishment in her case commenced on 17.06.2009 and expired on 17.12.2009. The crucial date for drawal of panel for Deputy Collector is on 31st December of every year. Therefore, according to the petitioner, there is no legal impediment to include her name in the panel of Deputy Collectors for the year 2010. Aggrieved over the non-inclusion of her name in the panel of Deputy Collector, the petitioner preferred an appeal to the 1st respondent on 24.02.2014. But, the petitioner received a communication from the 1st respondent on 21.03.2014 vide his Letter No.8557/Ser-I/2014-1, informing that her request for inclusion of her name in the panel of Deputy Collector for the year 2010 cannot be complied with. In the said communication, the 1st respondent has referred to the G.O.(2D) No.810, Reveneu (Ser-I) Department, dated 31.12.2013, stating that the petitioner is not eligible for inclusion in the panel of Deputy Collector for the year 2010 on account of the fact that the punishment has been given effect from 01.07.2009 (date of her increment) and ended on 31.12.2009. Hence, the petitioner has come forward with the present writ petition before this Court for the relief as stated supra.

3.When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the currency of punishment would take effect from the date of communication of the order to the delinquent employee, irrespective of the date of the increment for the said employee. In this regard, the learned counsel for the petitioner relied upon the following decisions of this Court_

(i) W.P.Nos.29297, 34289 & 42591 of 2006, dated 20.02.2007 (M.K.Kandasamy and others Vs. State of Tamil Nadu, rep by the Secretary to Government and others).

(ii)W.P.No.24180 of 2012, dated 18.12.2003 (Mrs.R.Jeevarathinam Vs. Government of Tamil Nadu rep. by the Chief Secretary to Government and others).

By relying upon the above orders of this Court, the learned counsel for the petitioner submitted that the currency of punishment, including withholding of increment, begins when the punishment order is communicated to the concerned government servant and concludes when the actual period of punishment is over. In the instant case, the punishment order was passed on 05.06.2009 and the said order was

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communicated to the petitioner on 17.06.2009. Hence, the currency of punishment commenced on 17.06.2009 and ended on 17.12.2009. The crucial date for drawal of panel of Deputy Collector is on 31st December of every year. Therefore, there is no legal impediment to include the petitioner's name in the panel of Deputy Collectors for the year 2010.

4.The learned counsel for the petitioner would further submit that the 1st respondent herein had earlier raised a query as to whether the currency of an order of stoppage of increment should be reckoned from the date of the order or upto the actual period covered by stoppage of increment. Consequent upon the same, the 1st respondent sought clarification from the Secretary, Personnel and Administrative Reforms Department, Chennai. In response to the said query, the Government has clarified that an order imposing any punishment including withholding of increment takes effect from the date on which the said order is communicated to the concerned Government servant. The learned counsel for the petitioner would submit that in the instant case, since the punishment of stoppage of increment for six months imposed on the petitioner ended on 17.12.2009, the petitioner's name ought to have been included in the panel of Deputy Collectors for the year 2010 by the respondents. Thus, the learned counsel for the petitioner sought for quashing the impugned order and consequently, to direct the respondents to include the petitioner's name in the panel at the appropriate place.

5.Though notice was given, the respondents have not chosen to file any counter.

6.Keeping the submissions made by the learned counsel for the petitioner, I have carefully gone through the materials available on record. I find some force in the submission made by the learned counsel for the petitioner that the currency of punishment would take effect from the date of communication of the punishment order to the government servant. In the instant case, the punishment order was passed by the 3rd respondent on 05.06.2009, imposing the punishment of stoppage of increment for six months on the petitioner. The said order was communicated to the petitioner on 17.06.2009. Therefore, the currency of punishment came to an end on 17.12.2009. The crucial date for drawal of panel of Deputy Collector is on 31st December of every year. Under such circumstances, there is no impediment for including the name of the petitioner in the panel of Deputy Collectors for the year 2010. The respondents ought to have included the name of the petitioner in the panel. Hence, the impugned order is liable to be quashed.

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In fine, the impugned order is quashed and the 1st respondent is directed to consider the request of the petitioner to include his name in the panel of Deputy Collector. The writ petition is allowed accordingly. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

ssv
To
1.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai-9.

2.The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk,

3.The District Collector,
Salem District.

+1cc to M/s. S. Vijayakumar, Advocate, S.R.No.55734
+1cc to the Government Pleader, S.R.No.55624

CP(CO)
EU(01/11/2016)

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