



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.6204 of 2014

and

W.M.P(MD)Nos.16214 and 16394 of 2016

AND MP(MD).1 TO 3 OF 2014

D.Rajeswari

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its
Secretary, Home Department,
Fort St. George, Chennai - 9.

2.The Registrar General,
The Hon'ble High Court of Madras,
Chennai.

3.The Registrar (Administration),
The Hon'ble Madurai Bench of Madras High Court,
Madurai - 23.

4.The Principal District Judge,
Virudhunagar District, Srivilliputtur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the first respondent in G.O.(D)No.1042 Home (Courts-V) Department, dated 28.10.2016 and quash the same and further direct the respondents to pass an order re-appointing the petitioner for a further period of three years as Official Receiver for Virudhunagar District.

(Prayer is amended vide order of this Court,
dated 28.11.2016, made in W.M.P(MD)No.16392
of 2016 in W.P(MD)No.6204 of 2014)

For Petitioner : Mr.M.Vallinayagam
Senior Counsel for
Mr.D.Nallathambi

For Respondents : Mr.R.Velmurugan
Government Advocate for R.1
Mr.N.Tamilmani for R.2 to R.4

**ORDER**

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

By consent, the writ petition is taken up for final hearing.

2. The petitioner is an Advocate practising at Virudhunagar District and according to her, she is eligible for the post of Part-Time Official Receiver of Virudhunagar District and she was also appointed vide G.O.(3D).No.35, dated 07.07.2010, for a period of three years based on the proposal sent by the third respondent and she assumed the office as Official Receiver on 16.09.2010. The petitioner would claim that she has completed the total period of three years without any adverse remarks and submitted an application on 03.05.2013 to the fourth respondent praying for further extension of three years to continue in the very same post as the period of three years would expire on 15.09.2013. The fourth respondent vide D.No.3766 dated 29.05.2013, had forwarded her application along with the enclosures to the third respondent for consideration for the purpose of further extension for a period of three years. Since no orders have been passed, the petitioner filed W.P(MD)No.15759 of 2013 praying for a writ of Mandamus to take action on the letter forwarded by the fourth respondent to consider the application dated 03.05.2013 seeking further extension as Official Receiver for Virudhunagar District and subsequently, the said writ petition was withdrawn on 25.09.2013.

3. The petitioner would further state that the first respondent, vide letter No.80786/Cts.V/2013-14, Home (Cts-V) Department, dated 15.02.2014, directed the fourth respondent to call for fresh applications from the eligible Advocates and accordingly, the fourth respondent has passed the consequential order in D.No.1688 dated 18.03.2014 seeking for applications for the post of Official Receiver.

4. The grievance expressed by the petitioner is that despite the pendency of the application of the petitioner seeking for extension, dated 03.05.2013, fresh applications have been invited and therefore, prayed this Court to quash the records of the third respondent which culminated in the consequential order of the fourth respondent dated 18.03.2014 and direct the respondents to order for continuance of the petitioner for a further period of three years.

5. When the matter was listed on 26.09.2016, it is brought to the knowledge of this Court that the learned Principal District Judge of Virudhunagar District, after conducting an enquiry with regard to the allegation levelled against the petitioner, had concluded that the said allegations are untrue and submitted a report to the Registrar (Administration), Madurai Bench of Madras High Court, who in turn forwarded the



same to the first respondent on 12.01.2016 and the orders from the Government are awaited and again, the matter was listed on 17.10.2016 and the learned Government Advocate appearing for the first respondent prayed for further time and it was extended.

6. Subsequently, when the matter was listed on 24.11.2016, it was brought to the knowledge of this Court that the first respondent, vide G.O(D).No.1042, Home (Courts-V) Department, dated 28.10.2016, has taken into consideration the report of the Enquiry Officer, wherein it was concluded that the allegation levelled against the petitioner has not been proved beyond reasonable doubt and after considering the case in detail, thought fit to call for fresh panel of Advocates on expiry of the term of the petitioner and challenging the legality of the same, the petitioner filed W.M.P(MD)No.16392 of 2016 in W.P(MD) No.6204 of 2014 and this Court, vide order dated 28.11.2016, has ordered the said petition.

7. The petitioner also filed W.M.P(MD)No.16393 of 2016 in W.P(MD)No.6204 of 2014 seeking to raise additional grounds in the writ petition and upon hearing the rival submissions, this Court, vide order dated 28.11.2016, has ordered the same and it is relevant to extract hereunder the additional grounds raised by the petitioner:

"(aa) The order of the 1st Respondent in G.O(D) No.1042, Home (Courts-V) Department, dated 28.10.2016 is unjust, unsustainable and liable to be set aside.

(ab) The 1st Respondent has not applied its mind while passing the order dated 28.10.2016.

(ac) The 1st Respondent has failed to note that the calling for fresh panel of Advocates for the appointment of Official Receiver for Virudhunagar District only on the ground of pendency of enquiry against the Petitioner. While so, when the result of the enquiry report is to effect that when the charges made against the Petitioner not established, rejecting the petition for extension of period on the ground that fresh panel has been already call for is most unsustianable.

(ad) The 1st Respondent ought to have permitted the Petitioner to continue the post of Official Receiver for further period of three years on receipt of the enquiry report wherein it is found that the charges against the Petitioner are not established.

(ae) The 1st Respondent ought not to call for fresh panel of Advocate for the post of Official Receiver for Virudhunagar District when the Petitioner is eligible and entitle to be appointed for further period of three years as Official Receiver for Virudhunagar District."

(extracted as such)



8. Mr.M.Vallinayagam, learned Senior Counsel assisted by Mr.D.Nallathambi, learned Counsel for the petitioner would submit that in the proposal forwarded by the Registrar (Administration), Madurai Bench of Madras High Court, to the first respondent, dated 12.01.2016, it has been stated that the allegations were not approved by the complainant and therefore, the reason assigned in the impugned G.O(D).No.1042, Home (Courts-V) Department, dated 28.10.2016 that the Enquiry Officer has concluded that the allegation levelled against the petitioner has not been proved 'beyond reasonable doubt', on the face of it, is wrong and as per the Rule 5 of the Rules Governing the Appointment of the Official Receiver, the continuance of the term for further period of three years shall be ordered by the Government on the recommendation of the Judges of the High Court in consultation with the District Judge concerned. It is relevant to extract hereunder Rule 5:

"5.Probation and continuance of term of office:-

Every person appointed as Part-Time Official Receiver shall be initially appointed for a period of three years and the continuance of the term of office for a further period of three years shall be ordered by the Government on the recommendation of the Judges of the High Court in consultation with the District Judges concerned. The continuance of the term shall not normally be ordered beyond the date on which a Part-Time Official Receiver attains the age of sixty years and his services will unless the Government specifically order otherwise, terminate automatically on his attaining the age of sixty years.

Provided that Government may terminate any Part-Time Official Receiver on administrative grounds without assigning specific reasons therefor at any time with one month's notice and the incumbent may also resign his post after giving one month's notice to Government.

Provided that the Government may call for fresh panel from the High Court for such appointment, if need be and appoint one from such panel received from the High Court."

9. Though the Principal District Judge has concluded that the allegations levelled against the petitioner have not been proved/substantiated, it is not made clear that in the report forwarded by the Registrar (Administration), Madurai Bench of Madras High Court, to the first respondent, whether the Principal District Judge has made a recommendation for continuance of the term of the petitioner for a further period of three years and on that basis, the High Court on its Administrative Side has taken a decision or not.



10. In the considered opinion of this Court, in the light of the report of the Principal District Judge of Virudhunagar District, holding that the allegations levelled against the petitioner have not been proved/substantiated, the reason assigned in the impugned order that the Enquiry Officer has concluded that the allegations levelled against the petitioner have not been proved, is per se unsustainable.

11. In the result, this writ petition is partly allowed and the impugned G.O.(D)No.1042 Home (Courts-V) Department, dated 28.10.2016, passed by the first respondent is set aside. The third respondent, in the light of the conclusions that the allegations levelled against the petitioner have not been proved/substantiated, shall send a proposal/recommendation to the High Court to its Administrative Side within a period of two weeks from the date of receipt of a copy of this order and the Administrative Side of the High Court, on receipt of the recommendation, shall take further steps in the light of the Rule 5 of the Rules Governing the Appointment of the Official Receiver, as expeditiously as possible and till such time, further decision as regards the fresh panel of Advocates for the appointment of the Official Receiver shall be deferred. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary,
State of Tamil Nadu,
Home Department,
Fort St. George, Chennai - 9.
- 2.The Registrar General,
High Court of Madras, Chennai.
- 3.The Registrar (Administration),
Madurai Bench of Madras High Court, Madurai - 23.
- 4.The Principal District Judge,
Virudhunagar District,
Srivilliputtur.

+1cc to Mr.D.Nallathambi, Advocate in SR No.73820

+1cc to the Spl.Govt.Pleader in SR No.73994

W.P(MD)No.6204 of 2014

and

W.M.P(MD)Nos.16214 and 16394 of 2016

28.11.2016