

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.10.2017

PRONOUNCED ON : 18.12.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.388 of 2017
and
C.M.P.No.5927 of 2017

A.Annie Sheela Rani ... Appellant/Writ Petitioner

... Vs ...

1. The Principal Secretary to Government,
Planning, Development and Special
Initiatives (SPC) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The State Planning Commission,
Rep. by its Member Secretary,
Ezhilagam, Chepauk,
Chennai - 600 005. ... Respondent/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent,
against the order dated 06.01.2017 made in W.P.No.589 of 2016.

WP.589/2016

Writ Petition filed Under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records from the 1st respondent pertaining to his proceedings in letter No. 4060/SPC/ 2014-4, dated 3.9.2015 and from the 2nd respondents proceeding in ref. No. Proc. Rc. No.3728/A1/SPC/2015 dated 14.12.2015 and quash the orders dated 3.9.2015 of the 1st respondent and 14.12.2015 of the 2nd respondent, award exemplary costs

For Appellant : Mr.N.G.R.Prasad for
Mr.N.Ganeshkumar

For Respondents : Mr.K.Venkataramani,
Additional Advocate General
Assisted by Mrs.A.Sri Jeyanthi,
Special Government Pleader

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JUDGMENT

(Judgment of the Court was delivered by
RMT. TEEKAA RAMAN,J.,)

Writ Appeal is directed against the order dated 06.01.2017 passed by the learned single Judge in W.P.No.589 of 2016.

2. The appellant herein/writ petitioner has filed the above writ petition seeking to call for the records from the first respondent pertaining to his proceedings in Letter No.4060/SPC/2014-4, dated 03.09.2015 and from the second respondent's proceedings in reference number Proc.Rc.No.3728/A1/SPC/2015, dated 14.12.2015, and to quash the same. In the above said writ petition in W.P.No.589 of 2016, the writ petitioner/appellant herein has challenged the order passed by the second respondent/State Planning Commission reverting her to her parental department on administrative ground and relieving her duties with effect from 14.12.2015.

3. For the sake of clarity, it may be mentioned here that the appellant herein/writ petitioner has also filed writ petition in W.P.No.2991 of 2016 against the minor punishment imposed upon her while the third writ petition in W.P.No.5465 of 2016 has been filed for a writ of mandamus directing the second respondent to draw a panel of seniority as per the relevant rules.

4. By a common order dated 06.01.2017, all the three writ petitions were dismissed by the learned Single Judge. However, the present writ appeal is filed only as against the order passed in W.P.No.589 of 2016.

5. It is represented from the Bar that as against the order passed in W.P.No.2991 of 2016 and W.P.No.5465 of 2016, no appeal has been preferred by the writ petitioner and the same is recorded.

6. The brief facts, which are necessary for determination of the appeal, are as follows:-

[i] The appellant herein/writ petitioner was recruited by TNPSC as a Junior Assistant in the 1986 batch, under the Tamil Nadu Ministerial Service. She was allotted to work in the Social Welfare Department and she joined the service on 22.08.1989. She completed her probation in the substantive post on 21.08.1991. She was promoted as an Assistant in the same department with effect from 13.07.1994.

[ii] According to the appellant/writ petitioner, since there were vacancies in the 2nd respondent's department viz., State Planning Commission, the writ petitioner was selected and appointed temporarily, by recruitment by transfer, as Planning Assistant by the proceedings of the 2nd respondent dated 18.09.2001. Accordingly, the writ petitioner joined the said post of Planning Assistant with effect from 28.09.2001, in the State Planning Commission. The writ petitioner's service in the said post was also regularized with effect from the same date, by the orders of the 2nd respondent dated 24.12.2012. She was assigned the seniority in the said post at Serial No.15. Thereafter, she was also promoted in the 2nd respondent's department, as a Senior Planning Assistant in the year 2013.

[iii] When promotions were given in the writ petitioner's original department viz., Social Welfare Department, the writ petitioner sent a representation requesting the Higher Officials in the Social Welfare Department to consider her case for promotion to the post of Superintendent on the ground that she continued to have a lien in the parent department. But, she was informed by the Director of Social Welfare by a letter dated 03.07.2006, which was communicated to the writ petitioner through the 2nd respondent vide his proceedings in Rc.No.8050/A1/SPC/2005, dated 28.07.2006. In the said letter, it was stated as follows:-

"The Director of Social Welfare, Chennai-5 vide his D.O.Lr.No.59813/Admn 2(2)/2005, dated 03.07.2006, has rejected her claim stating that as per the provisions contained in F.R. 14(b) read with Rule 14 (A) Sub-Rule (d), since the individual has been transferred and posted substantively in the cadre outside the control of the Directorate of Social Welfare, she had acquired a lien in a post outside the cadre on which she is borne and hence her lien in the Directorate of Social Welfare ought to have been suspended or terminated."

[iv] The writ petitioner was regularly promoted as a Planning Superintendent in the 2nd respondent's Department with effect from 29.04.2013. The Government of Tamil Nadu by G.O.Ms.No.203, Planning & Development (OP) Department, dated 28.11.1990, had created the post of Administrative Officer in the State Planning Commission. The appointment to the said post was to be made by 'recruitment by transfer' from among the holders of the post of Planning Superintendent in the Tamil Nadu Ministerial Service.

[v] In the meantime, the 1st respondent issued proceedings dated 03.09.2015, directing the 2nd respondent to pursue action against the writ petitioner either to revert her back to her parental department viz., Social Welfare Department, or to take necessary disciplinary action as per Rules for her false and frivolous petitions to the Government maligning the State Planning commission, or to take both of the actions. On the basis of the direction given by the 1st respondent, the 2nd respondent passed the impugned order dated 14.12.2015 in Rc.No.3728/A1/SPC/2015, reverting the writ petitioner to her parental department on administrative grounds and relieving her duties in the State Planning Commission with effect from 14.12.2015. Challenging the said two orders, the writ petitioner has filed the writ petition in W.P.No.589 of 2016.

[vi] According to the writ petitioner, in the meantime, by the proceedings in Memo No.2801/A1/SPC/2015, dated 22.07.2015, disciplinary action was initiated against the writ petitioner alleging several lapses on her part. The writ petitioner had given her explanation denying all the allegations levelled against her and requesting to conduct a proper enquiry. However, according to the writ petitioner, without conducting any enquiry and without giving any opportunity to her, the 2nd respondent had issued the proceedings in Rc.No.2801/A1/SPC/2015, dated 20.10.2015, imposing the punishment of stoppage of increment for three months without cumulative effect. Hence, challenging the same, the petitioner has filed the writ petition in W.P.No.2991 of 2016.

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[vii] Similarly, challenging the rejection of the writ petitioner's appeal/representation by the 2nd respondent vide his proceedings in Letter No.66/SPC/2016, dated 28.01.2016, stating that the promotion given to the third respondent in the writ petition viz., Murugan as Administrative Officer is in order, the writ petitioner has filed the writ petition in W.P.No.5465 of 2016.

[viii] Though all the three writ petitions filed by the appellant herein/writ petitioner were dismissed by the learned single Judge, the writ petitioner has chosen to file writ appeal only against the order passed in W.P.No.589 of 2016. No challenge has been made to the order passed in W.P.Nos.2991 and 5465 of 2016. Therefore, the same has become final.

7. On consideration of the submissions made by the second respondent/State Planning Commission, the learned single Judge, accepted the contention of the learned Additional Advocate General appearing on behalf of the second respondent and held that the writ petitioner had lien in her parental department viz., Social Welfare Department and therefore, the order of reversion is valid in law and accordingly, rejected the claim of the writ petitioner and hence, the writ appeal.

8. Mr.N.G.R.Prasad, learned counsel appearing for the appellant/writ petitioner relied upon the communication sent by the Social Welfare Department in reply to the rejection given to the appellant wherein her parent department viz., Social Welfare Department has stated that the writ petitioner was absorbed in the State Planning Commission. The learned counsel also relied upon the decision of the Supreme Court reported in (1989) 4 Supreme Court Cases 99 [Ramlal Khurana (Dead) by LRs. Vs. State of Punjab and others].

9. Per contra, Mr.K.Venkataramani, learned Additional Advocate General appearing for the respondents contended that the writ petitioner originally belonged to Social Welfare Department. While she was working as Assistant in the Social Welfare Department, she was selected and appointed, on temporary basis, as Planning Assistant in the State Planning Commission and she joined duty on 28.09.2001. It is further contended that in view of certain alleged misconduct by the writ petitioner as stated in the counter affidavit filed in the writ petition, the writ petitioner was reverted to her parent department as her lien in the Social Welfare Department has not been terminated and relied upon Rule 15(A) of the Fundamental Rules.

10. The short point that needs to be addressed by us in this case is that whether the writ petitioner was absorbed in her post in the second respondent viz., State Planning Commission and whether the order passed by the second respondent reverting her back to the parent department is legally sustainable?

11. On a similar point for consideration, the learned single Judge has gone into the various communications that have been marked before the Court and also the communication sent by the Director of Social Welfare dated 03.07.2006 and 28.07.2006. On a combined reading of the contents of both the letters would demonstrate that the Social Welfare Department, the parent department of the writ petitioner has to pass an order to suspend or terminate or cut off the lien from the said department. Further, the learned single Judge relied upon the communication dated 14.08.2006 sent by the Member Secretary, State Planning Commission to the Director of Social Welfare, Chennai, clarifying the position stating that the writ petitioner's appointment has not been made substantively as stated in the letter of the Director of Social Welfare dated 03.07.2006. After perusing the three communications as referred above and the Rule 14(A) of the Fundamental Rules, so far as the case of the writ petitioner is concerned, the writ petitioner's lien in the Social Welfare Department has not been terminated by an order specifically stating so by a parent department and as such, the writ petitioner/appellant was only on deputation to the State Planning Commission wherein she was working as an Assistant in the Social Welfare Department and she is only deemed to have lien only in the Social Welfare Department and in the above circumstances, the third respondent in the writ petition/Administrative Officer, State Planning Commission, is quite competent in passing the impugned order reverting the appellant/writ petitioner to her parent department viz., Social Welfare Department and also relieved the appellant/writ petitioner from the post held by her in the State Planning Commission and the said order is found to be in accordance with the Rule 14 of the Fundamental Rules.

12. A similar finding has been recorded by the learned single Judge and the above factual matrix as could be culled out from the above referred three communications are conversant to the fact that when the writ petitioner's lien in the Social Welfare Department was not terminated and when she was not substantially absorbed in the second respondent department, the order passed by the second respondent in reverting the writ petitioner/appellant to her parent department is supported by Rule 14 of the Fundamental Rules and application of the factual matrix.

13. A similar view taken by the learned single Judge does not call for any interference as it does not suffer from any infirmity or illegality and the writ appeal is devoid of merits and the same is liable to be dismissed.

14. In the result, the Writ Appeal is dismissed by confirming the order passed by the learned Single Judge in W.P.No.589 of 2016, dated 06.01.2017. The connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Planning, Development and Special
Initiatives (SPC) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The Member Secretary,
The State Planning Commission,
Ezhilagam, Chempauk,
Chennai - 600 005.

+1cc to Mr.ROW & REDDY, Advocate, S.R.No. 90158
+1cc to the Government Pleader, S.R.No. 90818

Judgement in
W.A.No.388 of 2017

MG (CO)
TR(19/01/2018)

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