

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.08.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.NO.28335 OF 2013 &
M.P.NO.1 OF 2013

J.Jayaprakash

.. Petitioner

versus

1. The Government of Tamil Nadu,
rep. by Secretary to Government,
Commercial Taxes & Registration Department,
Secretariat,
Chennai-600 009.
 2. The Inspector General of Registration,
120, Santhome High Road,
Mylapore, Chennai-600 028.
- .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the second Respondent relating to order in Pro.No.20320/A5/2013 dated 26.07.2013 to quash the same and to issue consequential directions to the Respondents to include the name of the Petitioner in the appropriate place in the approved panel for promotion to the post of Sub-Registrar Grade-I as issued in 34345/A1/2006-1 dated 2.6.2008 and to promote the petitioner as Sub-Registrar Grade-I with retrospective effect from the date of promotion of his immediate junior and to grant him all consequential service and monetary benefits including promotion as District Registrar and disburse and monetary benefits with interest.

For petitioner : Mr.M.Ravi

For respondents : Mr.T.M.Pappiah, Spl.G.P.

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Certiorarified Mandamus, to call for the records of the second Respondent relating to order in Pro.No.20320/A5/2013 dated 26.07.2013 to quash the same and to issue consequential directions to the Respondents to include the name of the Petitioner in the appropriate place in the approved panel for promotion to the post of Sub-Registrar Grade-I as issued in 34345/A1/2006-1 dated 2.6.2008 and to promote the petitioner as Sub-Registrar Grade-I with retrospective effect from the date of promotion of his immediate junior and to grant him all consequential service and monetary benefits including promotion as District Registrar and disburse and monetary benefits with interest."

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

The petitioner was selected and appointed as Sub-Registrar Grade II by the Tamil Nadu Public Service Commission in the year 2001. While working as Sub Registrar Grade II, the petitioner was initiated with disciplinary action vide proceedings dated 4.8.2007 under Section 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules for certain acts of misconduct and because of that, he had not been empanelled for promotion to the post of Sub Registrar Grade I in the year 2006-07 while his juniors were promoted to the said post and thereafter, they were also further promoted as District Registrars. The said disciplinary proceedings had ultimately culminated in imposing punishment of stoppage of increment for a period of six months without cumulative effect, vide order dated 20.11.2009 by the second respondent. Aggrieved by the same, the petitioner preferred an appeal to the first respondent, which came to be allowed by setting aside the punishment imposed on him. Thereafter, consequent to the setting aside the punishment, though the petitioner was fit for being promoted, however, the second respondent, vide proceedings dated 27.4.2009 issued another charge memo against the petitioner under Rule 17(b), which ended in imposing the penalty of 'censure'. As against this, the petitioner once again preferred an appeal before the first respondent, which came to be allowed by setting aside the penalty of censure. While so, again the second respondent issued another show cause notice dated 30.6.2010, which also ended with the imposition of penalty of censure, which also came to be set aside by the first respondent in the appeal preferred

by the petitioner, vide G.O.(D) No.13 Commercial Taxes & Registration (HR) Department dated 10.01.2012.

3. According to the petitioner, by virtue of setting aside all the punishments imposed on him by way of disciplinary proceedings, he is entitled to be promoted as Sub Registrar Grade I with retrospective effect from the date when his immediate juniors were promoted, with all consequential benefits. According to the petitioner, apart from the above, there was no other disciplinary proceedings against him. As such, the petitioner made a representation and as there was no response, he approached this Court by way of a Writ Petition in W.P.No.15414 of 2013, which came to be disposed of on 11.6.2013, directing the respondents therein, to consider and dispose of the representation of the petitioner dated 10.4.2013.

4. In pursuance of the direction passed by this Court in the above said writ petition, by proceedings dated 26.7.2013, the second respondent passed order, stating that since disciplinary proceedings initiated on 4.5.2007, 27.4.2009 and 30.6.2010 under Rules 17(b) & 17(a) and punishments thereof, the petitioner's name was not included in the panel for 2006-07; 2007-08; 2009-10 and 2010-11 and since the punishment of censure was in currency, his name was also not considered for 2011-12. The said order dated 26.7.2013 has been put under challenge in this writ petition.

5. Shri M.Ravi, learned counsel appearing for the petitioner would strenuously contend that the punishments, viz., stoppage of increment imposed on 20.11.2009, Censure imposed on 01.10.2010 and another Censure imposed on 11.08.2010 have all been set aside in appeal by the first respondent on 11.12.2012, 04.04.2013 and 10.01.2012 respectively. According to the learned counsel, apart from these, no further disciplinary action has been initiated against him and since all the punishments have been admittedly set aside by the first respondent, there was no legal impediment on the part of the respondents to grant promotion to the petitioner when he became eligible as Sub Registrar Grade I and further promotion to the post of District Registrar along with his juniors. According to the learned counsel, except citing the above three punishments no other legal obstacle has been cited by the respondents for not considering the promotion of the petitioner as Sub Registrar Grade I and District Registrar at the appropriate time when all the orders of punishment had been finally set aside as late as 10.01.2012. According to the learned counsel, once the punishment has been set aside, the petitioner is entitled to grant of promotion along with his juniors and therefore, the impugned order passed by the first respondent citing the punishments imposed on the petitioner which were admittedly set

aside, cannot be a valid ground to deny the petitioner of his due promotion as Sub Registrar Grade I and District Registrar along with his juniors.

6. The learned Special Government Pleader appearing for the respondents, apart from canvassing the issue of punishments imposed on the petitioner, would also contend that subsequently, another charge memo came to be issued against the petitioner on 26.5.2015 at the instance of the Directorate of Vigilance and Anti Corruption. In the said circumstances, the petitioner could not be considered for retrospective promotion as another charge memo is pending against him since 2015.

7. The said submission made on behalf of the respondents, cannot be sustained to deny the petitioner of his due promotion to which he was otherwise entitled to when a panel was drawn for promotion to the post of Sub Registrar Grade I on 2.6.2008 and also when a panel was drawn for promotion to the post of District Registrar during 2010-11. The said period was covered by initiation of disciplinary action which ended in punishment of stoppage of increment and censure and however, admittedly, the same were ultimately set aside by the appellate authority, the first respondent herein. When that being so, citing the present charge memo issued against the petitioner in the year 2015 and also citing the fact that the punishment imposed on him during the relevant time, cannot be a valid plea to be accepted by this Court for denying the petitioner of his due promotion.

8. Once the punishments are set aside by the appellate authority itself, the claim of the petitioner ought to be considered as if there was no punishment and as such, the right to promotion of the petitioner during the relevant time as Sub Registrar Grade I and District Registrar cannot be negated in view of the subsequent development as narrated above.

9. In the above circumstances, the contention put forth by the learned counsel appearing for the petitioner has to be accepted that in view of setting aside of all the punishments by the appellate authority, the first respondent herein, the status quo ante must be restored in the matter of promotion of the petitioner as Sub Registrar Grade I and District Registrar on the date when the petitioner's juniors came to be promoted to the respective posts.

10. Therefore, the present writ petition succeeds and the same is accordingly, allowed. No costs. The impugned order dated 26.7.2013 passed by the first respondent is set aside. There shall be a direction to the respondents to grant promotion to the petitioner as Sub Registrar Grade I and District Registrar with retrospective effect from the date of promotion

of his immediate junior and grant all attendant and consequential benefits thereof. The respondents are directed to pass orders in compliance with the above direction, within a period of two months from the date of receipt of a copy of this order. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

suk

To

1. The Secretary to Government,
The Government of Tamil Nadu,
Commercial Taxes & Registration Department,
Secretariat, Chennai-600 009.
2. The Inspector General of Registration,
120, Santhome High Road,
Mylapore, Chennai-600 028.

+1cc to Mr.M.Ravi, Advocate, S.R.No.58287

+1cc to the Special Government Pleader, S.R.No.58530

W.P.NO.28335 OF 2013

GMR(CO)
CS/11/10/17

सत्यमेव जयते

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