



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.11.2021

Pronounced on: 29.11.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

Rev.APLW(MD) .No.42 of 2017

WEB COPY

The Principal Secretary to Government,
Finance (Treasuries and Accounts - II) Department,
Secretariat, Chennai - 600 009. ... Petitioner

vs.

S. Kasilingam ... Respondent

PRAYER: Review Application filed under 47 Rule 1 r/w. Section 114 CPC r/w. Article 226 of the Constitution of India against the order dated 20.02.2014 made in W.P(MD).No.16768 of 2013, on the file of this Court.

Prayer in WP(MD) . 16768/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records of the respondent relating to G.O. (2D).No. 101 Finance (T &A-II) Department dated 19/08/2013 communicated by the Sub-treasury Officer, karungal in this endorsement dated 12/09/2013 and quash the same and consequently direct the respondent i.e. the Principal Secretary to Government, Finance Department, Chennai to include the name of the petitioner in the approved list of Accountants of the year 2005 of the Treasuries and Accounts Department of kanyakumari District within a specified time frame that may be fixed by this Honourable Court.

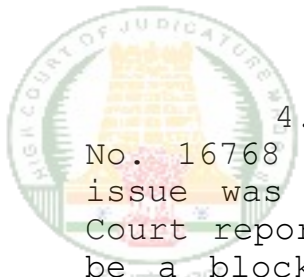
For Petitioner : Mrs. D. Farjana Ghouseia
Special Government Pleader
For Respondent : Mr.S. Visvalingam

O R D E R

The Review Application is filed against the order passed by this Court, dated 20.02.2014 made in W.P(MD).No.16768 of 2013.

2. The petitioner was recruited through TNPSC and joined as Junior Assistant on 07.02.1997 in the Treasuries and Accounts Department in the Office of the Pay and Accounts Officer (East) Chennai. Presently the petitioner was serving as Additional Sub-Treasury Officer.

3. The petitioner's name was not included in the approved list of Accountants of the year 2005 on the ground that a censure was given vide proceedings, dated 29.05.2005 and since the currency of punishment was running during that period the petitioner was denied promotion in the year 2005.



4. Aggrieved over, the writ petitioner had filed W.P.(MD) No. 16768 of 2013. The plea of the writ petitioner is that the issue was considered in the Full Bench Judgment of this Hon'ble Court reported in **2011 (3) CTC 129**. It was held that censure cannot be a blockade for promotion, since the check period of one year stated in the Government Letter No. 248 (P & AR) Department, dated 20.10.1997 and the consolidated instruction issued in Government Letter No. 18824 / 2005 - 2 (P & AR) Department, dated 07.10.2005 with annexure 1 to 7 were quashed since they are not statutory Rules framed under Proviso to Article 309 of the Constitution of India.

5. The Hon'ble Court following the Full Bench Judgment has allowed the writ petition and directed the respondent to re-consider the petitioner's case in the light of the fact that a censure does not have any currency. The respondent will have to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

6. Since the respondent had not passed an order the writ petitioner had filed contempt petition in Cont. P. No. 850 / 2015.

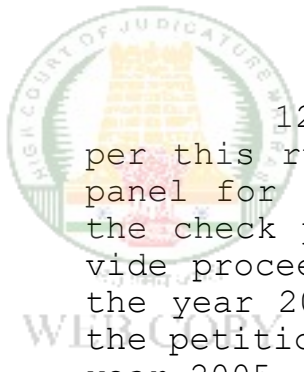
7. In the meanwhile, the respondent had filed a review petition in Review Application (MD) No. 42 / 2017.

8. Heard the learned Counsel for the review applicant and the learned Counsel for the respondent / writ petitioner.

9. In the review application the respondent has raised a plea that the Full Bench Judgment was passed quashing the Government Letter No. 248 (P & AR) Department, dated 20.10.1997 and the consolidated instruction issued in Government Letter No. 18824 / 2005 - 2 (P & AR) Department, dated 07.10.2005 with annexure 1 to 7, since the same are not forming part of the statutory rules framed under the proviso to Article 309 of the Constitution of India.

10. Thereafter, the Government after careful consideration has made the above said Government orders as a part of the statutory rule in G.O. Ms. No. 22, P & AR (S) Department, dated 24.02.2014 and some of the provisions have also been given retrospective effect in the amendment.

11. In the said G.O. 22, it has been held that any punishment (other than Censure) imposed within a period of five years prior to the crucial date and a punishment of "Censure" imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. It has also been stated that any punishment including "Censure" imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.



12. On perusal of the subsequent amendment it is seen as per this rule, the petitioner is not eligible for inclusion in the panel for the year 2005 since the delinquency committed comes with the check period of one year. The punishment of Censure was passed vide proceedings dated 29.05.2005, at the time of consideration for the year 2005, the punishment is within the check period. Therefore the petitioner is not eligible to be considered for the panel in the year 2005.

13. The Learned Counsel for the respondent / writ petitioner fairly submitted that after the amendment in G.O. 22, the writ petitioner is not entitled to promotion in the year 2005.

14. Therefore for the above stated reasons, the review petition is allowed and the order passed in the writ petition is set aside.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

TO:

The Principal Secretary to Government,
Finance (Treasuries and Accounts - II) Department,
Secretariat, Chennai - 600 009.

Order made in
Rev.APLW(MD) .No.42 of 2017
29.11.2021

SJ(CO)
GC(13.12.2021) 3P 2C