

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.116 of 2015

P.Manimegalai

... Petitioner

Vs

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

2.The Special Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai-5.

3.The District Collector,
Coimbatore District,
Coimbatore.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to consider the claim of the petitioner for inclusion of her name in the list of candidates fit for appointment temporarily to the post of Deputy Collector for the year 2006-07 published as per G.O.Ms.No.318, Revenue (Ser-1) Department dated 07.06.2007 by recruitment by transfer and promote her as Deputy Collector by placing her in appropriate place at par with her junior and grant her all consequential service and monetary benefits.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mrs.P.Rose Kamalam,
Additional Government Pleader

O R D E R

Heard Mr.V.Vijay Shankar, learned counsel for the petitioner and Mrs.P.Rose Kamalam, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Mandamus, to direct the respondents to consider the claim of the petitioner for inclusion of her name in the list of candidates

fit for appointment temporarily to the post of Deputy Collector for the year 2006-07 published as per G.O.Ms.No.318, Revenue (Ser-1) Department dated 07.06.2007 by recruitment by transfer and promote her as Deputy Collector by placing her in appropriate place at par with her junior and grant her all consequential service and monetary benefits."

3. The case of the petitioner is as follows:-

The petitioner entered the service of the respondents as Junior Assistant on 18.08.1980. She was promoted as Assistant in 1985 and further promoted as Deputy Tahsildar for the panel year 1995 and promoted as Tahsildar in 2003. The next avenue of promotion to the post of Tahsildar was the post of Deputy Collector and according to the seniority of the petitioner, she had come within the zone of consideration for the said promotion for the panel year 2006-07. However, for the panel year 2006-07, the petitioner could not be promoted as Deputy Collector against the quota reserved for SC community as she belong to SC community, in view of the pendency of disciplinary action against her during that time.

4. It was informed to the petitioner when the temporary list for the year 2006-07 was published in G.O.Ms.No.313, Revenue (Services-1) Department, dated 07.06.2007, wherein, the names of as many 157 Tahsildars had been included for promotion as Deputy Tahsildar by transfer of service. While serving as Special Tahsildar (Stamp Duty) in Coimbatore District during 2006, the petitioner was issued with the charge memo by the District Collector, Coimbatore on 30.12.2006 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, containing three articles of charges relating to valuation of certain documents which were found to be undervalued and on such under valuation, financial loss was caused to the Government. A detailed representation was submitted by the petitioner, denying the charges. An enquiry was also conducted and final report was submitted on 30.07.2007, holding all the charges as not proved and the copy of the enquiry report was forwarded to the disciplinary authority for passing final orders. The District Collector, the disciplinary authority by his proceedings dated 13.03.2008, accepted the findings of the Enquiry Officer's report and dropped further action in the matter.

5. According to the petitioner, on the charges being dropped vide proceedings dated 13.03.2008, the petitioner ought to have been promoted as Deputy Collector for the panel year 2006-07, since she was omitted to be included in the panel only for the reason of pendency of the above said charge memo and disciplinary action. Since there was no action forthcoming for promoting the petitioner as Deputy Collector, the petitioner has submitted a representation on 13.07.2009 to the first respondent

to grant her promotion as Deputy Collector. However, as no action was forthcoming, the petitioner approached this Court in W.P.No.19357 of 2010, seeking direction for inclusion of her name for the panel year 2006-07, based on her seniority. This Court disposed of the writ petition on 24.08.2010, by issuing direction to the respondents to consider the representation of the petitioner dated 13.07.2009 and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of that order.

6. However, despite the direction by this Court, no orders were passed in response to the representation submitted by the petitioner nor any action taken for granting promotion to the petitioner as Deputy Collector. On enquiry, the petitioner was informed that there was yet another disciplinary action in TDP case No.17/2007 dated 10.10.2007 was pending and therefore, she could not be promoted as Deputy Collector for the panel year 2006-07. In view of the above circumstances, the petitioner is before this Court challenging the action of the respondents in not granting her promotion for the panel year 2006-07.

7. The learned counsel for the petitioner would submit that admittedly the crucial date for drawing up of the panel for the year 2006-07 was 31.12.2005 and the panel was drawn up on 13.01.2007. When the charge sheet was issued on 30.08.2006 and in pursuance of which, the disciplinary action was initiated and pending, the petitioner's name came to be rightly omitted in the panel. However, when the charges were dropped by proceedings dated 13.03.2008, it was incumbent upon the authorities to consider the claim of the petitioner for promotion as Deputy Collector for the panel year 2006-07. According to the learned counsel for the petitioner, the legal principles are well settled on this aspect that once the disciplinary action ended in exoneration or dropped, the employee shall be considered for promotion on the date when her junior was promoted with all benefits. The contention of the respondents that there was an another charge memo was issued on 10.10.2007 against the petitioner and the consequent disciplinary action initiated, cannot be a valid ground to be held against the petitioner, since on the crucial date of consideration of the name of the petitioner, the second charge memo was not issued and the first charge memo which was issued and the disciplinary action initiated thereof came to be dropped on 13.03.2008, in which event, the authorities ought to have granted her promotion as Deputy Collector for the said panel year.

8. Upon notice, learned Additional Government Pleader appearing for the respondents entered appearance and filed a detailed counter affidavit. The counter affidavit would also emphasise the only fact that the petitioner was issued with the subsequent charge memo on 10.10.2007 which culminated in

imposition of punishment of reduction in rank to the lower post i.e., from Tahsildar to Deputy Tahsildar for a period of two years. The substance of the counter affidavit is narrated in paragraph No.11, is extracted below:-

"11. With regard to the averments made in ground C of the affidavit, it is submitted that though the charges originally impending the individual's inclusion in Deputy Collector panel for the year 2006-07 was dropped vide Collector's Ref.78160/2005/A4, dated 13.03.2008, the name of the writ petitioner could not be recommended for inclusion in that panel due to the pendency of another charge from 10.10.2007, framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, in Tribunal for Disciplinary Proceedings, case 17/2007 in RC No.726/2007/A1, dated 03.10.2007 which ended in imposing a punishment of reduction in rank to the lower post i.e., from Tahsildar cadre to Deputy Tahsildar cadre for a period of two years with effect from the date of issue of order vide in G.O.(1D) No.154, Revenue [Ser.10(1)] Department, dated 03.03.2016. Therefore, the contention of the writ petitioner may be over ruled. Since she is still serving the punishment of reduction in rank, there is no violation of Article 14 &16 of the Constitution of India."

The learned Special Government Pleader would therefore resist the claim of the petitioner that in view of the subsequent disciplinary action which ended in penalty, the petitioner cannot be rewarded with promotion.

9. This Court is unable to countenance such arguments advanced on behalf of the respondents, since as rightly contented by the learned counsel for the petitioner that the law is well settled on this aspect that once the charges were dropped, the clock must be put back to the time when there was no charge memo against the employee and promotion granted from that date, if otherwise was eligible to be granted promotion. In the instant case, the only point which was put against the petitioner is that the disciplinary action was pending against her which is evidenced by the document annexed with the letter dated 07.06.2007, which was filed along with the typed set of documents.

10. That being the case, the subsequent initiation of disciplinary action cannot be validly held against the petitioner for denying her due promotion as Deputy Collector for the panel year 2006-07. In fact, the petitioner has relied upon several decisions as indicated in the grounds of the affidavit filed in support of the writ petition in support of her claim. This Court is in full agreement with the legal contentions as

put forth on behalf of the petitioner that the issuance of subsequent charge memo cannot deny the valuable right of the petitioner for being considered for promotion for the post of Deputy Collector for the panel year 2006-07. More so, the crucial date for constitution of panel for the year 2006-07 was 31.12.2005 and subsequent charge memo was issued only on 10.10.2007.

11. In the above circumstances, this Court does not see any justification for the respondents to rely upon the subsequent charge memo for denying promotion to the petitioner. Such action on the part of the respondents is contrary to the well established legal principles on the subject matter. Therefore, the same cannot be sustained at all.

12. In view of the above conclusion, this Court has no hesitation in allowing the writ petition. There shall be a direction to the respondents to grant promotion to the petitioner to include her name for the panel year 2006-07, for the purpose of promotion to the post of Deputy Collector and promote her as Deputy Collector on the date when her junior was promoted with all attendant benefits like fixation of pay arrears and further promotion, seniority etc. The respondents are directed to pass appropriate orders as indicated above, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

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

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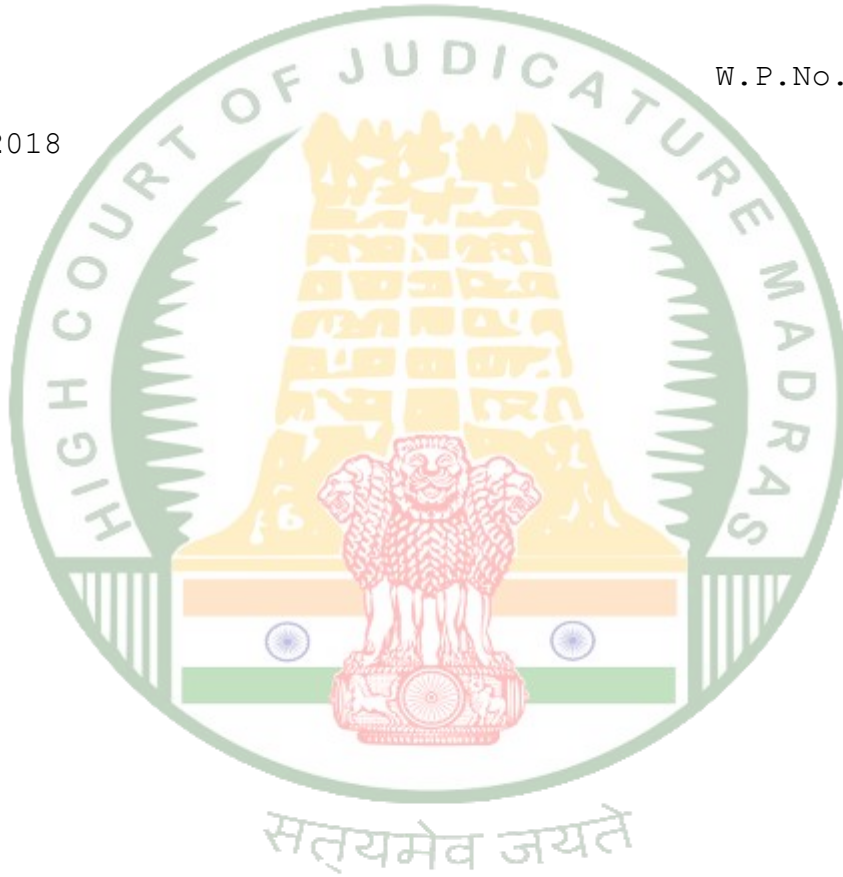
2.The Special Commissioner and
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3.The District Collector,
Coimbatore District,
Coimbatore.

+lcc to Mr.V.Vijay Shankar, Advocate sr.no.40244
+lcc to Government Pleader sr.no.40995

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