BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.8115 of 2018

S.Renuka ... Petitioner

Vs.

1.The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai-600 009.

2.The Principal Secretary and Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The District Collector,
Tiruchirapalli District,
Tiruchirapalli. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling records of the second respondent relating to the Principal Secretary and Commissioner of Revenue Administration, Chennai passed No.Ser3 (5)/22289/2017 dated 04.09.2017 communicated by the Collector in his endorsement number A3/32131/2010 dated 22.09.2017 and quash the same and consequently direct the second and third respondents ie., the Principal Secretary and Commissioner of Revenue Administration, Chennai and the District Collector, Tiruchirapalli District to include the name of the petitioner in the approved list of Deputy Tahsildars of the year 2008 according to her seniority in the feeder category within a specified time frame that may be fixed by this Court.

For Petitioner :Mr.S.Visvalingam

For Respondents :Mr.M.Murugan
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the Principal Secretary and Commissioner of Revenue

Administration, Chennai passed in No.Ser3(5)/22289/2017 dated 04.09.2017 communicated by the District Collector in his endorsement number A3/32131/2010 dated 22.09.2017 and quash the same and consequently direct the second and third respondents ie., the Principal Secretary and Commissioner of Revenue Administration, Chennai and the District Collector, Tiruchirapalli District, to include the name of the petitioner in the approved list of Deputy Tahsildars of the year 2008, according to her seniority in the feeder category.

2.The short facts, which are required to be noticed for disposal of the writ petition, are as follows:

The petitioner was appointed as an Assistant and her name was to be included in the year 2008, but it was not included in the year 2008 panel for Deputy Tahsildar on the ground that the petitioner had not completed 5 years of service on the crucial date ie., on 15.09.2008.

3.1.It is the case of the petitioner that, though the petitioner was appointed as directly recruited Revenue Assistant and allotted to Tiruchirapalli District Revenue Unit in October 2001, her name was not included in the Deputy Tahsildar panel in the year 2007 also on the ground that the petitioner was on Maternity Leave.

3.2.In view of the non-inclusion of the petitioner's name in the panel for the year 2008, the petitioner had made a request to the third respondent. The third respondent, on considering the request of the petitioner, has forwarded the report dated 19.08.2010 to the second respondent, who, in turn, has to pass orders.

4.Even though the said report dated 19.08.2010 the third respondent, having recommended the case of the petitioner, the second respondent in the impugned order dated 04.09.2017 rejected the request of the petitioner for the inclusion of the name of the petitioner in the panel of Deputy Tahsildar for the year 2008. The reasons cited in the impugned order of the second respondent is that, as per Section 38 of the Tamil Nadu Ministerial Service Rules (hereinafter referred to as 'the Rules'), service of 5 years training period, since is prescribed, after completion of the 5 years period only she would become eligible to be included in the Deputy Tahsildar panel and since the petitioner has not completed the five year service/training, she need not be included in the 2008 panel. Therefore, the non-inclusion is justified and accordingly, the request of the petitioner was rejected.

5.Assailing the said order, Mr.S.Visvalingam, learned counsel for the petitioner, would submit that, it is an admitted fact that the petitioner had been in maternity leave and because of that availing of Maternity Leave, the petitioner could not complete the 5 years training as required under the Rules. However, the said legal position has been completely changed by introduction of the Tamil

Nadu Government Servant (Conditions of Service) Act, 2016 (hereinafter referred to as the Act), which have retrospective effect. The learned counsel appearing for the petitioner would further submit that, according to Section 12 of the said Act, the period spent on leave will not bar any individual from being promoted if he is otherwise fully qualified to hold the post. When that being the legal position, the reasons cited in the impugned order cannot be justifiable.

6.The learned counsel appearing for the petitioner in this regard has relied upon the order passed by the very same second respondent for a similarly placed candidate, by order dated 17.02.2017 and the relevant portion of such order reads thus:

> "In this case, Tmt.N.Praveena Mary has acquired all the prescribed qualifications. But she was not considered for the Deputy Tahsildar panel, because the leave period of 9 months and 1 day was not treated as duty period as it was maternity leave and not eligible to be treated as duty as conceived by officers preparing the panel. Thus the individual fell short by 8 days of the 5 year service completion qualification as on 15.09.2015.
>
> According to Section 12 of Tamil Nadu Government Servant (Conditions of Service) Act 2016, the period spent on leave will not bar any individual from being promoted if he is otherwise fully qualified to hold the post.
>
> Perusal of the District Collectors report and service register of the individual reveals that she has completed all the training/tests prescribed for a Directly Recruited Assistant to be completed in 5 years period within the qualifying date of 15.09.2015 for the Deputy Tahsildar panel for the year 2015. As she has completed 4 weeks survey training during the period 15.04.2008 to 14.05.2008, while she was working as Village Administrative Officer, this position happened.
>
> Further, the District Collector, Pudukottai has also reported that there are no charges, punishment, criminal cases are pending against the individual as on date.
>
> Considering the above facts, the necessity for relaxation of rules does not arise. Hence, the District Collector, Pudukkottai is permitted to revise the Deputy Tahsildar panel for the year 2015 by placing the name of Tmt.N.Praveena Mary, Deputy Tahsildar in the appropriate places."

7.By making these submissions, the learned counsel for the petitioner would submit that the impugned order is liable to be quashed and the relief sought for by the petitioner may be granted.

8.I have heard the learned Government Advocate appearing for the respondents, who would submit that, since the recommendation was made by the third respondent District Collector, at the request of the petitioner as early as on 19.08.2010 and during that time, Rule 38(b) of the Rule was in effect. Therefore, the third respondent District Collector, in fact, had sought for special exemption to the petitioner's case, taking into account the maternity leave taken by the petitioner.

9.Only in that context, the second respondent passed the impugned order on 04.09.2017 by taking a stand that under Rule 38(b) of the Rules, the 5 years training is the must and without completing the same, the name of the petitioner cannot be accepted to be included in the panel of Deputy Tahsildar. Even though subsequently the Act came into effect, the erstwhile Rules since have been taken into account by the second respondent, the said impugned order has been passed.

10.I have heard the rival submissions made by both sides.

11.As has been rightly pointed out by the learned counsel for the petitioner, if the Act, 2016 came into effect with retrospective application, wherein under Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the leave period will also be taken for duty for the purpose of completion of 5 years period or any eligible period for the purpose of service benefits like, promotion etc., and based on the said Rule, since the very same second respondent passed an order for a similarly placed candidate by order date 17.02.2018, insofar as the petitioner's case is concerned, the second respondent cannot take a different stand, as has been taken in the impugned order.

12.On perusal of the order dated 17.02.2017 in respect of the similarly placed candidate and the order impugned herein dated 04.09.2017, this Court finds that there clear discrimination has been shown, that too, without properly complied with the provision of law under the Act, which came into effect retrospectively, and therefore, the reason stated in the impugned order, undoubtedly, is unsustainable and therefore, this Court has no hesitation to hold that the impugned order is liable to be interfered with.

13.Accordingly, the impugned order is quashed and the respondents are directed to consider the request of the petitioner for inclusion of her name in the panel of Deputy Tahsildar for the year 2008. Accordingly, her seniority, promotion and other service benefits and pay benefits payable shall be calculated and the same shall be disbursed to the petitioner. The needful as directed shall be undertaken by the respondents within a period of 8 weeks from the date of receipt of a copy of this order.

With these directions, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai-600 009.

2.The Principal Secretary and Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The District Collector,
Tiruchirapalli District,
Tiruchirapalli.

+1CC to Mr.S.Visvalingam, Advocate in SR.No.63542.
+1CC to Special Government Pleader in SR.No.63641.

NS
DS/SKN-RSK/SAR-4 :10.08.2018: 5P/6C

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