



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

Writ Appeal (MD).No.1448 of 2017
and
C.M.P.(MD).No.11108 of 2017

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

... Appellant

Vs.

1. A.Barakat Alikhan

2. The Secretary,
Personnel and Administrative Reforms
Department,
The State of Tamil Nadu,
St.George Fort, Chennai.

3. The Secretary,
Labour and Employment Department,
The Government of Tamilnadu,
St.George Fort, Chennai.

... Respondents

(Respondents 2 and 3 are suo motu impleaded vide Court order dated 29.01.2018 made in W.A(MD).No.1448 of 2017 by NKKJ & RTJ)

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order, dated 06.01.2017 in W.P(MD).No.924 of 2012.

Prayer in WP(MD)No.924/ 2012 :

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 passed in G.O. (2D) No.466 Revenue (Ser-1) Department dated 14.12.2011 and quash the same and consequently direct the respondent to include the name of the petitioner in the approved list of the Deputy Collector for the year 2008-2009 and promote him notionally as Deputy Collector on par with his juniors with all service benefits and send revised pension proposals within a specified time frame that may be fixed by this Honourable Court.



For Appellant : Mr.D.Muruganandam
Additional Government Pleader
For Respondents : Mr.S.Visvalingam (for R1)
Mr.D.Muruganandam (for R2 & R3)

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JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM,J.)

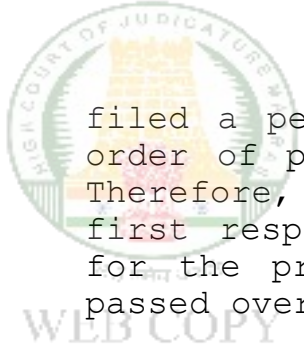
Heard Mr.D.Muruganandam, learned Additional Government Pleader for the appellant and also accepts notice for the second and third respondents and Mr.S.Visvalingam, learned counsel for the first respondent.

2.This Writ Appeal by the State, is directed against the order dated 06.01.2017 made in W.P.(MD)No.924 of 2012. The writ petition was filed by the first respondent herein to quash G.O.(2D)No.466 Revenue (Ser-1) Department dated 14.12.2011 and to direct the appellant to include the name of the first respondent in the approved list of the Deputy Collector for the year 2008-2009 and to promote him notionally as Deputy Collector on par with his juniors with all service benefits and send revised pension proposals. The writ petition was allowed by quashing the impugned order passed by the Government and a direction was issued to consider the first respondent/petitioner for promotion to the post of Deputy Collector, after the year 2008-2009 taking into account the crucial date i.e. 31.12.2008 and to give promotion notionally.

3.The appellant/State has filed an appeal against the impugned order primarily on two grounds. Firstly that, on the date, when the panel was drawn for the year 2008-2009, a charge memo dated 01.11.1995 was issued against the petitioner under the Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and was pending. The second contention being that if the first respondent/writ petitioner has to be considered for the promotion for the year 2009-2010, he should have one year left over service, which has to be computed from the crucial date i.e., 31.12.2008 and the first respondent/writ petitioner did not have one year left over service as he has attained the age of superannuation on 31.07.2009. The correctness of both these submissions have to be tested in this appeal.

4.We have heard Mr.S.Visvalingam on the above said submissions.

5.The following facts are relevant to decide the matter. While the first respondent/ writ petitioner was working as Deputy Tahsildar, charges were framed against him under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules on 01.11.1995. Ultimately, it ended in an order of punishment dated 31.03.1998, by which a major penalty of stoppage of increment for three years with cumulative effect was imposed. The first respondent/writ petitioner

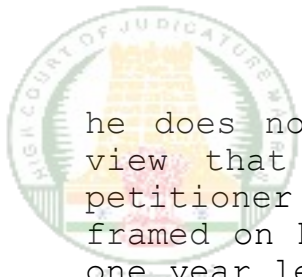


filed a petition in W.P(MD).No.5442 of 2007, challenging the said order of punishment, however, there was no order of interim stay. Therefore, the punishment was implemented, as a result of which, the first respondent/writ petitioner though eligible to be considered for the promotion to the post of Deputy Collector, his name was passed over consecutively for four years viz.,1997-2000.

6.After the currency of the punishment imposed on 31.03.1998, the next panel was drawn only in the year 2004 as in between i.e., from 2001-2003, no promotion panel was drawn. In the panel drawn for the year 2004, the first respondent/writ petitioner was found fit and promoted as Tahsildar. Only 3 years after, the respondent was promoted as Tahsildar, the writ petition was filed by him and was allowed by an order dated 27.11.2007. By the said order, the punishment was set aside, not on the ground that the first respondent/petitioner had undergone the punishment, but on various other technical grounds, which led the Court to remand the matter for fresh consideration. On remand, a fresh proceedings was initiated, an Enquiry Officer was also appointed, disciplinary proceedings were conducted and an order of punishment was passed on 03.10.2008. The punishment was minor penalty of stoppage of increment for three months without cumulative effect.

7.After the currency of the said punishment, the first respondent/writ petitioner requested that he should be considered for promotion to the post of Deputy Collector. This was negatived by the Government by the order dated 14.12.2011, which was challenged in the writ petition. The petitioner having suffered with the punishment imposed by the order dated 31.03.1998 and on account of the pendency of the charges and on account of the punishment imposed his name was passed over in the panel for four years. Therefore, for the very same reason, the first respondent/writ petitioner name cannot be passed over, merely because, he was working in the promoted post at the relevant time. In this regard, useful reference can be made to the consolidated instructions issued by the Government of Tamilnadu for preparation of panel for appointment by promotion/recruitment by transfer, which states that an officer passed over once need not been passed over for the second time on account of the same punishment at the time of consequent consideration for the next panel. The slight distinction in the case on hand is that the petitioner virtually punished for the same set of charges. He has suffered major penalty of stoppage of increment though the same was set aside subsequently in the year 2007 and on remand once again, the minor penalty was imposed, which was also suffered by the petitioner. Therefore, the case of the first respondent/ petitioner is a better case than what has been contemplated while preparing the consolidated instructions.

8.Thus, we find that the petitioner is entitled to be considered for promotion to the post of Deputy Collector notionally for the year 2009-2010. The learned Special Government Pleader would submit that there is an embargo to consider his case because



he does not have one year left over service. We are of the firm view that because facts of the case clearly disclose that the petitioner has been punished enough for the charges, which were framed on him in the year 1995 and therefore, it is fit case, where one year left over period should not be insisted upon.

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9. Considering the peculiar facts and circumstances of the case, we find that there are no good ground made out by the appellant to interfere with the order passed by the writ petitioner. Accordingly, the writ appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Personnel and Administrative Reforms
Department,
The State of Tamil Nadu,
St. George Fort, Chennai.
 2. The Secretary,
Labour and Employment Department,
The Government of Tamilnadu,
St. George Fort, Chennai.
 3. The Principal Secretary to Government,
Revenue Department,
Chief Secretariat,
Chennai-600 009.
- + 1 CC TO Mr.S.VISVALINGAM, ADVOCATE IN SR No. 50496
- RMK/MRN
TE/KKR/SAR-3 : 14/03/2018 : 4P/5C

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