

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.No.2859 of 2013

K.Radhakrishnan

..Petitioner

Vs

1.The District Collector
Nilgiris District, Nilgiris

2.The Principal Secretary and
Commissioner for Revenue Administration
Chepauk, Chennai-5

..Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Mandamus directing the respondents to consider the claim of the Petitioner for inclusion of his name in the panel of the Deputy Tahsildar for the year 2011 in Nilgiris District as communicated by the 1st respondent in RC.No.A2/PDL30/2011 dated 23.12.2011 and promote him as Deputy Tahsildar and grant him all consequential service and monetary benefits.

For Petitioner : Mr.Venkataramani, Senior counsel
for Mr.M.Muthappan

For Respondents : Mr.P.Siva Shanmuga Sundaram
Spl.G.P., for R1 and R2.

ORDER

The Petitioner has come forward with the above writ petition seeking to direct the respondents to consider his claim for inclusion of his name in the panel of the Deputy Tahsildar for the year 2011 in Nilgiris District as communicated by the 1st respondent in RC.No.A2/PDL30/2011 dated 23.12.2011 and promote him as Deputy Tahsildar and grant him all consequential service and monetary benefits.

2. The sum and substance of the issue on the hand is that the Petitioner while working as Assistant, Taluk Office, Coonoor

Taluk, Nilgiris District, was served with a charge memo issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for the allegation that he accepted illegal gratification for grant of house site patta to Adivasi families and after enquiry, by proceedings in R.C.No.Ser.4(1)/34013/2004 dated 03.08.2004, he was imposed with the punishment of stoppage of increment for five years with cumulative effect. It was further ordered that the effect of the said punishment on pension would be considered as required under Rule 24(3) (a) of Fundamental Rules. Thereafter, on the other set of allegations that he committed serious misconduct in the supply of free text books to school students, 5 charges have been framed against him and after enquiry, by Proceedings in G.O.Ms.No.8 Scheduled Caste and Scheduled Tribe Welfare Department dated 04.12.2009, he was imposed with a punishment of stoppage of one increment with cumulative effect.

3. It is the contention of the Petitioner that the 2nd punishment imposed on him dated 04.12.2009 was completed on 03.12.2010. The crucial date for the preparation of the panel for Deputy Tahsildar is 15th September every year and that the petitioner is fully qualified for consideration of his claim for promotion as Deputy Tahsildar, Nilgiris District, in the year 2011 for which the crucial date was 15.09.2011. When the panel was prepared on 23.12.2011, the name of the Petitioner was not included, whereas the petitioner's junior was included by proceedings dated 23.12.2011. The learned Senior counsel appearing for the Petitioner submits that the petitioner should have been considered for promotion and relied on Judgment of Full Bench of this court, in WP(MD).No.315 of 2009 dated 27.04.2011 [1.The Deputy Inspector General of Police, Thanjavur Range, Thanjavur and 2.The Director General of Police, Tamil Nadu, Chennai-4 Vs. V.Rani] and submitted that unless there is a currency of the punishment as on the crucial date or on the date of consideration, the claim of the Government servant cannot be overlooked. Thus, it is submitted that the petitioner was entitled to be promoted as Deputy Tahsildar for the year 2011.

4. In the counter affidavit filed by the second respondent, it is stated that the Writ Petitioner while working as Assistant in the Gudalur Taluk Office, he was appointed as Inspection Officer for verifying bogus ration cards in Gudalur and at that time, the individual has committed certain discrepancies and has marked non living cards as living cards resulting in revenue loss to Government. The Special Squad, Civil Supplies Corporation, Chennai, found that the Petitioner committed irregularities in their verification and requested the District Administration to initiate disciplinary proceedings against the delinquent official vide proceedings dated 31.01.2010. In response to the above, the District Supply Officer, Nilgiris @ Udagamandalam had addressed the Food Cell Inspector, Civil

Supplies (CB-CID), Coimbatore, to initiate criminal action against the individual and accordingly disciplinary proceedings under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955. In the said disciplinary proceedings, final order was passed inflicting a punishment of "Censure" vide Proceedings dated 27.06.2014.

5. According to the Petitioner, the crucial date for consideration of his name for promotion is 15.09.2011 and that the punishment imposed on him for the period between 2005-10 and yet another punishment for the year 2010-11, expired in March 2011 and on the crucial date, viz., 15th September 2011, the petitioner had not suffered any punishment or suspension or not even a charge memo was issued. Punishment imposed was already over. There is no hurdle on the part of the respondents in considering the case of the petitioner for promotion. Even though the Petitioner was served with charge memo relating to other charges, the punishment of censure was imposed only in the year 2014. As there was no charge memo or currency of punishment or suspension pending against the Petitioner when the panel was drawn on 23.12.2011, there is no reason why the petitioner's name did not find place in the panel for promotion to the post of Deputy Tahsildar for the year 2011, and therefore, sought to grant appropriate relief to the Petitioner.

6. In reply, the learned Additional Government Pleader appearing for the respondents would submit that the petitioner had committed serious misconduct and that the department has decided to initiate criminal proceedings against the petitioner in the year 2010. In this regard, the learned Additional Government Pleader relied on G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 and submitted that Clause (b) II of the said GO reads that Any punishment, other than 'Censure' imposed on an Officer within a period of Five years prior to the crucial date and a punishment of 'Censure' within a period of one year prior to the crucial date (or censure imposed after the crucial date, but before actual promotion) should be held against the Officer. In such a case the Officer's name should be passed over. Provided that if the officer was imposed with any of the punishments within the check period as mentioned above for irregularities/delinquencies which occurred five years prior to the crucial date, such punishment need not be held against him, if such penalty is not in currency on the crucial date and also on the date of consideration of the panel. Therefore, the petitioner's case could not be considered for promotion for the post of Deputy Tahsildar by including his name in the year 2011. It is further submitted that it would give a wrong signal to the persons who committed a serious misconduct, in the event of such consideration of name in the panel and that the petitioner had attained superannuation in the year 2014.

7. In reply, Mr.Venkataramani, learned Senior counsel appearing for the petitioner would invite the attention of this court to Paragraph 13 of the counter affidavit wherein it has been stated that no criminal action has been initiated or pending against the Writ Petitioner and further the petitioner was permitted to retire on 30.06.2014 after duly finalizing the charges initiated under Rules 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955.

8. A reading of paragraph 13 of the counter affidavit shows that though the respondents wanted to initiate criminal proceedings against the petitioner, no action has been initiated and as per the letter of Inspector of Police, Civil Supplies (CB-CID) Coimbatore, dated 31.05.2013, no criminal action has been initiated or pending against the petitioner and that being the case, depriving promotion to the Petitioner is not at all acceptable.

9. In view of the above, the Petitioner is entitled to the relief sought for in this Writ Petition. Accordingly, the writ petition is allowed. No costs. The Writ Petitioner is entitled to notional benefits with all terminal and consequential benefits that may be available to him, if he is otherwise eligible. The respondents are directed to extend the benefits within a period of eight weeks from the date of receipt of a copy of this order.

10. It is very unfortunate that the petitioner who has committed serious misconduct has been let off with minor punishments as mentioned supra; even though it is not a subject matter of the issue, it rather transpires that unless and until officials are hand in glove to the petitioner, the petitioner would not be imposed lesser punishment.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The District Collector
Nilgiris District,
Nilgiris

2.The Principal Secretary and Commissioner
for Revenue Administration,
Chepauk, Chennai-5.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.46125
+1cc to the Government Pleader, S.R.No.45824

WP.2859 of 2013

SSD (CO)

RRS (22/07/2019)



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