



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.10556 of 2014

V.Sethuraman

.. Petitioner

Vs.

The District Collector,
Ramanathapuram District,
Ramanathapuram.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent i.e., the District Collector, Ramanathapuram, relating to memo No.R.C.A.1/64121/2013, dated 18.12.2013 and quash the portion mentioned under serial No.21 of the impugned proceedings alone and consequently direct the respondent to include the name of the petitioner in the approved list of Deputy Tahsildars of the year 2013 on par with the petitioner's juniors with all service and monetary benefits within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Viswalingam

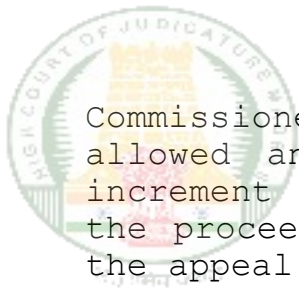
For Respondent : Mr.R.Murugan
Additional Government Pleader

ORDER

This writ petition is filed challenging the memo issued by the respondent, dated 18.12.2013 and to direct the respondent to include the petitioner's name in the approved list of Deputy Tahsildar for the year 2013 on par with the petitioner's juniors with all service and monetary benefits within the time stipulated by this Court.

2.The petitioner is an Assistant in the Taluk Office, Thiruvadanai, Ramanathapuram District. The grievance of the petitioner is that his name is not included in the approved list of Deputy Tahsildar in the year 2013 on the ground that a punishment of stoppage of increment was in force that is in currency.

3.It is admitted by the petitioner himself that the District Revenue Officer, Ramanathapuram, inflicted a punishment of stoppage of increment against the petitioner for a period of one year with cumulative effect, by order, dated 18.02.2010. The petitioner preferred an appeal to the Additional Chief Secretary and

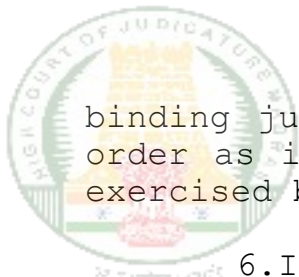


Commissioner of Revenue and Administration and the appeal was allowed and the punishment was modified to one as stoppage of increment for a period of six months with cumulative effect as per the proceedings, dated 12.11.2013. The reduction of punishment in the appeal filed by the writ petitioner is not in dispute.

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4.It is admitted that the punishment of stoppage of increment was given effect from 01.07.2010 to 31.12.2010 as per the proceedings of the Tahsildar, dated 28.05.2014. Hence, it is contended by the petitioner that the currency of punishment of stoppage of increment was over by 31.12.2010 and that the petitioner who is entitled to be considered for promotion cannot be denied an opportunity by refusing to include his name in the list prepared for the year 2013. It is admitted that the crucial date for preparing panel was on 15.09.2013. The actual date of promotion was on 18.12.2013. It is in the said circumstances, relying upon the Full Bench Judgment, reported in **2011 (3) CTC 129 (in Rani's Case)**, the learned counsel for the petitioner submitted that the petitioner is eligible for inclusion in the approved list of Deputy Tahsildar for the year 2013. However, it is seen from the memorandum, dated 18.12.2013, impugned in the writ petition, that the name of the petitioner was not included in the approved list of Deputy Tahsildar, for the year 2013 on the ground that punishment of stoppage of increment was in force.

5.As per the judgment of Full Bench of this Court in **Deputy Inspector General of Police and another Vs. V.Rani**, reported in **2011 (3) CTC 129**, the prescription of check period for consideration of promotion is held to be bad and that embargo put on the right of Government Servant for being considered for further period of minor punishment is over in the name of check period is impermissible under the statutory rules. Admittedly, the punishment was reduced from one year to six months and by the end of December 2010, there is no punishment in currency. It is in the said circumstances, the petitioner is entitled to the relief. However, the learned Additional Government Pleader submitted that by virtue of subsequent Government Order by G.O.Ms.No.22, dated 24.02.2014, no member of service can be promoted or appointed to a post, if the member is undergoing any punishment under Rule 8 of the Act, either on the crucial date or on the date of consideration of real promotion. It is further seen that the Government Order stipulates that any punishment imposed on a member of service within a period of five years prior to crucial date and punishment of censure imposed within a period of one year prior to the crucial date or minor punishment, his name shall not be considered for inclusion in the approved list. It is to be noted that G.O.Ms.No.22, dated 24.02.2014, is contrary to the order of Full Bench of this Court. The terms of G.O.Ms.No.22 was also considered by a subsequent Division Bench and held that the Government order is directly against the judgment of this Court by the Full Bench and quashed the same. This Court has held that a



binding judgment of this Court cannot be altered by an Executive order as it amounts to usurping the power of judicial review to be exercised by the Courts.

6. In this regard the Division Bench of this Court, has rendered a judgment, dated 14.06.2017, in the case of **Secretary to Government, Finance Department and another Vs. A.Thiagarajan** in W.A.No.767 of 2017. The relevant portion of the judgment passed by the Division Bench of this Court in W.A.767 of 2017 is extracted below for convenience.

"4. The validity of the Government Orders fixing a check period of 5 years was tested by a Full Bench of this Court, in the case of, **The Deputy Director General or Police, Thanjavur Range Vs. V.Rani, reported in 2011 (3) CTC 129**, wherein it was held that there cannot be any embargo under the guise of check period. To get over the said decision, the State Government amended the Rule by passing G.O.Ms.No.22, dated 24.02.2014. This Government Order was put under challenge in batch of cases in the case of **K.Rajalakshmi and others Vs. Principal Secretary to Government, School Education Department filed in W.A.No.983 of 2015, dated 14.09.2016**, and the Writ Appeals and Writ Petitions were allowed and the said Government Order was quashed in so far as it relates to check period is concerned."

7. Considering the issue that arise for consideration in this writ petition, in the light of Government order and the judgment of Full Bench and the Division Bench of this Court, this Court has no hesitation to hold that the impugned order is not sustainable and the petition is liable to allowed.

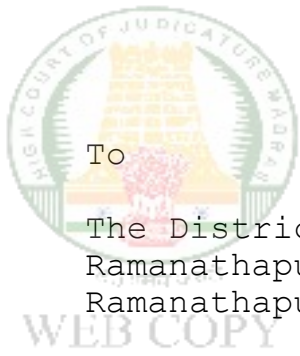
8. This writ petition is allowed. The impugned order passed by the District Collector, Ramanathapuram, in memo No.R.C.A.1/64121/2013, dated 18.12.2013 is quashed in respect of the portion mentioned under serial No.21 of the impugned proceedings alone and the respondent is directed to include the name of the petitioner in the approved list of Deputy Tahsildar for the year 2013 on par with his juniors with all service and monetary benefits within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To

The District Collector,
Ramanathapuram District,
Ramanathapuram.

+1 CC to Mr.S. VISVALINGAM, Advocate SR-91003.
+1 CC to GP SR-91374.

W.P. (MD) .No.10556 of 2014
03.10.2019

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