



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.10.2019**

CORAM

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THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

W.P. (MD).No.2521 of 2014

and

M.P. (MD).No.1 & 2 of 2014

M.Subbulakshmi,
Revenue Assistant,
District Adi-Dravidar and Tribal Welfare Office,
Madurai - 625 020. ... Petitioner

/ Vs./

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

2.The District Collector,
Madurai District, Madurai - 625 020.

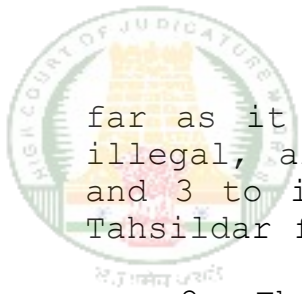
3.The District Adi-Dravidar and Tribal Welfare Officer,
District Adi-Dravidar and Tribal Welfare Office,
Madurai - 625 020. ... Respondents

PRAYER: Writ petition - filed under Article 226 of the Constitution of India, to issue a Writ Certiorarified Mandamus, to call for the records of the Impugned Order passed by the 3rd respondent vide Na.Ka.No.Aa5/115/2013 dated 06.01.2014 and its impugned Proforma - I and III, Serial No.2, as far as it relates to the Petitioner's case and quash the same as illegal, arbitrary and consequently to direct the respondents No.2 and 3 to include the Petitioner's name in the panel of the Deputy Tahsildar for the year 2013 in the appropriate place within stipulated time.

For Petitioner	: Mr.D.Sadiq Raja
For Respondents	: Mr.M.Jeyakumar
	Additional Government Pleader

ORDER

This writ petition is filed for issuing a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order passed by the 3rd respondent vide Na.Ka.No.Aa5/115/2013 dated 06.01.2014 and its impugned Proforma - I and III, Serial No.2, as

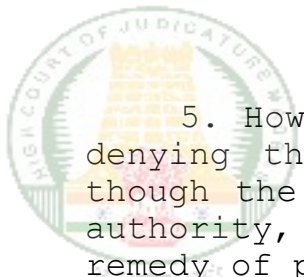


far as it relates to the Petitioner's case and quash the same as illegal, arbitrary and consequently to direct the respondents No.2 and 3 to include the Petitioner's name in the panel of the Deputy Tahsildar for the year 2013 in the appropriate place.

2. The petitioner was appointed as Typist with effect from 07.11.1994 through Tamil Nadu Public Service Commission (TNPSC). The petitioner was promoted to the post of Revenue Assistant with effect from 26.06.1997 and she was working as Revenue Assistant till she was considered to be included in the panel for promotion to the post of Deputy Tahsildar for the year 2011. It is stated that the petitioner was entitled to be considered for promotion, even in the year 2011 and that his name was deferred from the panel for promotion to the post of Deputy Tahsildar for the year 2011. It is also a fact that the petitioner's name was not included in the panel prepared for the year 2013. It is stated that the crucial date was 15.09.2013.

3. It is stated by the respondents that due to pendency of the charges for major punishment under Rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules, the petitioner was found disqualified for inclusion in the Deputy Tahsildar's list 2013. The respondents admit that the petitioner faced disciplinary proceedings and an order of stoppage of increment for a period of six (6) months with cumulative effect was passed on 28.03.2013. However, on appeal, the punishment was reduced to one as stoppage of increment for three (3) months without cumulative effect. This order modifying the punishment was passed on 16.11.2013. However, ignoring the subsequent order modifying the punishment in the appeal preferred by the petitioner, impugned order came to be passed by the third respondent on 06.01.2014 by disqualifying the petitioner to include her name in the panel for promotion to the post of Deputy Tahsildar for the year 2013 on the ground that the petitioner was facing charges under Rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules. When it is not in dispute that the crucial date was 15.09.2013 and the punishment was modified on 16.11.2013, the third respondent has passed the impugned order ignoring the modification of punishment. Since the order of the punishment was on 28.03.2013, the punishment comes to an end by 28.06.2013 and as on 05.09.2013, the punishment was not in currency.

4. It is in the said circumstances, the counsel for the petitioner submitted that the non-inclusion of the petitioner's name in the panel for promotion to the post of Deputy Tahsildar for the year 2013 is illegal and arbitrary. The punishment of three (3) months of stoppage of increment has been effected on 01.04.2013 and it came to an end by 28.06.2013, well before the crucial date. Hence, the petitioner is right in contending that the non-inclusion of the petitioner's name is improper.



5. However, the second respondent has filed a counter affidavit denying the contentions of the petitioner. It is stated that though the punishment was reduced to three months by the appellate authority, second respondent stated that there was an adequate remedy of preferring an appeal before the Additional Chief Secretary and Commissioner of Revenue Administration, Chennai in terms of Rule 37 of the Tamil Nadu State and Subordinate Service Rules and Rule 5 (g) of the Special Rules namely the Tamil Nadu Revenue Subordinate Service Rules. Sum and substance, it is contended by the respondents that the petitioner has an alternative remedy and the writ petition is not maintainable.

6. The respondents have infact admitted the position that as on 15.09.2013, the petitioner was fully qualified and that there is no reason to exclude her name in the list for the promotion to the post of Deputy Tahsildar prepared for the year 2013. Having admitted the crucial fact, it is not appropriate to deny the relief to the petitioner on the ground that the petitioner has an alternative remedy. When entitlement of petitioner to get relief is admitted on the facts established the contention of the respondents that the writ petition is not maintainable cannot be accepted. Alternative remedy is not an absolute bar to maintain writ petition.

7. Considering the facts and circumstances of the cse, this Court is inclined to set aside the order impugned in the writ petition. This Writ petition is allowed. Impugned order passed by the third respondent vide proceedings Reference Na.Ka.No.Aa5/115/2013 dated 06.01.2014 is quashed. The second respondent is directed to include the petitioner's name in the panel for the promotion to the post of Deputy Tahsildar for the year 2013 in appropriate place and consider the petitioner for promotion by placing the petitioner appropriately.

8. Since it is admitted that the petitioner is now promoted, promotion should be with effect from the date after placing her appropriately in the promotion panel of Deputy Tahsildar for the year 2013. This exercise shall be done by the second respondent within a period of six (6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)



To

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

2.The District Collector,
Madurai District, Madurai - 625 020.

3.The District Adi-Dravidar and Tribal Welfare Officer,
District Adi-Dravidar and Tribal Welfare Office,
Madurai - 625 020.

+1 CC to M/s.D.SADIQRAJA, Advocate SR-93733.
+1 CC to GP SR-94073.

**Order made in
W.P. (MD) .No.2521 of 2014**

**Dated:
22.10.2019**

CS (15.11.2019) 4P 6C