



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 12476 of 2013

R.Radha

..Petitioner

- Vs -

1. The State of Tamil Nadu
Rep. By its Principal Secretary to the Govt,
Small Industries Department,
fort St. George, Chennai 600 009.

2. The Industries Commissioner and
Director of Industries and Commerce,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai 600 028.

..Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling the records of the 2nd respondent in its order dated 27.8.2012, in Rc.No.4678/EG4/200 7 communicated to the petitioner by way of a letter dated 31.10.2012 in Na.Ka.No.5248/Tho-Ku 1/2012 quash the same and to direct the respondents to include the petitioner's name in the panel for the post of Assistant Director of Industries and Commerce (Industrial Co-Operatives) of the year 2006-2007 and grant promotion in accordance with the seniority of the Petitioner.

For Petitioner : M/S.T.Sundar Rajan
For Respondents : Mr.S..Thangavel, Spl.G.P

ORDER

The present petition has been filed to call the records of the 2nd respondent in its order dated 27.8.2012, in Rc.No.4678/EG4/2007 communicated to the petitioner by way of a letter dated 31.10.2012 in Na.Ka.No.5248/Tho-Ku 1/2012 quash the same and to direct the respondents to include the petitioner's name in the panel for the post of Assistant Director of Industries and Commerce (Industrial Co-Operatives) of the year 2006-2007 and grant promotion in accordance with the seniority of the Petitioner



2. It is the case of the petitioner that she was appointed as Supervisor of Industrial Cooperatives by the 2nd respondent by direct recruitment and she joined duty in the year 1983. Subsequently, she got regular promotion as Industrial Cooperative officer in the year 1992. It is the further case of the petitioner Industrial cooperative officer is the feeder category to the next higher post of the Assistant Director of Industries. It is the case of the petitioner that she has been continuing in the said feeder category post for the past 19 years and the petitioner is eligible for promotion to the post of Assistant Director of Industries and Commerce. In the mean while, during the year 2000, proposals were called for by the concerned officers to prepare the panel for the year 2006-2007 and the crucial date for fixing the eligibility for inclusion in the was 15.4.2006. On the said date, the petitioner was fully qualified and eligible to be considered for inclusion in the panel to be drawn for the year 2006 as no charge was in pendency against the petitioner. Whiles, the 2nd respondent herein had taken action against one G.Anbalagan, Assistant Director of Industries and Commerce for certain allegations in respect of SISCO Vellore, when the petitioner was holding additional charge of the said society and, therefore, on the directions of the 2nd respondent, requisite particulars were furnished by the petitioner. The said action of the petitioner, in discharge of her duties, turned Anablagan inimical towards the petitioner and to wreak vengeance, the said Anbalagan had given a false complaint against the petitioner, which culminated in the initiation of disciplinary proceedings. The petitioner submitted a representation to the second respondent in the year 2007 stating that the petitioner is eligible for inclusion in the panel for promotion for the year 2006 as on the said crucial date, there was no charge pending against the petitioner.

2.1. Since promotion was not given to the petitioner, as there was no charge pending against the petitioner on that crucial date the petitioner filed W.P.No.5766 of 2008 and this Court, vide order 4.3.2008, directed the respondents to include the name of the petitioner in the panel for promotion to the post of the Assistant District of Industries and Commerce (Industrial Cooperatives) for the year 2006-2007 and grant promotion in accordance with the seniority. Subsequent to the said order, the 2nd respondent issued charge memo dated 18.2.2008 framing charges against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and after receiving the explanation of the petitioner, enquiry was conducted which resulted in filing of the final report. Pursuant to calling for further explanation, which was submitted by the petitioner, the disciplinary authority, considering the gravity of the charges, imposed a punishment of of Censure,



which was challenged by the petitioner by filing W.P.No.5766 of 2008 and this Court by order dated 19.4.2012, disposed of the petition directing the 2nd respondent to take into the consideration the recommendations made by the General Manager, District Industries Centre, Vellore dated 7.11.2008, recommending for dropping the charges framed against the petitioner and pass appropriate order on merits and in accordance with law. However not satisfied with the said order, the petitioner filed review petition in Rev. App. No.205 of 2012. In the meanwhile the respondents passed the impugned order dated 27.8.2012 stating that the petitioner is not eligible for being considered for promotion to the post of Assistant Director as per the guidelines issued in G.O.Ms.No. 368 P&AR (Personnel) department dated 18.10.1993 and as per the instructions in Government Letter (Ms) No.248, P&AR (S) Department dated 20.10.1997 and, accordingly, the petitioner's representation was disposed. Challenging the said impugned order, the petitioner is before this Court with the present petition.

3. Learned counsel appearing for the petitioner submitted that on the crucial date for considering the names for inclusion in the panel for promotion neither there was any enquiry pending against the petitioner nor the petitioner was visited with any charge memo and no punishment was suffered by the petitioner. It is the further submission of the learned counsel that even the Government in the order has made it clear that the censure is not a punishment. However, without advertting to the above, the 2nd respondent, in an inimical manner, has passed impugned order declining promotion to the petitioner.

4. Learned Special Government Pleader appearing for the respondents submitted that though censure is not a punishment even as per guidelines issued by the Government and further fairly conceded that as on the crucial date, i.e., 15.4.2006, there was no charge against the petitioner and, therefore, the non-inclusion of the petitioner's name in the panel for promotion is not justified and, therefore, submitted that appropriate orders be passed for inclusion of the petitioner's name in the panel for the relevant period.

5. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. A careful perusal of the counter affidavit makes it clear that the punishment of censure was imposed by Government on the petitioner vide G.O.(2D) No.3 MS&ME Department dated 7.2.2012. However, the panel for the year 2006 was finalised way back on 28.3.08 Further the crucial date for drawal of the



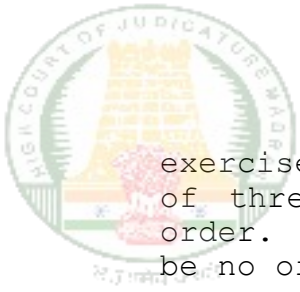
panel was 15.4.06. On the crucial date, it is borne out by record, there was no charge or enquiry pending against the petitioner and, therefore, the petitioner was fully eligible to be considered for inclusion of his name in the panel for the year 2006. The punishment of censure was imposed on the petitioner only after the crucial date and much after the finalisation of the panel and, therefore, the same cannot be consideration for rejecting the name of the petitioner for inclusion of his name in the panel. Further, it is to be seen that in the consolidated instructions issued by Government for preparation of panel, the following has been codified by the Government :-

"Any punishment, other than "Censure" imposed on an officer within a period of Five years prior to the crucial date and 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."

7. Further, it is fairly conceded by the learned counsel on either side that the vires of G.O. Ms.No.368 P&AR (Personnel) Department dated 18.10.1993 was put to test before the Full Bench of this Court, and the Full Bench of this Court quashed the impugned Government Order holding that the check in period after the currency of the punishment was illegal and is against the Act and a Government Order cannot supplant what is not provided under the Act.

8. In the present case, the crucial date for preparation of panel is 15.04.2006 and on the said date, no charge or enquiry was pending against the petitioner and the petitioner had not been visited with any punishment prior to the crucial date. The charge memo itself was issued only in the year 2008 subsequently after filing the earlier writ petition and the petitioner was visited with a punishment of 'Censure' only in the year 2012. Therefore, the non-inclusion of the name of the petitioner in the panel for promotion in the year 2006, for which the crucial date was fixed as 15.4.06, is wholly unsustainable and deserves interference.

9. For the reasons aforesaid, this writ petition is allowed setting aside impugned order passed by the 2nd respondent. Further, this Court directs the respondents to include the name of the petitioner in the panel for the post of Assistant Director of Industries and Commerce (Industrial Co-operatives) for the year 2006-2007 and grant promotion to the petitioner along with all consequential service and monetary benefits in accordance with the seniority of the petitioner. The above



exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. However, in the circumstances of the case, there shall be no order as to costs.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to the Govt.
Small Industries Department,
Government of Tamil Nadu
Fort St. George, Chennai 600 009.

2. The Industries Commissioner and
Director of Industries and Commerce,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai 600 028.

+lcc to M/s.T.Sundararajan, Advocate, S.R.No.27244

+lcc to the Government Pleader, S.R.No.27497

W.P. NO.12476 OF 2013

AD(CO)
RV(18/11/2020)