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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.135 of 2010 and
WMP.No.19082 of 2017

Esther Rani

... Petitioner

Vs

1. The State of Tamil Nadu rep. by its Secretary,
Revenue Department, Fort St. George,
Chennai-600 009.

2. The Commissioner & Special Commissioner,
Revenue Administration,
Chepauk, Chennai-603 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd respondent in Proceeding No.Ser.4(2)23841/2000 dated 12.11.2003 and the consequential orders passed by the 1st respondent in Letter No.29275/Ser. 10(1)/05-13 DATED 19.09.2007 and foj vz; 2087 -gzp 10 (1) 2009 1 ehs; 24/2/2009 and quash the same thereby directing the respondents to send the pension proposal of the petitioner.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.K.Magesh, Spl.G.P.

O R D E R

The present Writ Petition has been filed questioning the correctness of the impugned order dated 12.11.2003 removing the husband of the petitioner from service from the post of Accountant, office of the District Supply Officer, Coimbatore, w.e.f. 31.3.1997 on proved charges.

2. Learned Counsel appearing for the petitioner submitted that the husband of the petitioner, namely, late Mr.P.Chellappa, was initially selected by the Tamil Nadu Public Service Commission and appointed as Lower Division Clerk and allotted to the Kancheepuram District Revenue Unit. Thereafter, he was



promoted to the post of Deputy Tahsildar. While so, he faced serious charges levelled against him by the Tribunal for Disciplinary Proceedings, Chennai and on his findings, a report was sent to the Government. The charges levelled against the husband of the petitioner are given as under:

"Charge 1 : That, while you (Accused Officer) were working as Head Accountant, 'T' Section, Collectorate, Chengai-MGR District at Kancheepuram, actuated by corrupt motive and in abuse of your official position and authority and with intent to secure wrongful gain for your self (accused officer) during 1987 you (accused officer) had posed yourself as Deputy Tahsildar looking after the land survey section in the Collectorate and promised Thiru Shanmugham, Driver PTC Staff No.9686, residing at No.324, NGGO Nagar, Melamaiyur, Chengalpattu, that you (Accused Officer) would use your good office to alienate the poromboke land near Bhuvaneshwari Amman Temple in Thailavaram Village and instructed him to muster employees like him and other friends and to arrange for collection of Rs.2000/- from each person towards illegal gratification for you (Accused Officer) to arrange to get them 5 cents of house site each from the said Government direction and accordingly, he, the said Thiru Shanmugham, had collected a total amount of Rs.26000/- from 52 persons (mostly employees of the Pallavan Transport Corporation) at the rate of Rs.500/- each between 28.4.87 and 5.5.87 and paid you (Accused Officer) that sum of Rs.26000/- as illegal gratification in seven instalments to you (Accused Officer) which you (Accused Officer) had accepted.

Charge 2 : That, while (Accused Officer) were working as Head Accountant, 'T' Section, Collectorate, Chennai Anna District at Kancheepuram on a day during July 1988 you (Accused Officer) had approached Thiru Shanmugham, Driver, PTC Staff No.9686, residing at No.324, NGGO Nagar, Melamaiyur, Chengalpattu, for a land loan of Rs.10000/- under the guise that you (Accused Officer) was a partner in a lay out at Melamaiyur village and that the money was urgently required by you (Accused Officer) to meet out the expenses in preparing the lay out and accepted Rs.7000/- as hand loan from the said Thiru Shanmugham on 13.7.88 at the precincts of Udupi Hotel in Tambaram and did not return the said hand loan of Rs.7000/- to him."

3. The learned Counsel for the petitioner further submitted that the above charge memo was served on the petitioner's husband on 29.7.1993. Thereafter, the prosecution examined 37



witnesses and marked 4 exhibits. On the other hand, the petitioner's husband did not choose to examine any witness or mark any exhibit. Finally, the Commissioner, Tribunal for Disciplinary Proceedings, Chennai, after going through the explanation offered by the late Mr.Chellappa and the charges levelled against him, came to the conclusion that the late Chellappa, the petitioner's husband demanded and accepted Rs.26,000/- as illegal gratification in seven instalments for the purpose of alienating the poramboke land and also demanded and accepted a hand loan of Rs.7000/- on 13.7.1988 from P.W.2 P.Shanmugham which he did not return so far. Thereupon, accepting the report submitted by the Commissioner, Tribunal for Disciplinary Proceedings, the 1st respondent passed an order removing the petitioner's husband, formerly Accountant, Kancheepuram Collectorate, from service w.e.f. 31.03.1997, the date on which the accused officer, namely, late Mr.Chellappa attained the age of superannuation. Unfortunately, the said order of removal dated 12.11.2003 was not questioned by the said late P.Chellappa till his demise on 19.05.2005. Only after five years from the date of his death and after 7 years from the date of his removal, the petitioner, who is the wife of the said late P.Chellappa has come to this Court with the present Writ Petition.

4. The learned Counsel for the petitioner also submitted that firstly, when the alleged incident took place in the year 1987 framing of belated charges on 27.09.1993 is not legally sustainable. Secondly, when the late P.Chellappaa was selected though the Tamil Nadu Public Service Commission and appointed as Lower Division Clerk and allotted to Kancheepuram District and also subsequently promoted to the post of Deputy Tahsildar, he was holding a civil post. Therefore, before passing the impugned order of removal, the Tamil Nadu Public Service Commission should have been consulted and his opinion should have been sought. But in the present case, without consulting the Tamil Nadu Public Service Commission, the present impugned order has been passed. Therefore, the same is liable to be quashed for the vital infirmities committed by the respondents.

5. Heard the learned Special Government Pleader appearing for the respondents. I have also perused the materials available on record carefully.

6. At the outset, considering the serious allegations levelled against the late Mr.P.Chellappa for which he was removed by order dated 12.11.2003, this Court is unable to entertain the writ petition. The reason being that firstly, the order dated 12.11.2003 which was passed against the late Mr.P.Chellappa thereby removing him from service has not been questioned for a period of 7 long years, more particularly, when



the late P.Chellappa also died only on 19.05.2005 and till his death, he did not even bather to question the said order of removal. Therefore, the challenge made by her wife, the present petitioner with a huge delay of seven years cannot be entertained. Secondly, the reasoning given in the impugned order shows that late P.Chellappa has demanded and accepted a sum of Rs.26,000/- as illegal gratification in 7 instalments from P.W.2 Mr.P.Shanmugham, who also deposed before the Tribunal for Disciplinary Proceedings that late Chellappa collected Rs.26,000/- from the aspirants of the pattas and gave it to the accused officer, namely, late Mr.P.Chellappa in 7 instalments i.e. Rs.5,000/- on 19.5.1987, Rs.2000/- on 21.05.1987, Rs.3,000/- on 29.5.1987, Rs.2000/- on 8.6.1987, Rs.3,000/- on 11.6.1987, Rs.6,000/- on 18.6.1987 and Rs.5,000/- on 23.6.1987. Thirdly, when the cross-examination was taken up, the late Mr.P.Chellappa has not even succeeded in convincing the Tribunal for Disciplinary Proceedings. Fourthly, the 2nd charge put against him that he has accepted the personal loan of Rs.7,000/- from Mr.P.Shanmugham on 13.7.1988 at Udupi Hotel in Tambaram for preparing a layout at Melambaiyur Village was also proved before the Tribunal for Disciplinary Proceedings. Therefore looking at the case of the petitioner from any angle, this Court is unable to show any leniency.

7. In the result, the Writ Petition fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Revenue Department, Fort St. George,
Chennai-600 009.
2. The Commissioner & Special Commissioner,
Revenue Administration,
Chepauk, Chennai-603 001.

+1 CC to Mr.A.R.Nixon, Advocate, sr 18472
+1 CC to Government Pleader, sr 18761

W.P.No.135 of 2010

GJ(CO)
AT(21/05/2020)