

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 34879 OF 2013

V.Seeni Ramadoss

.. Petitioner

- Vs -

1. The State of Tamil Nadu, rep. By
Principal Secretary to Government
Rural Development & Panchayat
Raj Department, Secretariat
Chennai 600 009.

2. The Director of Rural Development
Panagal Building, Saidapet
Chennai 600 015.

3. The District Collector
Virudhunagar District
Virudhunagar.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records pertaining to the order passed by the 1st respondent in their etter No.5044/E1/2013-4, Rural Development and Panchayat Raj Department, dated 28.10.2013 and quash the same and direct the respondents to promote the petitioner as Assistant Director from the date on which his junior was promoted and confer all consequential benefits.

For Petitioner : Mr. P.Ganesan for M/s. C.S.Associates

For Respondents: Mr. S.Thangavel, Spl. GP

ORDER

It is the case of the petitioner that he was appointed as Lower Division Clerk in the respondent Department and subsequently received various promotions and in the year 1993, was promoted as Block Development Officer. The petitioner was visited with a charge memo on 10.6.1993 and after enquiry, punishment of reversion for a period of three years to the post of Deputy Block Development Officer was imposed on the petitioner by the 3rd respondent vide order dated 12.4.1995. On

appeal filed by the petitioner, the appellate authority set aside the order of punishment and remanded the matter back for de novo enquiry by order dated 4.3.1996. It is the case of the petitioner that since the order of reversion has been set aside, he is entitled for all the consequential benefits, which was not granted to the petitioner. Therefore, the petitioner filed O.A. No..5916/97 on the file of the Tamil Nadu Administrative Tribunal and the Tribunal directed the respondents to restore the petitioner to the post of Block Development officer.

2. It is the further case of the petitioner, though the petitioner was reinstated as Block Development Officer, however, the petitioner was once again inflicted with the punishment of reversion to the post of Deputy Block Development Officer in September, 1997, without conducting de novo enquiry against which the petitioner preferred appeal to the 2nd respondent, which was rejected vide order dated 21.4.1998. The petitioner attained the age of superannuation on 30.4.98 and he was permitted to retire from service without prejudice to the disciplinary proceedings. The petitioner filed revision to the Government against the said order, which was rejected by order dated 5.9.01. Once again, the petitioner filed review to the Government, which passed an order on 17.10.05 setting aside the order of reversion, but imposing a punishment of cut in pension @ Rs.100/- per month for a period of six months.

3. It is the further case of the petitioner that the pendency of the disciplinary proceedings, the petitioner was denied his promotions and by virtue of the order of the Government setting aside his reversion, the petitioner ought to be considered for promotion. In the above backdrop, the petitioner submitted to the respondents for the purpose of notional promotion, which was ultimately rejected vide order dated 28.10.13 on the ground that when the panel was drawn in the year 1997, a charge u/r 17 (b) of the Tamil Nadu Civil Services (D&A) Rules was subsisting and, therefore, the petitioner is not entitled to have his name considered in the panel for promotion. Against the said order, the present petition has been filed by the petitioner.

4. Learned counsel appearing for the petitioner submitted that the reversion order having been set aside by the Government, there subsists no punishment against the petitioner on the date when the panel was drawn and, therefore, the case of petitioner ought to have been considered for promotion to the next higher post when the drawal of panel took place in the year 1997. It is the further submission of the learned counsel for the petitioner that the punishment imposed on the petitioner is only a cut in pension, which is after the date of his superannuation and, therefore, on the crucial date, no

punishment having been inflicted on the petitioner, the petitioner ought to have been granted promotion. Therefore, the order passed by the Government is wholly unsustainable and, therefore, prayed for allowing the petition.

5. Learned Special Government Pleader appearing for the respondents submitted that though the punishment was modified to one of cut of Rs.100/- in the pension of the petitioner for a period of two months, on the basis of the second review petition submitted by the petitioner, however, the said order was passed by the Government only on the basis of the opinion given by the Tamil Nadu Public Service Commission which opined that the after the retirement of the petitioner, the charge u/r 17 (b) cannot be continued and that action has to be taken only as per Rule 9 of the Tamil Nadu Pension Rules. In the light of the said opinion, the Government, while proceeding with the disciplinary proceeding against the petitioner, however, proceeded the same u/s 9 of the Tamil Nadu Pension Rules and, thereby, inflicted the punishment above by modifying the punishment imposed u/s 17 (b). Therefore, the mere fact that the punishment was modified was not on account of the exoneration of the petitioner, but more so in view of the rule position. This aspect has been gone into by the respondents while passing the impugned order and, therefore, no interference is called for with the same.

6. This Court considered the submissions advanced by the learned counsel appearing for the petitioner and the learned Special Government Pleader for the respondents and perused the materials available on record.

7. The facts in issue are not in dispute. So also the various orders passed by the authorities culminating in the reversion of the petitioner and the reversion order being subsequently modified to cut in pension @ Rs.100/- for a period of six months. In effect, it is to be pointed out that the petitioner has suffered punishment for his delinquency.

8. A perusal of the materials available on record reveal that the initial review petition filed by the petitioner in the year 1998, after he was permitted to superannuate without prejudice to the pending disciplinary proceedings, the Government rejected his petition vide order dated 5.9.01. However, the petitioner once again submitted a second review petition on 4.2.02. The Government, after obtaining the opinion of the Tamil Nadu Public Service Commission, had modified the punishment. However, a careful analysis of the need for revisiting the punishment resulting in modification is the fact that the Tamil Nadu Public Service Commission had opined that pursuant to the superannuation of the petitioner, the charge u/r 17 (b) cannot be continued and, therefore, opinion was given to

proceed against the petitioner u/r 9 of the Tamil Nadu Pension Rules. In the backdrop of the above, the charges, in all eight, against the petitioner, having held to be proved, the Government, accepting the opinion of the Tamil Nadu Public Service Commission, had modified the punishment and imposed the same u/r 9 of the Tamil Nadu Pension Rules, and, accordingly, ordered cut in pension. Therefore, in the above backdrop, the petitioner cannot contend that there was no punishment in the eye of law on the crucial date when the panel was drawn in the year 1997.

9. It is to be pointed out, as contended by the respondents, that a charge u/r 17 (b) was very much in subsistence on the crucial date of drawal of the panel. Unless the petitioner stood discharged from the above charge, it is not open to the petitioner to claim for promotion, as the said proceeding comes in the way of the petitioner to claim promotion. It is not disputed by the petitioner that on the date when the drawal of panel was made, no punishment was in subsistence against him. The contention of the petitioner is that only on the Government modifying the punishment, the petitioner is deemed to have been restored to the said post of Block Development Officer, which he was holding and, therefore, he is entitled to all the consequential benefits. Though the said contention, on the face of it looks attractive, however, the crucial fact remains that when the panel was drawn for the year 1997-98 on 1.3.97, the charges u/r 17 (b) in Charge Memo No.P2/5073/1993 dated 10.6.1993 were pending against the petitioner. Further, the instructions issued by the Government vide G.O. Ms. No.368, Personnel & Administrative Reforms Dept., dated 18.10.93 mandates that such of those Government servants, whose promotions are deferred on account of pending charges shall be considered for promotion only if they are exonerated or acquitted from the charges. In tune with the above, the request of the petitioner for inclusion of his name in the panel of Assistant Director of Rural Development for the year 1997-98 was denied vide Letter No.5044/E1/2013-14, Rural Development & Panchayat Raj Dept., dated 28.10.13. In such a backdrop, it is to be pointed out that but for his superannuation, the petitioner would have been inflicted with the punishment u/r 17 (b) as the disciplinary proceedings were very much subsisting on the date of drawal of panel. Only due to his superannuation, the punishment of the petitioner was inflicted u/r 9 of the Tamil Nadu Pension Rules on the opinion of the Tamil Nadu Public Service Commission and, therefore, in the above circumstances, the contention of the petitioner that there was no punishment in the eye of law on the crucial date and, therefore, he is entitled for all consequential promotional and service benefits, is wholly unsustainable and lacks merits. The order passed by the Government in rejecting the claim of the petitioner is just

and reasonable and, no interference is warranted with the well considered findings recorded in the impugned order.

10. Accordingly, for the reasons aforesaid, this writ petition fails and the same is dismissed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary to Government
Rural Development & Panchayat Raj Department,
Government of Tamil Nadu
Secretariat, Chennai 600 009.
2. The Director of Rural Development
Panagal Building, Saidapet
Chennai 600 015.
3. The District Collector
Virudhunagar District
Virudhunagar.

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MG (CO)
RV (14/09/2020)

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