

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 5933 OF 2013

R.Rukmani

.. Petitioner

- Vs -

1. The Secretary to Govt.
Revenue Department
Secretariat, Chennai - 9.

2. The Principal Secretary &
Commissioner of Revenue
Administration, Chepauk
Chennai - 5.

3. The District Collector
Namakkal.

.. 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 relating to the 3rd respondent in his proceedings No.18617/2012/A2 dated 4.2.13 in respect of non-inclusion of the petitioner's name in the panel of Deputy Tahsildar for the year 2007 in Namakal District, quash the same and consequently direct the 3rd respondent to include the petitioner's name in Sl. No.8 above Raghunathan in the panel of Deputy Tahsildars for the year 2007 vide Proceedings No.18617/2012/A2 dated 4.2.13.

For Petitioner : Mr. S.Vijayakumar

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

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ORDER

It is the case of the petitioner that she joined the post of Typist in the Revenue Department on 7.7.95 and while in service, she was granted various promotions, the last of which was as Deputy Tahsildar on 12.10.10. It is the further averment of the petitioner that she was visited with a charge memo by the District Revenue Officer, Namakkal and after receipt of explanation, the petitioner was awarded punishment of stoppage of increment for three months without cumulative effect vide proceedings dated 15.4.04, which was communicated to the petitioner on the same day and the said punishment ended on 15.7.04. It is the case of the petitioner that on and from 15.9.07, she became entitled for promotion to the next higher post of Deputy Tahsildar and there was no legal impediment to consider the name of the petitioner in the panel for promotion for the year 2007.

2. It is further averred by the petitioner that a panel for promotion to the post of Deputy Tahsildar for the year 2007 was drawn by the 3rd respondent in proceedings dated 13.3.09 in which the name of the petitioner was not included. The representation given by the petitioner in this regard was answered that since the matter is subjudice before the Hon'ble Apex Court, and the list would be redrawn in terms with the order that would be passed by the Hon'ble Apex Court. The matter before the Hon'ble Apex Court was with reference to fixation of seniority between promotee graduate assistants and promotee non-graduate assistants. Subsequent to the order passed by the Hon'ble Supreme Court, the 3rd respondent redrew the panel of Deputy Tahsildars for the years 2007, 2008, 2009 and 2010 vide proceedings dated 4.2.13. Though the petitioner was eligible for promotion to the post of Deputy Tahsildar in the year 2007, however, she was promoted only in the year 2009 vide proceedings dated 14.9.10. On joining the said post of Deputy Tahsildar, the petitioner submitted a representation citing that many persons junior to the petitioner have been promoted and requested the respondents to redraw the seniority list. Since no orders were passed by the respondents, the petitioner has filed the present writ petition.

3. Learned counsel appearing for the petitioner submitted that the issue relating to inter se seniority between the promotee graduate assistants and promotee non-graduate assistants stood settled by the order of the Hon'ble Apex Court based on which the respondents ought to have drawn the seniority. However, the respondents, though accepted that the original seniority of the petitioner is above one Raghnuathan

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and that her name should have figured in Sl. No.8 in the seniority list, however, in view of the punishment imposed on the petitioner, which stood ended on 30.9.04, her name was not considered in view of the check-in period of five years imposed vide G.O. Ms. No.368 dated 18.10.1993. It is the submission of the learned counsel for the petitioner that the said Government Order having been quashed by the Full Bench of this Court in Dy. Inspector General of Police, Thanjavur - Vs - V.Rani (2001 (3) CTC 129 (FB)), the respondents ought to have redrawn the seniority list and promoted the petitioner. In view of the above, learned counsel prays for allowing the present writ petition.

4. Per contra, learned Special Government Pleader appearing for the respondents, while fairly conceded that G.O. Ms. No.368 stood quashed by the Full Bench of this Court in Rani's case (supra), however, submitted that pursuant to the said quashment, the Government issued G.O. Ms. No.22 (P&AR) Dept., dated 24.2.14 amending the General Rules for the Tamil Nadu State and Subordinate Services which prescribes for the check in period. It is further submitted by the learned Special Government Pleader that the said G.O. Ms. No.22 as also the vires of the Act is put in issue before this Court and the respective Division Bench and Full Bench are seized of the matter and, therefore, the petitioner's case cannot be considered as the said Government Order and Act operates and is against the relief sought for by the petitioner. Therefore, the learned Special Government Pleader prays for dismissal of the petition.

5. In reply, learned counsel appearing for the petitioner relied on various decisions of single Bench as well as Division Benches of this Court to emphasis his point that not only the check period is invalid, but the resultant gap between the quashment of G.O. Ms. No.368 and issuance of G.O. Ms. No.22 and amendment to the Act cannot be put against the petitioner for denying the rightful promotion to which she is entitled to.

6. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record and also the decisions to which reference was drawn by the learned counsel on either side.

7. The facts in issue are not in dispute. The sufferance of punishment by the petitioner from 15.4.04 to 15.7.04 is not disputed. The punishment being stoppage of increment by three months without cumulative effect, which was inflicted on the petitioner from 15.4.04 came to an end on 15.7.04. Therefore,

on and from 1.8.04, the petitioner stood fully eligible to be considered for promotion in the panel with reference to her due seniority. However, even according to the petitioner, reckoning the seniority position, the petitioner ought to be included in the panel for promotion, which was drawn in the year 2007.

8. On this aspect, the counter of the respondents clearly reveal that the contention of the petitioner that her name ought to have been included in the panel drawn for promotion in the year 2007 for the post of Deputy Tahsildar and that her name should be placed above Raghunathan in Sl. No.8, is just and proper. However, the ground on which the petitioner's name has not been considered for inclusion is on account of the fact that G.O. Ms. No.368, mandated check period of five years for any sufferance of punishment prior to five years and, therefore, the petitioner, having suffered punishment which came to an end on 30.7.04, the five year check in period came to an end only on 30.7.09 and, therefore, her name was considered for promotion in the year 2009.

9. While on this point decisions are placed before this Court by the learned counsel for the petitioner submitting that G.O. Ms. No.368, which prescribed the check period having been quashed by the Full Bench of this Court in Rani's case (supra) and further G.O. Ms. No.22, which was issued in April, 2014 reviving the provisions as found in G.O. Ms. No.368, having been struck down by the Division Bench in W.A. No.983/15 and the same having been followed in various decisions by this Court, the petitioner ought to have been granted promotion, however, the same is countered by the learned Special Government Pleader submitting that the order passed in W.A. No.983/15 having been recalled by the Division Bench and the matter is restored back to file and is still pending, G.O. Ms. No.22 still holds its forte and is valid for all purposes and the Act having been amended subsequently, both of which are under challenge, unless a quietus is given to the said issues, the case of the petitioner cannot be considered.

10. True it is that very many decisions have been placed by the learned counsel on either side in support of their contention. However, this Court, in the factual aspect of the matter, finds that there is no necessity to dwell deep into the decisions to arrive at a finding one way or the other and, therefore, this Court is not amplifying much on any of those decisions.

11. The decision, which is much relevant to the case on

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hand is the decision of the Full Bench of this Court in Rani's case (supra). In and by the said decision, the Full Bench of this Court had quashed G.O. Ms. No.368 dated 18.10.1993, insofar as it mandated check period after the currency of punishment, the relevant portion of which is extracted hereunder :-

"24. While it is true that the pendency of punishment can be certainly a ground for the Government to deny the promotion till the completion of the period of punishment, it can never be said that even after the period of punishment is over, in between the date of crucial date and the date of punishment there must be one year in case of censure and five years in other cases as disqualification period. The above said impediment in the name of 'check period' can never be imposed on a Government servant. Even though it has not been issued as statutory rules under the proviso to Article 309 of the Constitution of India, the said letter stating the currency of punishment as an embargo for considering for further promotion during the period of punishment cannot be said to be antithesis to the principles of law. The embargo imposed in respect of further period as stated above can never be said to be authorized under the statutory rules. The said Government letter can be treated as a circular issued by the Secretary to Government to all departments. This letter, as correctly submitted by the learned senior counsel Mr.G.Rajagopal, cannot supersede the statutory rules.

* * * * *

28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and others [2008 (5) MLJ 350] stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

2) If any benefit has been conferred on the party to the judgment rendered by the Division Bench in Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and others [2008 (5) MLJ 350], the same shall not be affected by the judgment of this Bench since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

3. The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

4. The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso to Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules."

12. It is crucial to note here that the said decision of the Full Bench was rendered on 27.4.2011. Therefore, on and from 27.4.2011 till the issuance of G.O. Ms. No.22, dated 24.2.2014, there was no provision under the relevant Acts and Rules, which mandated check period. It is further evident from the materials available on record that pursuant to the order

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passed by the Hon'ble Supreme Court in SLPNo.8848 of 2008, the 3rd respondent had redrawn the panel for the post of Deputy Tahsildars for the years 2007, 2008, 2009 and 2010 vide proceedings dated 4.2.13. Therefore, it is clear from the record that on the date of drawal of proceeding on 4.2.13 by the 3rd respondent, there was no provision under the relevant Acts and Rules, which mandated check period to be completed, on and after the currency of punishment, to be considered for promotion. The currency of punishment is from 15.4.04 to 15.7.04 which came to an end on 30.7.07 and, therefore, on and from 1.8.07, the petitioner was fully eligible for being considered for promotion, barring G.O. Ms. No.368, which stood quashed by the Full Bench of this Court in Rani's case (supra) vide its order dated 27.4.2011 and there being no provision mandating check period till 24.2.2014, the issuance of G.O. Ms. 22, there was no embargo for the respondents to consider the inclusion of the name of the petitioner in the panel for the year 2007. In this backdrop, the 3rd respondent, pursuant to the order of the Hon'ble Supreme Court, having redrawn the panel for the years 2007, 2008, 2009 and 2010 vide its proceedings dated 4.2.13, the 3rd respondent was necessarily under obligation to include the name of the petitioner in the panel for the post of Deputy Tahsildar for the year 2007, more so, when the respondents, in their counter, have accepted that the petitioner is eligible for inclusion of her name in the panel for the year 2007, but for the punishment suffered by her and the check period being in operation. Once the Government Order mandating check period having been quashed by the Full Bench, the respondents ought to have included the name of the petitioner in the panel for the year 2007, while issuing proceedings No.18617/2012/A2 dated 4.2.13. However, for reasons best known to the respondents, the name of the petitioner was not included in the panel, while drawing the proceedings dated 4.2.13, which is nothing but injustice committed to the petitioner and the panel drawn by the respondents, which is impugned herein, definitely warrants interference at the hands of this Court. Therefore, the prayer as sought for by the petitioner deserves to be allowed.

13. For the reasons aforesaid, this writ petition is allowed and the respondents are directed to include the name of the petitioner above one Raghunathan in Sl. No.8 in the panel of the year 2007 for promotion to the post of Deputy Tahsildar and grant the petitioner promotion with all consequential service and other benefits, including further promotional benefits to which the petitioner is duly entitled to as per her seniority. The said exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of

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this order. In the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

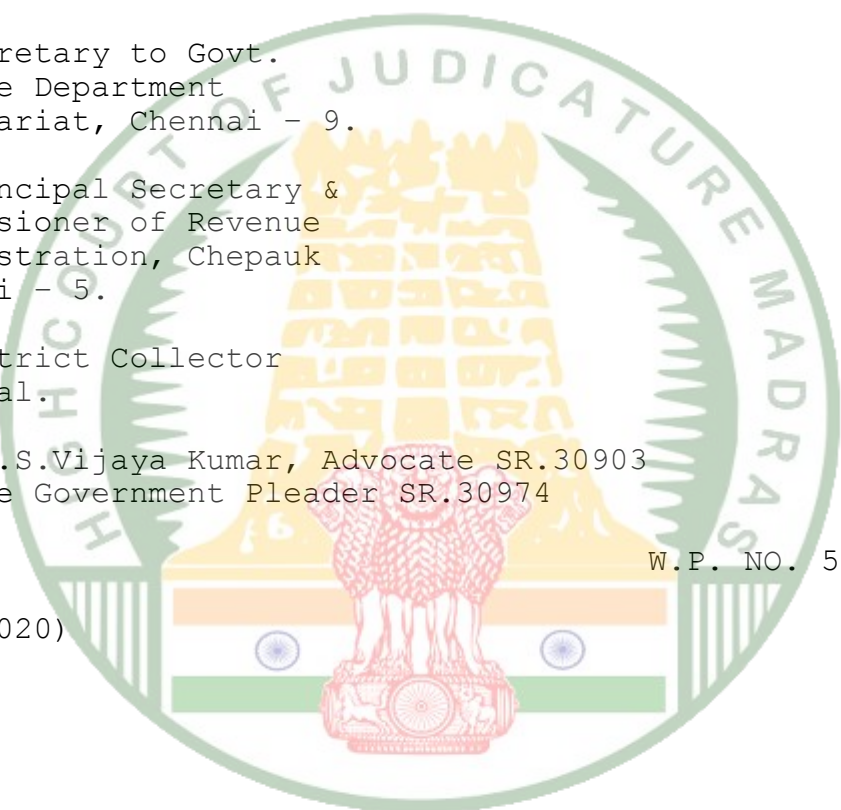
To

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3. The District Collector
Namakkal.

+1cc to Mr.S.Vijaya Kumar, Advocate SR.30903
+1cc to the Government Pleader SR.30974

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