

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 2886 of 2017

P. Ponnum Perumal

..Petitioner

Vs

1. The Additional Chief Secretary to Government (FAC) Commercial Taxes and Registration (H) Department, Fort St.George, Chennai - 600 009.

2.The Inspector General of Registration, Office of the Inspector General of Registration, 100, Santhome High Road, Chennai - 600 004.

3.The Deputy Inspector General of Registration, Tirunelveli District

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to G.O. (2D) No.1 dated 24.01.2017 on the file of the first respondent and the consequential proceedings in No. 3523/A2/2017 dated 31.01.2017 on the file of the second respondent and quash the same and direct the respondents to permit the petitioner to continue his services as District Registrar, Administration, Marthandam, Kanniyakumari District.

For Petitioner : M/s. D.Veerasekaran

For Respondents : Mr.B.Kannan, GA

O R D E R

The prayer sought for in the Writ Petition is to call for the records relating to G.O. (2D) No.1 dated 24.01.2017 on the file of the first respondent and the consequential proceedings in No. 3523/A2/2017 dated 31.01.2017 on the file of the second respondent and quash the same and direct the respondents to permit the petitioner to continue his services as District Registrar, Administration, Marthandam, Kanniyakumari District.

3. Brief facts of the case:

The writ petitioner was appointed as Junior Assistant in the year 1981 and subsequently promoted as District Registrar in the year 2010. While he was working as Sub Registrar at Ganapathy SRO, Coimbatore, the officials of Vigilance and Anti-corruption did surprise check on 08.12.2008 and seized the alleged sum of Rs.4360/-. After the alleged seizure, the respondent have not given promotion, hence the petitioner preferred a writ petition in W.P. No. 19024 of 2010 and obtained orders. Pursuant to the order of this Court, the petitioner was promoted to the cadre of District Registrar on 15.11.2010. Thereafter, a charge memo was issued for the alleged inspection and enquiry initiated disciplinary proceedings in the year 2014 and concluded the proceedings in the year 2016 by giving punishment of stoppage of increment for two years with cumulative effect. Aggreived against the said order, the petitioner has preferred an appeal before the 1st respondent . The 1st respondent on 24.01.2017 issued orders de-promoting the petitioner from the cadre of District Registrar to the cadre of Sub Registrar (Grade-I). Challenging the same, the present writ petition is filed.

3. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the documents available on record.

4. The learned counsel for the petitioner submitted that the impugned order passed by the 1st respondent is contrary to the order passed by this Court in WP.No. 19024 of 2010 dated 03.09.2010 filed by the writ petitioner herein. It is useful to extract the relevant portion of the order;

"6. In view of the punishment imposed upon the petitiioer on 21.09.2004 and 04.09.2006, his name was not considered for promotion. There was also a charge memo dated 18.03.2005.

7. However it is admitted by the second respondent

that the charges were dropped on 12.08.2009. Hence the petitioner gave a representation for inclusion of his name in the panel of Sub Registrar Grade I for promotion for the year 2005-06. It was considered in favour of the petitioner and an order was passed on 14.06.2010 including the name of the petitioner in the panel of the year 2006-07 at Serial No.2A. It is also admitted by the second respondent in the written instructions that by the time of his name was included in the panel of 2006-07, the panel for 2009-2010 had been released on 04.06.2010.

8. After having narrated the above sequence of events, the second respondent has stated in his written instructions that the Government had issued an order in Letter No. 111 Commercial Taxes and Registration Department dated 06.08.2010 to the Commissioner for disciplinary proceedings to initiate an enquiry against the petitioner. But the date of the said letter is 06.08.2010. The date of the panel is 04.06.2010 and the date on which the junior of the petitioner was actually promoted is 07.07.2010. On both these dates namely 04.06.2010 and 07.07.2010, there was no proceedings initiated against the petitioner. As a matter of fact, if the order dated 14.06.2010 had been passed 10 days earlier, on the representation made by the petitioner in pursuance of the dropping of the charges on 12.08.2009, the petitioner's name would have found a place in the panel released on 04.06.2010. Therefore in the light of the consolidated instructions dated 07.10.2005 issued by the Government relating to promotions, the petitioner's name should be considered.

9. In view of the above, the writ petition is disposed of, directing the respondents to consider the name of the petitioner for inclusion in the panel of the year 2009-2010, in tune with the order passed on 14.06.2010 and on par with the promotion granted to his junior on 07.07.2010, without reference to any proceedings initiated after 07.07.2010, but subject to the petitioner fulfilling all other conditions and fulfilling the conditions laid in the consolidated instructions dated 07.10.2005. The first respondent shall pass appropriate orders in accordance with law within a

period of two months from the date of receipt of a copy of this order. Consequently, M.P.No.1 of 2010 is closed. No costs."

5. In Paragraph 8 of the above order, this Court clearly discussed that the panel for the year 2009 -2010 was released on 04.06.2010 and the disciplinary proceedings were initiated against the petitioner on 06.08.2010, but the junior of the petitioner was promoted on 07.07.2010. Hence this Court by considering the fact that on both dates namely 04.06.2010 and 07.07.2010, there was no proceedings initiated against the petitioner and therefore directed the respondent to consider for inclusion of the petitioner's name in the panel for the year 2009-2010 on par with juniors, without reference to any proceedings initiated after 07.07.2010.

6. On the other hand, the learned Government Advocate by reiterating the averments made in the counter affidavit, has submitted that the petitioner was temporarily promoted to the cadre of District Registrar and after imposing punishment, the petitioner's appointment was terminated and reverted back to the cadre of Sub Registrar (Grade-I).

7. The said contention of the respondent cannot be accepted in view of the fact that this Court by order dated 03.09.2010 had disposed of the writ petition filed by the petitioner herein holding that the name of the writ petitioner shall be included in the panel for the year 2009-2010 on par with the juniors. Hence, the respondent had passed the aforesaid order of temporary promotion to the petitioner.

8. It is also brought to the notice of this Court that the junior to the petitioner was promoted in the regular vacancy on 07.07.2010. Therefore, this Court had issued directions to the respondents in the aforesaid writ petition that the case of the petitioner has to be considered on par with junior without reference to the proceedings initiated after 07.07.2010, but subject to the petitioner fulfilling all other conditions. On the crucial date i.e on 04.06.2010, there was no such proceedings initiated or pending against the petitioner as observed by this Court in the aforesaid order.

9. In view of the aforesaid order, if the respondent takes contrary stand to the said order of this Court, the respondent ought to have seek appropriate remedy before this Court. Without doing so, the respondent passed the impugned order, de-promoting the petitioner. Therefore, this Court is of the view that the impugned order passed by the 1st respondent is liable to

quashed.

10. Accordingly, the impugned order passed by the 1st respondent dated 24.01.2017 is quashed. The writ petition is allowed. The 1st respondent is directed to regularise the service of the petitioner with effect from 15.11.2010 i.e from the date of temporary promotion as District Registrar. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Chief Secretary to Government (FAC)
Commercial Taxes and Registration (H) Department,
Fort St.George, Chennai - 600 009.
- 2.The Inspector General of Registration,
Office of the Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 004.
- 3.The Deputy Inspector General of Registration,
Tirunelveli District.

+1cc to Mr.D.Veerasekaran, Advocate SR.15079
+1cc to the Government Pleader SR.16214

W.P.No. 2886 of 2017

JP (CO)
CB(22/09/2020)

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