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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE R.VIJAYAKUMAR

Writ Appeal No.2594 of 2021

- 1.The Government of Tamil Nadu,
rep. by its Secretary to Government,
Revenue Department,
Chennai - 600 009.
 - 2.The Principal Secretary and Commissioner
of Revenue Administration,
Chepauk, Chennai - 5.
 - 3.The District Collector,
Namakkal District,
Namakkal.
- ...Appellants/Respondents 1 & 3

vs.

R.Kuppusamy ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 22.01.2020 passed by this Court in W.P.No.19042 of 2010.

W.P.No.19042 of 2010:

Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus, to call for the records relating to orders in (1) Pro.Ser.3(2) 86637/09 dated 18.2.2010 of the second respondent and (2) Pro.Na.Ka.No.8357/2002/A2 dated 23.11.2008 of the third respondent and quash the same and direct the first respondent to include the name of the petitioner herein in the panel for promotion to the post of Deputy Collector for the year 2009-2010, notwithstanding and without reference to the above mentioned impugned orders and consequently promote him as such with retrospective effect from the date of promotion of his immediate junior.



For Appellants : Mr.K.V.Sajeev Kumar
Government Advocate

For Respondent : Mr.P.Kumaravel
for Mr.M.Ravi

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J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Respondents 1 and 3 in the Writ Petition have filed the present Writ Appeal challenging the order dated 22.01.2020 passed by the learned Single Judge allowing the Writ Petition in W.P.No.19042 of 2010.

2. The Respondent in the Writ Appeal has filed W.P.No.19042 of 2010 challenging the order of punishment imposed upon him and seeking a prayer of mandamus to include his name in the panel for promotion to the post of Deputy Collector for the year 2009-2010.

3. It is the contention of the Writ Petitioner that, he was working as a Typist in the Revenue Department from the year 1982 and thereafter, he was promoted as Assistant in the year 1995; he was further promoted as Deputy Tahsildar in the year 2001 and as Tahsildar from 01.08.2007. While he was working as Tahsildar, he was issued with a Charge Memo on 03.11.2007 on certain allegations as regards false entries in the Copy Application Register with regard to the issuance of Death Certificate. Enquiry was conducted and punishment of 'stoppage of increment for a period of one year and six months without cumulative effect' was imposed upon the Writ Petitioner, on 03.11.2007. The Appeal filed by the Writ Petitioner was also dismissed on 12.01.2009 and the said order was challenged before this Court in the Writ Petition.

4. The Writ Petition was filed mainly on two grounds. Firstly, the Charge Memo has been issued in the year 2007 for an incident that has taken place in the year 1993 and the issue of delay in issuing the Charge Memo was raised. The second ground on which the Writ Petition was filed is that, the superior Officer of the Writ Petitioner who was arrayed as a co-delinquent in respect of the same proceedings, has been let off vide proceedings dated 30.06.2003 and in fact, he was permitted to retire without initiation of any disciplinary proceedings.

5. The learned Single Judge of this Court, by an order dated 22.01.2020, has allowed the Writ Petition on the ground



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that, the Writ Petitioner, who is a subordinate, has been proceeded against. On the other hand, his superior Officer, who has played a much greater role in the delinquency, has been permitted to retire without even reserving any right to continue the proceedings under the Pension Rules.

6. The learned Single Judge has referred to the judgment of the Honourable Supreme Court in the case of Man Singh vs. State of Haryana reported in (2008) 8 MLJ 518 (SC), wherein, the Honourable Supreme Court was pleased to point out that, co-delinquents should be treated equally and there cannot be any discrimination; and if there is any discrimination as among the co-delinquents who are equally placed with regard to the seriousness of the misconduct, disciplinary proceedings initiated are liable to be quashed.

7. The learned Single Judge has also relied upon a judgment of the Honourable Supreme Court in the case of P.V.Mahadevan vs. The Managing Director, Tamil Nadu Housing Board reported in 2005 (6) SCC 636, wherein, the Honourable Supreme Court was pleased to hold that, any delay in completion of departmental enquiry would be prejudicial to the interest of the employee concerned.

8. In the present case, the incident took place in the year 1993, but, the Charge Memo was issued only on 03.11.2007. Certainly, the delay on the part of the Department would cause great prejudice to the Writ Petitioner. The Petitioner was a Junior Assistant at the time of delinquency and the co-delinquent was Head Quarters Deputy Tahsildar, who signed the Death Certificate. The learned Single Judge has allowed the Writ Petition on the above two grounds.

9. The learned Government Advocate appearing on behalf of the Appellants has strenuously contended that, the charges are serious in nature and the learned Single Judge ought not to have interfered with the order passed by the Disciplinary Authority.

10. We have gone through the order passed by the learned Single Judge and we are convinced that, the proceedings have been initiated much belatedly, that too after a period of 14 years and the co-delinquent, who was the superior Officer to the Writ Petitioner, has already been permitted by the Government to retire, without reserving any power to initiate proceedings under the Pension Rules. Hence, it is a clear case of discrimination, prejudicial to the interest of the Writ Petitioner. Thus, we do not find any material to interfere with the order passed by the learned Single Judge.



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Accordingly, the Writ Appeal fails and stands dismissed. No costs. Consequently, connected C.M.P.No.16931 of 2021 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

(vm/aeb)

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Revenue Department,
Chennai - 600 009.
- 2.The Principal Secretary and Commissioner
of Revenue Administration,
Chepauk, Chennai - 5.
- 3.The District Collector,
Namakkal District,
Namakkal.

W.A.No.2594 of 2021

SVI (CO)
PR (26/11/2021)