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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.24964 OF 2021

AND

W.M.P.NO.26278 OF 2021

A.Valli, W/o C.Murugan

.. Petitioner

Vs.

1. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai-5.
2. The District Collector, Tiruvannamalai.
3. The District Revenue Officer, Tiruvannamalai.
4. The Revenue Divisional Officer, Tiruvannamalai.
5. K.Amsaveni,
Senior Revenue Inspector, Taluk Office,
Vandavasi Taluk, Tiruvannamalai District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the third respondent in his proceedings Na.Ka.A2/407/2019, dated 03.07.2019 in respect of non-inclusion of petitioner's name in the panel of Assistants for the year 2019 and to quash the same and consequently direct the third respondent to include the petitioner's name in Sl.No.1 above K.Amsaveni in the panel of Assistants drawn for the year 2019.

For petitioner : Mr.S.Vijayakumar

For respondents : Mr.L.S.M.Hasan Fizal,
Addl.G.P. for RR-1 to 4



ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorari Mandamus to call for the records relating to the third respondent in his proceedings Na.Ka.A2/407/2019, dated 03.07.2019 in respect of non-inclusion of petitioner's name in the panel of Assistants for the year 2019 and to quash the same and consequently direct the third respondent to include the petitioner's name in Sl.No.1 above K.Amsaveni in the panel of Assistants drawn for the year 2019.

2. It is the case of the petitioner that she was appointed as Village Administrative Officer and recruited through Tamil Nadu Public Service Commission on 10.03.2008 and allotted to Pudukkottai District. Thereafter, she was transferred to Tiruvannamalai District and she joined in the Revenue Unit therein. The petitioner is presently serving as Village Administrative Officer, Tiruvannamalai Taluk and District. According to her, she had served for about 14 years with blemish-less service, and there was no complaint against her at all during her entire service period. She was due for promotion to the post of Assistant since 2019.

3. On 23.05.2016, the petitioner was served with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge against the petitioner was that she had demanded bribe of Rs.2,000/- for issuance of extract of Chitta, Land Ownership Certificate, etc., to a third party. According to the petitioner, no criminal case has been registered on the above allegation, but in respect of the departmental charges, the petitioner appeared to have submitted an explanation on 03.06.2016 denying the charges.

4. The Disciplinary Authority, not being satisfied with the above explanation of the petitioner, ordered enquiry into the charges. On completion of the enquiry proceedings, the Enquiry Officer held that the charges were not proved. Accordingly, a report was also submitted to the Disciplinary Authority, the fourth respondent herein. The Disciplinary Authority, not being satisfied with the report of the Enquiry Officer, ordered fresh enquiry in the presence of the Vigilance officials by appointing one Mr.Dhananjayan, Tahsildar, Urban Land Tax Scheme, Thiruvannamalai, vide proceedings dated 13.10.2016.

5. Although such second enquiry was illegal and not contemplated in the Rules, according to the petitioner, she participated in that enquiry also and finally, the second Enquiry Officer also had submitted a report on 28.04.2017 holding that there was no illegal demand as alleged in the



charge memo. According to the said report, money was demanded as part of the Flag Day collection. But the Disciplinary Authority, notwithstanding the report in favour of the petitioner, passed an order of stoppage of increment for a period of six months without cumulative effect, by proceedings dated 25.04.2018 and this order was communicated to the petitioner on that day itself.

6. The petitioner, being aggrieved by the above order passed by the fourth respondent (Disciplinary Authority), had preferred an appeal on 07.05.2018 before the third respondent/Appellate Authority, and the said appeal was rejected, vide order dated 12.10.2018, confirming the order passed by the Disciplinary Authority. Thereafter, a Review Petition was filed before the first respondent on 09.12.2018. In the meanwhile, a panel was drawn in the category of Assistants for the year 2018, vide proceedings dated 29.06.2018. The petitioner's name was not included in the said panel because of the pendency of the disciplinary proceedings at that point of time.

7. Subsequently, for the year 2019, panel was drawn, vide proceedings dated 03.07.2019, by which, 35 persons have been given promotion to the post of Assistant, but the petitioner once again was overlooked, although the fact remained that the punishment which was imposed on the petitioner on 25.04.2018, had been completed on 25.10.2018 itself and thereafter, there was no currency of penalty at all when the panel was drawn for promotion to the post of Assistant in 2019.

8. In the above circumstances, the petitioner approached the authorities for grant of promotion to her and in the representation, she appeared to have cited Section 7, Schedule XI, Part-A, Clauses 12 and 17 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. However, there was no positive action forthcoming from the respondents, and therefore, the petitioner is before this Court challenging the proceedings dated 03.07.2019 for non-inclusion of the name of the petitioner in the panel of Assistants for the year 2019.

9. The learned counsel for the petitioner straightaway drew the attention of this Court to the rule position, relating to Clauses 12 and 17, Part-A of Schedule -XI (relating to Section 7) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follows:

Clause 12: A member of service whose name has not been included in the approved list for a punishment shall not be overlooked in the subsequent years' list for the same punishment or punishments, provided the



member of service is not undergoing any punishment on the crucial date for preparation of approved list.

Clause 17: Any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over."

10. In this case, admittedly, the punishment was communicated on 25.04.2018 and the period of six months from that date expired on 25.10.2018 itself. However, the proceedings were drawn empanelling the candidates for promotion to the post of Assistant on 03.07.2019. The petitioner was not facing any disciplinary action at that time and the punishment imposed on her ended in October 2018 itself.

11. The learned counsel for the petitioner in fact, has also relied on a decision of this Court in W.P.No.4640 of 2016, dated 27.09.2016 (Smt.T.Shanthi Vs. The Secretary to Government, Revenue Department, Fort St.George, Chennai-9 and two others), in which, a learned Judge, in identical circumstances, allowed similar claim of the petitioner therein. The learned counsel drew the attention of this Court to paragraphs 3 to 6 of the order, which are extracted hereunder:

"3. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the currency of punishment would take effect from the date of communication of the order to the delinquent employee, irrespective of the date of the increment for the said employee. In this regard, the learned counsel for the petitioner relied upon the following decisions of this Court:

(i) W.P.Nos.29297, 34289 & 42591 of 2006, dated 20.02.2007 (M.K.Kandasamy and others Vs. State of Tamil Nadu, rep by the Secretary to Government and others).

(ii) W.P.No.24180 of 2012, dated 18.12.2003 (Mrs.R.Jeevarathinam Vs. Government of Tamil Nadu rep. by the Chief Secretary to Government and others).

By relying upon the above orders of this Court, the learned counsel for the petitioner submitted that the



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currency of punishment, including withholding of increment, begins when the punishment order is communicated to the concerned government servant and concludes when the actual period of punishment is over. In the instant case, the punishment order was passed on 05.06.2009 and the said order was communicated to the petitioner on 17.06.2009. Hence, the currency of punishment commenced on 17.06.2009 and ended on 17.12.2009. The crucial date for drawal of panel of Deputy Collector is on 31st December of every year. Therefore, there is no legal impediment to include the petitioner's name in the panel of Deputy Collectors for the year 2010.

4. The learned counsel for the petitioner would further submit that the 1st respondent herein had earlier raised a query as to whether the currency of an order of stoppage of increment should be reckoned from the date of the order or upto the actual period covered by stoppage of increment. Consequent upon the same, the 1st respondent sought clarification from the Secretary, Personnel and Administrative Reforms Department, Chennai. In response to the said query, the Government has clarified that an order imposing any punishment including withholding of increment takes effect from the date on which the said order is communicated to the concerned Government servant. The learned counsel for the petitioner would submit that in the instant case, since the punishment of stoppage of increment for six months imposed on the petitioner ended on 17.12.2009, the petitioner's name ought to have been included in the panel of Deputy Collectors for the year 2010 by the respondents. Thus, the learned counsel for the petitioner sought for quashing the impugned order and consequently, to direct the respondents to include the petitioner's name in the panel at the appropriate place.

5. Though notice was given, the respondents have not chosen to file any counter.

6. Keeping the submissions made by the learned counsel for the petitioner, I have carefully gone through the materials available on record. I find some force in the submission made by the learned counsel for the petitioner that the currency of punishment would take effect from the date of communication of the punishment order to the government servant. In the instant case, the punishment order was passed by the 3rd respondent on 05.06.2009, imposing the punishment of stoppage of



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increment for six months on the petitioner. The said order was communicated to the petitioner on 17.06.2009. Therefore, the currency of punishment came to an end on 17.12.2009. The crucial date for drawal of panel of Deputy Collector is on 31st December of every year. Under such circumstances, there is no impediment for including the name of the petitioner in the panel of Deputy Collectors for the year 2010. The respondents ought to have included the name of the petitioner in the panel. Hence, the impugned order is liable to be quashed.

In fine, the impugned order is quashed and the 1st respondent is directed to consider the request of the petitioner to include his name in the panel of Deputy Collector. The writ petition is allowed accordingly. Connected Miscellaneous Petitions are closed. No costs."

12. The facts of the above case are almost identical as that of the present case, and therefore, the present Writ Petition filed by the petitioner is liable to be allowed. According to the petitioner, two other decisions have also been relied on by the learned Judge in the above decision, in paragraph 3 of the order extracted above.

13. The learned Additional Government Pleader appearing for the respondents 1 to 4 submitted that, as far as the ruling of the learned Judge of this Court in the above order, as relied on by the learned counsel for the petitioner, he cannot have any quarrel with the same. The learned Additional Government Pleader would have no quarrel with the dates mentioned by the learned counsel for the petitioner and also the rule position governing the subject matter of the present Writ Petition.

14. It is an admitted position that the punishment imposed on the petitioner, had come to an end on 25.10.2018 itself, and therefore, when the subsequent panel which was drawn for the year 2019, the petitioner was not facing any disciplinary action and was not coming under cloud at all. Therefore, the action on the administration in overlooking her claim and not finding place in the panel, cannot be countenanced both in law and on facts. Merely because of the fact that the petitioner was punished earlier in 2018, the same cannot be continuously held against the petitioner in the subsequent year of panel as well. When once the currency of the penalty was over, there cannot be any further legal impediment in including the name of the petitioner in the subsequent panel, for the purpose of promotion to the next higher post.



15. The decision cited on behalf of the petitioner in W.P.No.4640 of 2016, would squarely apply to the facts of the present case as well. In the said circumstances, this Court has no hesitation in allowing this Writ Petition.

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16. Accordingly, the impugned proceedings dated 03.07.2019 is hereby set aside, insofar as it has not included the name of the petitioner in the panel for the post of Assistants for the year 2019. The respondents 1 to 4 are consequentially directed to include the name of the petitioner in the serial number above K.Amsaveni (fifth respondent herein) who is immediate junior to the petitioner, in the panel of Assistants drawn for the year 2019 and grant her promotion with all attendant and monetary benefits.

17. The respondents 1 to 4/competent authority, are directed to pass appropriate orders in that regard within a period of six weeks from the date of receipt of a copy of the order.

18. With the above direction, the Writ Petition is allowed as prayed for. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai-5.
2. The District Collector, Tiruvannamalai.
3. The District Revenue Officer, Tiruvannamalai.
4. The Revenue Divisional Officer, Tiruvannamalai.

+1cc to Mr.S.Vijayakumar, Advocate, S.R.No.65238
+1cc to the Government Pleader, S.R.No.66086

W.P.No.24964 of 2021

JPL(CO)

RLP(27/12/2021)