



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.4816 of 2020

and

W.M.P(MD)Nos.4192 of 2020 & 5324 of 2021

WEB COPY

A.Mala

... Petitioner

vs.

1.The Director of School Education,
Directorate of School Education Department,
D.P.I Campus College Road,
Chennai - 600 006.

2.The Joint Director of School Education
(Personnel Division),
Directorate of School Education,
D.P.I Campus College Road,
Chennai - 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the impugned order issued by the first respondent in Na.Ka.No.59484/A1/E5/2019, dated 27.02.2020 and quash the same as illegal and without jurisdiction.

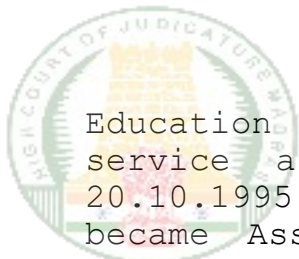
For Petitioner	: Mr.V.R.Shanmuganathan for Mr.J.Anandkumar
For Respondents	: Mr.K.S.Selva Ganesan Government Advocate

ORDER

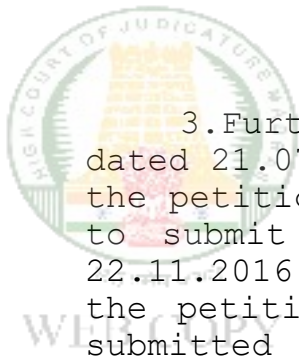
The petitioner has filed the present Writ Petition, to quash the impugned order passed by the first respondent, dated 27.02.2020.

2.According to the petitioner, she was appointed as Junior Assistant in the Education Department on 12.11.1986 on compassionate ground. Her service was regularized with effect from the date of appointment by G.O(2D)No.46, Education, Science and Technology (M1) Department, dated 11.03.1994. Subsequently, she was promoted as Assistant with effect from 20.10.1995 and further promoted as Desk Superintendent with effect from 15.10.2009, by proceedings, dated 29.11.2010 issued by the second respondent. One K.Mohammed Buhari has joined as Junior Assistant on 15.12.1986, who was appointed on compassionate ground. He was promoted as Assistant with effect from 20.10.1995 and he was regularized by proceedings, dated 27.09.2000.

The petitioner made a representation to the Joint Director of School



Education (Personnel), Chennai, the second respondent that her service as Assistant should be regularised with effect from 20.10.1995 from the date on which her junior-K.Mohammed Buhari became Assistant. The second respondent, by proceedings dated 25.10.2010, regularised the services of the petitioner as Assistant with effect from 20.10.1995 and she was placed in Serial No.188(a) above K.Mohammed Buhari, who was placed in Serial No.189. Subsequently, both the petitioner and K.Mohammed Buhari were promoted as Desk Superintendent from 15.10.2009. The petitioner was shown as senior to K.Mohammed Buhari, when the panel was drawn for promotion to the post of Personal Assistant to District Educational Officer. However, the petitioner's name was not included in the said panel, but K.Mohammed Buhari's name was included in the said panel. Therefore, the petitioner gave a representation, dated 13.07.2018, to include her name in the said panel. The official respondents did not pass any order on the representation. Therefore, the petitioner filed W.P.(MD)No.15716 of 2018, seeking for a direction to include her name over and above K.Mohammed Buhari to the post of Personal Assistant to District Educational Officer, by considering the representation of the petitioner, dated 13.07.2018. This Court, by the order, dated 19.07.2018, directed the official respondents to consider the representation of the petitioner and pass appropriate orders thereon. The second respondent, without disposing of the said representation, has recommended the name of K.Mohammed Buhari and promoted him as Personal Assistant to District Educational Officer, by the proceedings dated 23.10.2018, which was impugned in W.P.(MD)No.22238 of 2018. After promoting K.Mohammed Buhari, the second respondent, by the proceedings dated 08.01.2019, has rejected the representation of the petitioner, which was impugned in W.P.(MD)No.1422 of 2019. This Court, vide order, dated 14.10.2019, set aside the impugned order, dated 08.01.2019 and directed the second respondent to consider the petitioner for promotion to the post of Personal Assistant to the District Educational Officer in the existing vacancy available, if she is otherwise eligible and fix the seniority of the petitioner, after giving notice to the petitioner and the said K.Mohammed Buhari. The second respondent, without complying with the order of this Court, dated 14.10.2019, promoted one T.Simon J.Bibin as personal Assistant to the District Educational Officer, by proceedings, dated 09.01.2020. Even though the Writ Petitions filed by the petitioner were ended in her favour and were not pending on the date of promotion of the abovesaid T.Simon J.Bibin, the second respondent promoted the said T.Simon J.Bibin, on the ground that the Writ Petitions filed by the petitioner were pending and the said promotion is subject to the result of the said Writ Petitions. The petitioner filed Cont.P(MD)No.165 of 2020 and this Court, vide order, dated 21.02.2020, issued statutory notice to the second respondent for his appearance.



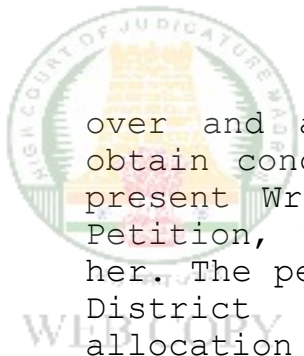
3.Further, according to the petitioner, based on the complaint, dated 21.07.2014 given by one J.Rajasekar, charge-memo was issued to the petitioner and two other persons. The petitioner was called upon to submit her explanation and she submitted her explanation on 22.11.2016. The said proceeding was kept pending till 2019 and again the petitioner was called upon to submit her explanation and she submitted detailed explanation on 25.06.2019. On the same day, the said J.Rajasekar, the complainant, withdrew the complaint against the petitioner. After taking note of the said fact, the punishment of 'censure' was imposed only on the Personal Assistant served at the relevant point of time, vide proceedings, dated 24.06.2019, by the Directorate of School Education Department. After a lapse of six months, the respondents, on issuance of statutory notice by this Court, imposed order of punishment of 'censure' under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, vide impugned proceedings, dated 27.02.2020. Challenging the said order of punishment, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner submitted that the punishment of Censure was imposed on the petitioner only because the petitioner has filed Writ Petitions for restoring her seniority and Contempt Petition, when the second respondent failed to comply with the order of this Court. The second respondent, taking note of the fact that the petitioner is not responsible for the alleged misconduct and irregularity and the fact that the complaint against the petitioner was withdrawn by the complainant viz., J.Rajasekar, imposed punishment of censure only to the then Personal Assistant of the District Educational Officer on 24.06.2019.

5.The learned counsel appearing for the petitioner further submitted that the impugned order was passed after a lapse of five years is only with a view to circumvent this Court from passing any order in the Contempt Petition and prayed for allowing the Writ Petition.

6.The respondents filed counter-affidavit along with the vacate stay petition.

7.Mr.K.S.Selva Ganesan, learned Government Advocate appearing for the respondents submitted that the petitioner is claiming seniority over and above one K.Mohammed Buhari, even though the said K.Mohammed Buhari was appointed subsequent to the appointment of the petitioner. The said K.Mohammed Buhari passed all the Departmental Tests earlier than the petitioner. Hence, he was promoted as Personal Assistant to the District Educational Officer earlier than the promotion of the petitioner. As per the Rules and Regulations, the said K.Mohammed Buhari is senior to the petitioner. The petitioner filed various Writ Petitions with regard to seniority



over and above the said K.Mohammed Buhari and having failed to obtain concrete orders, has mentioned all those proceedings in the present Writ Petition, which are irrelevant. In the present Writ Petition, the petitioner is challenging the punishment imposed on her. The petitioner, while working as Superintendent, instigated the District Elementary Educational Officer for disproportionate allocation of travelling allowance funds to the Assistant Elementary Educational Officer by allotting more funds to some particular offices and less amount to particular offices. The petitioner failed to bring to the notice of the District Elementary Educational Office to the correct information and failed to bring to the notice of the Court orders which resulted in official facing contempt proceedings.

8.For the above misconduct, charge-memo was issued under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and considering her explanation, impugned order, dated 27.02.2020 was passed, which is valid and legal and the petitioner was given ample opportunity to putforth her case and the Writ Petition is devoid of merits and prayed for dismissal of the Writ Petition.

9.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the entire materials available on record.

10.From the above rival submissions and materials available on record, it is seen that the petitioner is challenging the impugned order, dated 27.02.2020, imposing the punishment of 'censure' on her. The petitioner has elaborately made averments with regard to the previous Writ Petitions filed by her in respect of fixing her seniority and also orders passed by this Court. Earlier Writ Petitions filed by the petitioner and orders passed by this Court are relevant to decide the issue in the present Writ Petition.

11.According to the petitioner, inspite of the orders of this Court, the second respondent did not promote the petitioner to the post of Personal Assistant to the District Educational Officer, but promoted one T.Simon J.Bibin. Further, according to the petitioner, by promoting T.Simon J.Bibin, the second respondent has deliberately disobeyed the orders of this Court and she has filed Cont.P(MD) No.165 of 2020 and this Court, by order, dated 21.02.2020 issued statutory notice to the second respondent. According to the petitioner, only when this Court ordered statutory notice to the second respondent, the second respondent in order to circumvent the contempt proceedings, has passed the impugned order. The said contention has considerable force and is acceptable for the following reasons:-

(i) One J.Rajasekar, Treasurer of Assistant Elementary Educational Officer Sangam gave a complaint on 21.07.2014 against the District Elementary Educational Officer, Personal



Assistant to District Elementary Educational Officer and Superintendent of District Elementary Educational Officer. Based on the said complaint, the above said persons were called for explanation in the year 2016. The petitioner submitted her explanation in the year 2016 itself.

(ii) No order was passed on the charge-memo based on the explanation till 2019.

(iii) Again in the year 2019, the second respondent called upon the petitioner to submit her explanation.

(iv) The petitioner submitted her explanation on 25.06.2019. On the same day ie., on 25.06.2019, the complainant J.Rajasekar withdrew the complaint against the petitioner.

(v) The second respondent imposed punishment of 'censure' only on the Personal Assistant to the District Educational Officer in the year 2019 and no punishment was imposed on the petitioner.

(vi) Statutory notice was issued by this Court on 21.02.2020 in Cont.P(MD)No.165 of 2020, which was filed by the petitioner. Immediately, after such notice, the second respondent, by impugned order, dated 27.02.2020, imposed the punishment of 'censure' on the petitioner.

12.The respondents filed the counter-affidavit, but they have not filed as to why the disciplinary proceedings initiated against the petitioner and others based on the complaint given by J.Rajasekar on 21.07.2014, was kept pending for more than five years till 2019. In the year 2019, the complainant J.Rajasekar withdrew the complaint on 25.06.2019 against the petitioner. The second respondent imposed punishment only on the Personal Assistant to the District Educational Officer. The second respondent in the counter-affidavit has not explained as to why no punishment was imposed on the petitioner at that time. Only when this Court ordered statutory notice to the second respondent in the contempt petition, the impugned order was passed by the second respondent on 27.02.2020, ie., within six days of issuance of the said notice by this Court. The respondents also not explained why the petitioner was not promoted when T.Simon J.Bibin was promoted as Personal Assistant to the District Educational Officer on 09.01.2020. In the order, dated 09.01.2020, promoting T.Simon J.Bibin as Personal Assistant to the District Educational Officer, the second respondent has mentioned that the said promotion is subject to the result of the Writ Petitions in W.P(MD)Nos.15318 of 2009, 5300 of 2010, 5301 of 2010, 29677 of 2012 and W.M.P(MD)Nos.20173 & 20174 of 2018 in W.P(MD) No.22238 of 2018, whereas the Writ Petitions in W.P(MD)Nos.22238 of 2018 and 1422 of 2019 filed by the petitioner were finally decided



by this Court, by order, dated 14.10.2019.

13. These facts clearly show that the impugned order is passed only because of various Writ Petitions filed by the petitioner to get her seniority restored and contempt petition filed by her and as contended by the learned counsel for the petitioner, to circumvent the adverse order that may be passed in the Contempt Petition.

14. For the above reasons, the impugned order, dated 27.02.2020 passed by the first respondent is liable to be set aside and the same is set aside.

15. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

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Sub Assistant Registrar (CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Director of School Education,
Directorate of School Education Department,
D.P.I Campus College Road,
Chennai - 600 006.

2. The Joint Director of School Education
(Personnel Division),
Directorate of School Education,
D.P.I Campus College Road,
Chennai - 600 006.

+1 CC to M/s.J.ANAND KUMAR, Advocate (SR-19997[F] dated 23/06/2021)

+1 CC to M/s.SPL GP (SR-20017[F] dated 23/06/2021)

W.P (MD) No.4816 of 2020
22.06.2021