IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.04.2022

Pronounced on : 06.06.2022

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.10806 of 2010

S.Sampath ...Petitioner

Vs.

1.The District Collector,
Coimbatore.

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

3.The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Revenue Department,
Secretariat, Chennai-9. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to orders in [i] Pdl.32/2009/A2 dated 12.04.2010 of the First Respondent [ii] Na.Ka.No.16387/2004/A4 dated 26.07.2008 of the First Respondent and [iii] Na.Ka.Ser.3(3) /37397/2009 dated 20.08.2009 of the second respondent and [iv] Pdl.32/2005/A4 dated 21.03.2006 of the first respondent and toquash item No. (i) to (iii) as such and quash Item No. (iv) to the limited extent of non-inclusion of the name of the petitioner herein and direct the respondents to include the name of the petitioner in the list of promotion to the post of Tahsildar for the year 2005 and to promote his as such with retrospective effect from the date of promotion of his immediate junior with all consequential service and monetary benefits.

For Petitioner : Mr.S.Balakrishnan
for Mr.M.Ravi

For Respondents: Mrs.V.Yamuna Devi
Special Government Pleader

O R D E R

This writ petition is filed challenging the following orders:

(a) Order dated 26.07.2008 - disciplinary proceedings imposing punishment of stoppage of increment for 6 months without cumulative effect under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules,1955.

(b) Order dated 20.08.2009 of the 2nd respondent rejecting the appeal filed by the petitioner against non-inclusion of his name in the panel of Tahsildar for the years 2005, 2006 and 2007.

(c) Order dated 12.04.2010 by the 1st respondent insofar as non-inclusion of petitioner's name in the panel prepared for the year 2009, for promotion to the post of Tahsildar.

2. The petitioner was initially appointed as Junior Assistant through Tamil Nadu Public Service Commission during the year 1982 and was thereafter promoted as Assistant and later to the post of Deputy Tahsildar during the year 1998. The next avenue of promotion to the petitioner was to the post of Tahsildar, a panel was prepared for promotion to the post of Tahsildar for the year 2005.

3. The petitioner by virtue of his qualification was eligible to be considered for promotion to the post of Tahsildar and ought to have been included in the panel for the year 2005, for promotion to the post of Tahsildar. The empanelment of promotion to the post of Tahsildar was deferred on the premise that certain disciplinary proceedings initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 was pending. I shall now proceed to deal with the challenge to the above three orders in seriatim.

a) Challenge to the Disciplinary Proceedings - Order dated: 26.07.2008 :

A charge memo was issued on 27.07.2004 on the premise that Community Certificate was allegedly issued during the year 2000, when the petitioner was discharging his services as Zonal Deputy Tahsildar, Coimbatore (North) without verification of records or conducting a proper investigation. An enquiry officer was appointed, enquiry report was submitted after obtaining the explanation from the petitioner on 16.09.2004. The enquiry report found that the charges were not proved on the premise that the Revenue Inspector examined, verified and scrutinized the documents and based on the same, Community Certificate was issued by the petitioner. However, the disciplinary authority/ 1st respondent rejected the enquiry report and found that the petitioner is responsible for issuance of Community certificate and held that the reports of field officials are not binding on the certificate issuing authority and the delinquent/ petitioner had issued the certificate in a routine manner without verifying records and proceeded to impose punishment of stoppage of increments for a period of six months without cumulative effect. Importantly, the above disciplinary proceedings has not been challenged by way of an appeal and the petitioner has chosen to challenge the same after almost two years, since the order imposing punishment came to be issued, in the present writ petition. In this regard it may relevant to refer to the following averments in the counter:

> "The petitioner after receiving his punishment order on 31.07.2008 has not appealed to the Principal Commissioner/ Commissioner of Revenue Administration, Chennai within the appeal time of 60 days nor filed any representation to the Government within the stipulated time. The petitioner has not exhausted his alternative remedies and on this ground alone this writ petition may be dismissed."

The petitioner has filed the present writ petition challenging the order of punishment vide order dated 26.07.2008 after almost 2 years since the said order came to be passed. The affidavit filed in support of the writ petition does not set out any reason whatsoever for the delay in challenging the same. It is well settled that Courts would come to rescue of only those who are vigilant about their rights. The petitioner on receipt of the order of punishment on 26.07.2008 did nothing to challenge the same until May 2010, when this writ petition came to be filed, clearly showing that the petitioner was being casual about his rights. It is trite law that Courts would come to the rescue of only those who are vigilant about their rights which I am afraid the petitioner is not. In this regard it may be useful to refer to the following judgments:

> "It has been consistently held that relief under Article 226 of the Constitution of India is only to those who are vigilant and not those who sleep over their rights. The maxim "Vigilantibus, et non Dormientibus, Jura Subveniunt" - the law assists who are vigilant, not those who sleep over their right is relevant and has been consistently applied by the Apex Court in a catena of cases. Some of them being:

i) Delhi Airtech Services (P) Ltd. v. State of U.P., reported in (2011) 9 SCC 354.

ii) Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd., reported in (2015) 1 SCC 680.

iii) State of U.P. v. Dayanand Chakrawarty, reported in (2013) 7 SCC 595.

b) Non-inclusion of petitioner's name in the panel for promotion to the post of Tahsildar for the years 2005 to 2007 - Order dated 20.08.2009:

The petitioner's name was not included in the panel for promotion to the post of Tahsildar for the years 2005 to 2008, on the premise that the disciplinary proceedings were pending. The petitioner has challenged non-inclusion of his name in the panel for promotion to the post of Tahsildar the year 2005 to 2008 before the 2nd respondent. The 2nd respondent vide order dated 20.08.2009 rejected the contention and held that since the disciplinary proceedings under Rule 17(b) of the Tamil Nadu State and Sub-ordinate Services Rules, 1955 were pending on the crucial date i.e., 01.07.2006 and 01.07.2007 and which has also culminated in the order of punishment vide order dated 26.07.2008. The petitioner was not eligible to be considered for inclusion in the panel in terms of G.O.Ms.No.248 dated 20.10.1997. Aggrieved by the above order dated 20.08.2009, the petitioner challenged the same before the Government on 10.10.2009 wherein it was submitted that the petitioner's name has not been considered to be included in the panel for the years 2005, 2006, 2007 and 2008 only in view of the fact that the disciplinary proceedings were kept pending for over 3 ½ years. It was submitted that the delay and inaction on the part of the respondents has resulted in denying the petitioner's right to be included in the panel and to be considered to the post of Tahsildar. The challenge to the order dated 20.08.2009 by way of a writ petition appears to be not maintainable. Since the petitioner has already availed the statutory remedy by way of appeal. Filing of the present writ petition results in availing parallel remedies which is impermissible. The writ petition may thus not be maintainable and it may be necessary for the petitioner to pursue the statutory appeal/ revision which has been filed before the 3rd respondent, about the status of which there is no clarity i.e., whether it is pending or disposed of. Having held that the writ petition is not maintainable, insofar as the challenge to the order dated 20.08.2009. Nevertheless, the conclusion/ decision of this Court insofar as the challenge to the proceedings dated 12.04.2010 insofar as non-inclusion of the petitioner’s name in the panel for promotion to the post of Tahsildar for the year 2009 would have a direct and material bearing on the legality of the proceedings dated 20.08.2009.

c) Non-inclusion of petitioner’s name in the panel for promotion to the post of Tahsildar for the year 2009-challenge to order dated 12.04.2010 :

The petitioner vide order dated 12.04.2010 of the 1st respondent was informed the reasons for non-inclusion of the petitioner's name in the list of Tahsildars for the year 2009, wherein, it was stated that the petitioner having been issued an order of punishment of stoppage of increment for a period of six months without cumulative effect vide order dated 26.07.2008 for issuing false Community Certificate. The stoppage of increment for a period of six months would take effect from the date on which the order is communicated to the employee/ Government Servant and also the punishment shall continue till the actual period of punishment is completed i.e., currency of punishment begins when the punishment order is communicated to the concerned Government Servant and will conclude when the actual period of punishment is over and that in the instant case, the order of punishment was served on 31.07.2008 and next increment falls on 01.04.2009. In view of currency of punishment on the crucial date, the petitioner was held to be not eligible for consideration.

In this regard, it may be relevant to note that the question as to whether legality/ validity of non-inclusion/ non-consideration for promotion during currency of punishment was considered by the Hon'ble Supreme Court in State of Tamil Nadu v. K.S.Murugesan reported in (1995) 3 SCC 273 wherein it was held as follows:

> " 7. It would thus be clear that when promotion is under consideration, the previous record forms the basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution....
>
> We have already expressed our view that during currency of punishment, no one can claim promotion as a matter of right...
>
> 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."
>
> (emphasis supplied)

It may also be relevant to refer to the decision of the Full bench of this Court in W.A (MD) 315 of 2010 in the matter of V.Rani wherein after finding that the delinquent therein was served with the charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and after enquiry was imposed a punishment of stoppage of increment for 2 years without cumulative effect, the Full bench of this Court proceeded to hold that during the currency of punishment no one can claim promotion as a matter of right and an embargo against consideration for promotion during the period of punishment is not anti-thesis to principle of service law. The following extract from the judgment of this Court in W.A.(MD) No.315 of 2020 would make the above position clear:

> "..... We have already expressed our view that during currency of punishment, no one can claim promotion as a matter of right....
>
> ....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 anthithesis to the principles of law....
>
> 28....
>
> g) Since the currency of punishment is in force, as held by us, for the reasons stated above, the petitioner is not entitled for the relief claimed and the writ petition stands dismissed, however, with liberty to the petitioner to approach the second respondent herein after the period of punishment its over for consideration of his name for promotion."

4. In view of the above the petitioner's challenge to the order dated 12.04.2010 wherein it has been stated by the 1st respondent that the petitioner's name was not being considered for inclusion in the panel for promotion to the post of Tahsildar in view of currency of punishment under Rule 17(b) Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 is justified and does not warrant interference.

5. The Writ petition is disposed of as under :

a) Prayer to quash the disciplinary proceedings dated 26.07.2008 stands rejected for the reasons set out above.

b) Prayer to quash the order dated 20.08.2009 - admittedly an appeal is pending before the 3rd respondent challenging the said order - Direction is issued to the 3rd respondent to dispose of the appeal within a period of four weeks from the date of receipt of a copy of this order, if the appeal is not disposed already.

c) the challenge to the proceedings dated 12.04.2010 is rejected.

6. Accordingly, this writ petition is disposed of on the above terms. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

Psa

To :

1.The District Collector,
Coimbatore.

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

3.The Secretary to Government,
Revenue Department,
Secretariat, Chennai-9.

+1cc to Mr.M.Ravi, Advocate SR.No.32399

+1cc to Government Pleader SR.No.33044

W.P. No.10806 of 2010

SKM(CO)
GMY(26/06/2022)