BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.10930 of 2015
and
W.M.P.(MD).No.2880 of 2017
and
M.P.(MD).Nos.1, 2 and 3 of 2015

S.Gnanasekaran ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Revenue Department,
Secretariat,
Chennai – 5.

2.The Principal Secretary/
Commissioner for Revenue Administration,
Chepauk,
Chennai – 5. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in connection with the impugned order of punishment passed by him in Government Order issued in G.O.(2D) No.26, Revenue (Service-2(3)) Department, dated 09.01.2014 and consequential rejection of Review vide his impugned proceedings issued in Government Order G.O.(2D) No.275, (Ser-2(3)) Department, dated 28.04.2015 and consequential rejection of promotion to the post of District Revenue Officer for the year 2010 and 2011 vide impugned proceedings in Letter No.850/A4/2013-3 dated 09.05.2014 and quash all as illegal and ultra vires and thereby direct the respondents to promote the petitioner as District Revenue Officer for the year 2010 on par with his batchmates and pay all services and monetary benefits within a time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

The petitioner has challenged the punishment order dated 09.01.2014 and the consequential rejection order in Revenue Department dated 28.04.2015 and the consequential rejection of promotion vide order dated 09.05.2014 with a prayer to include the petitioner's name in the panel of 2010 on par with the batchmates.

2. The brief facts of the case are that the petitioner was appointed as Junior Assistant on 02.04.1985 and promoted as Assistant on 31.05.1988 and Deputy Tahsildar on 01.12.1995, Tahsildar on 01.07.2000 and Deputy Collector on 30.09.2007. When the petitioner was serving at Kodaikanal as Revenue Divisional Officer on 03.11.2009, the petitioner along with other officials intercepted lorries carrying silver oak wood logs belonging to the politically influenced persons and the FIR has been registered. In the FIR, it was specifically stated that as the lorry driver was not in a position to produce the permit / license bill to transit the logs, the FIR was filed. Subsequently, a complaint was preferred against the petitioner that he has seized the lorry inspite of lorry is having permit and license to transport the silver oak trees. Based on such false complaints, the petitioner was transferred to Virudhunagar District vide order dated 27.11.2009. Thereafter, the petitioner was transferred to Chennai. After nineteen (19) months, a charge memo dated 13.06.2011 was issued on five counts. The nutshell of the charges were (i) the petitioner misused his power in registering the criminal complaints against the lorry bearing silver oak trees inspite of valid permit (ii) without any report from subordinates gave permission to cut the trees vide proceedings dated 10.09.2009 (iii) without any report from subordinates gave permission to cut the trees vide proceedings dated 08.08.2009 (iv) dereliction in duty in verifying the authenticity of the assignment land in Patta No.302/1992 dated 30.06.1983 and (v) violated Rule 20 (1) of the Tamil Nadu Conduct Rules. The petitioner submitted his explanation. In the meanwhile, a criminal complaint was registered in Crime No.213 of 2009 under Section 353 of IPC. But the other complaint in regard to the illegal cutting of trees was not registered.

3. The contention of the petitioner is without his knowledge, his subordinates have withdrawn the complaint. In the domestic enquiry, the petitioner was allowed to peruse the documents in a hurried manner and the documents were not served on the petitioner. The enquiry officer with a predetermined mind and political pressure failed to conduct fair and proper enquiry and the enquiry officer failed to consider the deposition of witness, where it has been stated that neither the petitioner demanded any money or furniture. Neither the lorry driver nor the agent produced the cutting order / permit at the time of interception and the FIR came to be registered only after the direction given by the District

Authority. Therefore, the petitioner is aggrieved by the imposition of punishment of stoppage of increment for two years without cumulative effect. The currency of punishment is affecting the petitioner from promoting to the post of District Revenue Officer. The petitioner has attained superannuation on 30.03.2018. Therefore, the learned counsel for the petitioner claims notional promotion to the post of District Revenue Officer.

4. The respondents have filed counter stating that the petitioner did not involve himself the flood relief works at Kodaikanal. All the subordinate officers were busy in relief work, the petitioner applied for leave. The petitioner failed to see that there was valid permission to cut the tree logs. Further the entire exercise of unilaterally giving permission to cut trees points out to "unfound for" secrecy on the part of the petitioner for ulterior motives. As far as promotion is concerned, the respondents stated in the counter that the petitioner was not considered due to contemplation of charges against the petitioner and his name was not included in the name of District Revenue Officer from the year 2011. Due to pendency of 17 (b) charges against the petitioner and the petitioner was not considered for promotion. The respondents prayed to dismiss the Writ Petition.

5. Heard Mr.G.Thalaimutharasu, learned counsel for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the respondents.

6. The allegations against the petitioner is that he has not properly verified before preferring a criminal complaint against the lorry driver carrying silver oak trees. On two occasions, he has given permission to cut trees without any report and one charge is without verifying the authenticity of the assignment land in Patta No.302/1992 dated 30.06.1983.

7. The alleged charges in the charge memo happened during the year 2009 but the charge memo was issued in the year 2011 and hence this Court is of the considered opinion that the charge memo is belated one.

8. As far as the first charge is concerned, according to the petitioner, the lorry was not carrying the valid permit / license to carry the wood logs. But the respondents alleges that the lorry was having valid permit. Felling of trees and deforestation is a menace to the eco-system, but the petitioner has taken action for carrying wood logs. The petitioner felt that there is prima facie evidence and any employee if there is prima facie evidence is duty bound to register a complaint. This Court is of the considered opinion that the respondents have over stepped in this issue. A person has taken action for not having the valid permit, but according to the respondents the lorry was having valid permit. Even if it is agreed the respondent version is right, the accused in FIR

can very well establish before the police that he had valid permit and accused can take steps to close the FIR as mistake of fact. It is unnecessary to take disciplinary proceedings in this issue.

9. On perusal of the charges, it is seen for the sake of first charge, the charges 2, 3 and 4 are included in the charge memo. Therefore, this Court is of the considered opinion that the charges are very frivolous and it is vindictive in nature. Therefore this Court is of the considered opinion that the impugned punishment order ought to be quashed.

10. As far as the promotion is concerned, the respondents have stated in the counter in paragraph 13, which is extracted hereunder:

> "*13. With regard to the averments made in paragraphs 11 and 12 of the affidavit, it is submitted that the name of the petitioner was not considered due to the contemplation of charges against the petitioner and subsequently, his name was not included in the list of District Revenue Officers from the year 2011 due to the pendency of 17(b) charges pending against him. The averments of the petitioner that he was punished due to the political vengeance and his request to promote him as District Revenue Officer is not legally sustainable. The contentions of the petitioner made in this paragraph do not deserve any merit and it may be rejected accordingly*".

11. In the impugned order dated 09.05.2014, it is stated that the petitioner did not reached the zone of consideration for the District Revenue Officer panel for the year 2010. But the specific claim of the petitioner is that for the year 2010, he is in Serial No.3. As far as the counter is concerned, the counter is silent about the eligibility for the 2010 panel and the averments in the counter is that, the promotion was not considered because there was contemplation for framing charges. This plea is not acceptable, because the respondents have contemplated from 2009 onwards and has issued charge memo in the 2011. The charge memo ought to have been issued in the year 2009, since the same is not issued, it is only contemplation, therefore the stand of the respondents is rejected. Even according to counter the petitioner name was not included in the year 2011, since there was 17(b) charges, which means the petitioner is eligible prior to 2011. Therefore, this Court is of the considered opinion that the petitioner is entitled to promotion for the year 2010.

12. Therefore, the respondents are directed to grant promotion to the petitioner notionally from 2009 onwards since the

petitioner has attained superannuation. As far as the monetary benefits this Court is declining in granting monetary benefits under "no work and no pay" principles and hence it is made clear that the petitioner is not entitled to any monetary benefits but is entitled to pensionary benefits by calculating the said period in the promoted post.

13. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

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 Secretary,
The State of Tamil Nadu,
Revenue Department,
Secretariat,
Chennai – 5.

2.The Principal Secretary/
Commissioner for Revenue Administration,
Chepauk,
Chennai – 5.

+1 CC to M/s.SPL GP (SR-11213[F] dated 10/03/2022)

W.P.(MD).No.10930 of 2015
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RD(31.03.2022) 5P 4C