BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.09.2022**

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12241 of 2016
and
W.M.P.(MD)No.9331 of 2016

P.Ramasamy ... Petitioner

Vs.

1. The State of Tamil Nadu
   represented by its Secretary to Government,
   Revenue Department, Fort St. George,
   Chennai – 600 009.

2. The Principal Secretary/Commissioner of
   Revenue Administration,
   Revenue Administration Department,
   Chepauk, Chennai – 600 005.

3. The District Collector,
   Collectorate,
   Ramanathapuram,
   Ramanathapuram District. ... 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 in pursuant to the impugned order passed by the third respondent in proceedings Rc.A1/40000/2014, dated 09.02.2015 and quash the same and consequently, direct the Respondents to promote the Petitioner to the post of Deputy Tahsildar on par with his immediate junior and to grant all attendant and monetary benefits.

For Petitioner : Mr.M.Saravanan Kumar

For Respondents : Mr.C.Baskaran
Government Advocate (Civil side)

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus to quash the impugned order, dated 09.02.2015 and consequently, direct the respondents to promote the petitioner to the post of Deputy Tahsildar on par with his immediate junior and to grant all attendant and monetary benefits.

2. The petitioner was appointed as Junior Assistant through Tamil Nadu Public Service Commission (TNPSC) on 05.02.1993 in the Revenue Department and his service was regularized. Subsequently, the petitioner's probation was declared on 04.02.1995 and promoted in the year 1988. The petitioner passed all the departmental test and fully qualified to the post of Deputy Tahsildar. In the meanwhile, the third respondent, vide proceedings, dated 09.02.2015, issued the temporary panel for the post of Deputy Tahsildar in the year 2014 by fixing the crucial date as 15th September. The petitioner's name was not included in the above list. Therefore, the petitioner submitted an appeal to the third respondent and the respondents had passed the impugned order wherein it is stated that the petitioner cannot be considered because as per the guidelines issued in G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 24.02.2014 and the rules laid down in Tamil Nadu Revenue Subordinate Service Rules Annexure-II Clause (i) to (iii) there was currency of punishment. The contention of the petitioner is that the punishment was imposed prior to five year from the panel year vide proceedings, dated 11.08.2010 and therefore the reason

for not including in the list of Deputy Tahsildar for the year 2014 is erroneous. Hence the petitioner prays to allow the writ petition.

3. The third respondent has filed a counter affidavit stating that while drawing panel to the post of Deputy Tahsildar for the year 2014, the petitioner was not included because he was awarded with the punishment of stoppage of one year without cumulative effect vide proceedings, dated 11.08.2010. As per G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 22.02.2014 and as per the rules laid down in Tamil Nadu Revenue Subordinate Service Rules Annexure-II Clause (i) to (iii) the petitioner is not entitled to since there was currency of punishment. Hence the respondents prayed to dismiss the writ petition.

4. Heard Mr.M.Saravanan Kumar, learned Counsel appearing for the petitioner and Mr.C.Baskaran, learned Government Advocate (Civil side) appearing for the respondents and perused the records.

5. The respondents submitted that the charge memo under Rule 17(a) TNCS (D & A) was issued to the petitioner on 08.04.2010 and the punishment of stoppage of increment for one year without cumulative effect on 11.08.2010. The punishment was awarded for the delinquencies that was committed on 31.03.2010. The crucial date for drawing the panel of Deputy Tahsildar for the year 2014 was 15.09.2014. As per the provision of 1(HH) of the G.O.Ms.No.22, any punishment imposed on a member of service within a period of five years prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. The relevant provision is extracted hereunder:

> *“1(HH) Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment”.*

6. The respondents also relied on the amendments made under Rule 4(a) of the Tamil Nadu State and Subordinate Services Rules in Schedule VII in part II-A Paragraph II (G.O.Ms.No.22, dated 24.02.2014) which read as follows:

> *"1(ii) if a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to the post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion".*

The above provision 1(II) provides exemption from 1(HH), if the delinquencies was committed five years prior to the crucial date. But in the present case the delinquencies was committed on 08.04.2010 that is within five years from the crucial date, hence the exemption for Rule 1(HH) could not be granted in the case of the petitioner as per provision 1(II). Hence, the respondents prayed to dismiss the writ petition.

7. However the Learned Counsel for the petitioner submitted that the delinquency committed on 31.03.2010. But the respondent has

wrongly stated the delinquency committed on 08.04.2010. The charge memo was issued on 08.04.2010. The Learned Counsel further submitted that G.O.Ms.No.22 and the amendment to the service rules came into effect from 24.02.2014. The delinquency in on 31.03.2010 and hence the subsequent amendment cannot be applied to the delinquency which was committed earlier to the amendment. This Court is of the considered opinion that the petitioner is right in stating that the amendment cannot be applied retrospectively and hence the reasons stated in the impugned order and the counter is not sustainable in law.

8. The law prevailing to the amendment was elaborately dealt with by the Hon'ble Full Bench Judgment in the Deputy Inspector General of Police Vs. V.Rani reported in 2011(3) CTC 129, where it has been held as under:

> 28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:
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> 1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and others [2008 (5) MLJ 350] stands overruled. It is

needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

2) If any benefit has been conferred on the party to the judgment rendered by the Division Bench in Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and others [2008 (5) MLJ 350], the same shall not be affected by the judgment of this Bench since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

3. The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

4. The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of “check period” viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules.

9. The check period imposed through Government letter

Ms.No.248 P & AR Department dated 20.10.1997 has been held as illegal, since the letter and G.O. are not statutory rules framed under Proviso to Article 309 of the Constitution of India. Therefore, the check period cannot be imposed on the petitioner as per Rani's case and the petitioner is eligible for consideration to the post of Deputy Tahsildar. At the time of preparation of the panel on 09.02.2015, there was no such currency of punishment pending is against the petitioner. Admittedly, the delinquencies were on 31.03.2010 and the punishment was imposed on 11.08.2010. Applying the principles laid down in Rani's case, the check period cannot be imposed on the petitioner.

10. Therefore, the petitioner's claim ought to be considered. It is submitted by the learned Counsel appearing for the petitioner that the petitioner had attained superannuation. Therefore, the official respondent is directed to grant notional promotion to the petitioner and also to grant the consequential monetary and service benefits within a period of eight weeks from the date of receipt of the copy of the order.

11.. With the above said direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

28.09.2022

Index : Yes / No
Internet : Yes / No
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To
1. The State of Tamil Nadu
represented by its Secretary to Government,
Revenue Department, Fort St.George,
Chennai – 600 009.

2. The Principal Secretary/Commissioner of
Revenue Administration,
Revenue Administration Department,
Chepauk, Chennai – 600 005.

3. The District Collecotr,
Collectorate,
Ramanathapuram,
Ramanathapuram District.

S.SRIMATHY, J

jbr

Order made in
W.P.(MD)No.12241 of 2016

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