



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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W.P(MD).No.2561 of 2017

A.Murthy

... Petitioner

Vs

The District Collector,
Thanjavur District, Thanjavur.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent relating to O.Mu.1881/2017/A5, dated 19.01.2017 and quash the same and consequently direct the respondent i.e. the District Collector, Thanjavur to include the name of the petitioner in the approved list of Deputy Tahsildars of the year 2016 according to his seniority in the feeder category of Assistant within a specified time frame that may be fixed by this Court.

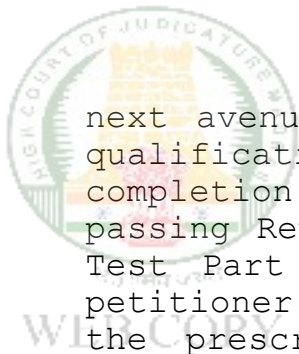
For Petitioner : Mr.S.Visvalingam

For Respondent : Mr.P.Thambidurai
Government Advocate (Civil Side)

O R D E R

This Writ Petition has been filed in the nature of Certiorarified Mandamus, to quash the impugned order in O.Mu.1881/2017/A5, dated 19.01.2017 and consequently direct the respondent i.e. the District Collector, Thanjavur, to include the name of the petitioner in the approved list of Deputy Tahsildars of the year 2016 according to his seniority in the feeder category of Assistant, within a specified time frame that may be fixed by this Court.

2. The brief facts of the case are that the petitioner was recruited through TNPSC in the year 2009, under Group II Examinations and selected as directly recruited Assistant and allotted to Thanjavur District Revenue unit and joined duty on 23.12.2009 in the Taluk Office, Peravurani, Thanjavur District. The



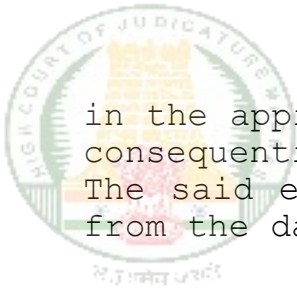
next avenue of his promotion is Deputy Tahsildar. The prescribed qualification for inclusion in the list of Deputy Tahsildars is completion of five years of service in the cadre of Assistant and passing Revenue Tests Part I, Part II, Part III, Criminal Judicial Test Part I and II, Accounts Test - Part I and Part II. The petitioner has completed five years of service and has passed all the prescribed tests. The crucial date for drawal of Deputy Tahsildars list for the year 2016 is 15.09.2016. Though the petitioner is fully qualified on the crucial date, the petitioner was not included in the approved list. The reason for non inclusion is that in the disciplinary action initiated against Rule 17(a) of Tamil Nadu Discipline Appeal Rules and censure was awarded as per the proceeding No. R.C.5320/2014/A4 dated 21.05.2016 of the District Collector, Thanjavur.

3. The contention of the petitioner is that non inclusion of his name in the approved list of Deputy Tahsildars of the year 2016, based on the Government letter Ms.No.248 P & AR Department dated 20.10.1997 read with Government letter No.67562/S/2002-6(P&AR) Department dated 27.08.2003 is illegal. The action of the respondent is against the order rendered in Full Bench Judgment in Rani's case reported in 2011(3) CTC 129, where it has been held that punishment of censure cannot be a blockade for promotion, since the check period of one year and the 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. Since the respondent has denied the same, the petitioner has filed this writ petition.

4.The respondent has not filed any counter.

5.The learned counsels appearing for the petitioner and the respondent admitted that there was disciplinary proceedings against the petitioner, which has ended up awarding punishment of censure. Censure is considered as minor punishment. The respondent has relied on the Government letter in Ms.No.248 (P & AR) Department dated 20.10.1997, which was challenged in the Full Bench and this Court has set aside the Government letters as *ultra vires*. This Court has also held the circulars and the Government letters cannot be treated as having statutory force, since these letters are not issued under Proviso under Article 309. Moreover, the Full Bench has held that the censure cannot be considered as punishment, check period cannot be imposed. Moreover it was held that check period is alien to service jurisprudence. Following the full Bench judgment, this Court is of the considered opinion that the impugned order is against the Full Bench Judgment and liable to be set aside.

6.Accordingly, this Writ Petition is allowed and the impugned order in O.Mu.1881/2017/A5 dated 19.01.2017 of the respondent is hereby set aside and the respondent is directed to consider the petitioner's name for promotion and include the petitioner's name



in the approved list of Deputy Tahsildars of the year 2016 and grant consequential relief of notional promotion and monetary benefits. The said exercise shall be completed within a period of six weeks, from the date of receipt of a copy of this order. No costs.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

PNM

To

The District Collector,
Thanjavur District, Thanjavur.

+1 CC to M/s.S. VISVALINGAM, Advocate (SR-21609[F] dated 27/04/2022)

+1 CC to M/s.SPL.GP. (SR-21845[F] dated 27/04/2022)

ORDER IN

W.P(MD)No.2561 of 2017

26.04.2022

SS/29/06/2022/ 3P 4C