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W.P.No.20128 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.20128 of 2013

D.Sampathkumar

... Petitioner

Vs.

The District Collector,
Office of the Collectorate,
Namakkal District
@ Namakkal

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records pertaining to the order of the respondent herein passed in his Na.Ka.No.Ni.1/8386/2013 dated 11.07.2013 reverting the petitioner from the cadre of Block Development Officer to that of Deputy Block Development Officer and quash the same and consequently direct the respondent herein to promote the petitioner as Block Development Officer for the year 2013-2014 by including his name in Roc.No.W1/8386/2013-1 dated 04.07.2013 in the appropriate place with due seniority and all other consequential service and monetary benefits.

For Petitioner : Mr.Ravi Shanmugam,
Senior Counsel
for M/s.Sudha Ravi



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For Respondent : Mr.L.S.M.Hasan Fizal,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the respondent thereby reverted the petitioner from the post of Block Development Officer to the post of Deputy Block Development Officer.

2. The petitioner had joined his services as Junior Assistant on 18.09.1990 and thereafter, he was promoted to the post of Assistant on 01.03.2000. Again, he was further promoted to the post of Extension Officer on 30.09.2004. Finally, he was promoted as Deputy Block Development Officer on 28.08.2008. On 20.12.2012, charge was formulated under Rule 17(a) of Tamilnadu Civil Services(D&A) Rules on allegation of negligence in not inspecting the Panchayat Union Villages. It was served on the petitioner on 26.12.2012. on 11.01.2013, he submitted explanation for the charge memo. While pending charge memo, he was promoted to the post of Block Development Officer under



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Rule 39(a) of Tamilnadu State and Subordinate Service Rules on temporary basis and posted as Block Development Officer of Sendhamangalam Block. Accordingly, he had joined on 12.02.2013 as Block Development Officer. By an order dated 18.06.2013, final order was passed in pursuant to the respective enquiry report and he was imposed with punishment of stoppage of increment for a period of six months without cumulative effect. Thereafter, by communication dated 25.06.2013, the respondent called for particulars of Deputy Block Development Officer fit for promotion as Block Development Officer for the year 2013-2014. The petitioner's name was not included in the list for promotion to the post of Block Development Officer for the year 2013-2014. That apart, by order dated 11.07.2013 passed by the respondent herein, thereby reverted the petitioner as Deputy Block Development Officer on the ground that he was imposed with punishment of stoppage of increment for six months.

3. Mr.Ravi Shanmugam the learned Senior Counsel appearing for the petitioner submitted that the petitioner was not served with any



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prior notice before passing the order of reversion. Therefore, it is violation of principles of natural justice. Further, the pendency of the charge memo is not an impediment for including the petitioner's name in the list of panel for promotion. On the date of panel for promotion i.e. on 01.03.2013, the charges were pending under Rule 17(a) of Tamilnadu Civil Services(D&A) Rules. The punishment was imposed only after the crucial date i.e. on 01.03.2013. Even as per the GO.Ms.No.368, P&AR Department dated 18.10.1993, the nature of the irregularity rather than quantum of punishment should be taken into consideration while granting promotion. The petitioner was promoted as Block Development Officer when the charges were pending under Rule 17(a) of Tamilnadu Civil Services(D&A) Rules. Therefore, the respondents ought not to have reverted him for the minor charges.

4. The respondent filed counter and Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader submitted that GO.Ms.No.368, P&AR Department dated 18.10.1993 was already struck down and as such, the petitioner cannot claim any benefit under the same. It is true



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that the punishment imposed under Rule 17(a) of Tamilnadu Civil Services(D&A) Rules cannot be impediment for promotion. However, the petitioner was promoted to the post of Block Development Officer under Rule 39(a) of Tamilnadu State and Subordinate Service Rules on temporary basis. Therefore, he does not require any notice for his reversion to the post of Deputy Block Development Officer. He also pointed out that when a person was temporarily promoted under Rule 39(a) of Tamilnadu State and Subordinate Service Rules, he shall be replaced as soon as possible by the member of the service who is entitled to the promotion under the Rules. He also pointed out that the Tamilnadu Government Servants (Conditions of Service), Act 2016, Schedule XI (II), with regards to inclusion of a member in the panel for promotion says that 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



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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. Therefore, the petitioner had become ineligible for inclusion due to currency of the punishment imposed on him by the respondent dated 18.06.2013 and thus, his name was not included in the panel for the promotion to the post of Block Development Officer. Therefore, the services of a person promoted under Sub Rule (a), (b) or (d) of Rule 39 of Tamilnadu State and Subordinate Service Rules shall be liable to be terminated by appointing authority at any time without notice and without any reason being assigned.

5. The learned Senior Counsel appearing for the petitioner relied upon the judgment of this Court in the case of ***M.Sasikumar Vs. State of Tamilnadu*** rendered in WP.No.31256 of 2006 dated 09.06.2009 with regard to prior notice and opportunity before reverting the petitioner back to his earlier post, wherein this Court citing the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India and another Vs. Narendra Singh*** reported in (2008) 2 SCC 750, held that



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before such an action is taken and a person is actually reverted, he must be given an opportunity to show cause why the proposed action should not be taken and set aside the order of reversion.

6. In the case on hand, as stated supra, the petitioner was given temporary promotion under Rule 39(a) of Tamilnadu State and Subordinate Service Rules. As per Rule 39(e), the petitioner has no legitimate right to hold the post of Block Development Officer on regular basis since he became ineligible for inclusion in the 2013-2014 panel for Deputy Block Development Officer for promotion to the post of Block Development Officer. Since at the time of actual promotion, the petitioner was imposed punishment. Therefore, as per Rule 39(e), the petitioner can be reverted back without any prior notice. As such, the above judgment cited by the learned Senior Counsel is not applicable to the case on hand.

7. He also relied upon the judgment of this Court rendered in WP.No.7203 of 2020 dated 18.11.2020, with regards to the charges have



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been framed after the crucial date and the same cannot be a bar for inclusion in the panel. This Court cited various judgments and concluded that where there was no currency of punishment on the crucial date, the subsequent charge cannot be a bar for promotion.

8. As stated supra, as per Tamilnadu Government Servants (Conditions of Service), Act 2016, Schedule XI (II), 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. Therefore, the above judgment cited by the learned Senior Counsel is also not applicable to be case on hand.

9. That apart, as per the instructions of the Government issued in letter No.18824/S-2005-2 Personnel and Administrative Reforms (S) Department dated 07.10.2005, whenever an officer is undergoing any punishment on the crucial date or on the date of consideration, then irrespective of the time of occurrence of the irregularity, his name should



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be passed over for that panel. Only in accordance with that instruction, the petitioner was not considered for inclusion and passed over for the year of 2013-2014 panel of Deputy Block Development Officer fit for promotion to the post of Block Development Officer. Therefore, he was rightly reverted back to the post of Deputy Block Development Officer. Further, when the petitioner was found to be disqualified for inclusion in the 2013-2014 Deputy Block Development Officer panel owing to the currency of the punishment, the respondent rightly reverted him to the post of Deputy Block Development Officer as contemplated under Rule 39(c) of General Rules for Tamilnadu State and Subordinate Services. Therefore, this Court finds no infirmity or illegality in the order passed by the respondent and this writ petition fails.

10. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

11.08.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The District Collector,
Office of the Collectorate,
Namakkal District
@ Namakkal
2. The Public Prosecutor,
High Court, Madras.

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