IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.09.2023

Pronounced on : 11.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.16862 of 2023

V.Saradha Rukmani .. Petitioner

Versus

1.The State of Tamil Nadu
Rep by its Additional Chief Secretary/
Revenue Secretary
Revenue and Disaster Management Department
Fort St.George, Chennai – 600 009

2.The Additional Chief Secretary/
Commissioner of Revenue Administration
Revenue and Disaster Management Department
Ezhilagam, Chennai – 600 005 .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to revise her seniority in the post of Deputy Collector by taking in to account the seniority fixed in the post of Tahsildars for the year 2003 in 2016 and to include the petitioners name in the panel of Deputy Collectors for the year 2008- 2009 in the appropriate position below Mr. S.Christy and grant promotion based on such inclusion in the relevant panel and seniority lists and consequential service benefits by duly following the decision of this Hon'ble court rendered in WA.626/2021 dated 2.09.2021 and the decision of the Hon'ble Apex Court in Contempt Petition (Civil) diary No. 6415/ 2021 dated 18.04.2023.

For Petitioner : Mr.Vijay Narayan, Senior Counsel
for Mr.C.K.Chandrasekar

For Respondents : Mr.R.Silambanan, AAG
assisted by
Mr.P.Baladhandayutham
Special Government Pleader

ORDER

This writ petition has been filed seeking to direct the respondents to revise her seniority in the post of Deputy Collector by taking in to account the seniority fixed in the post of Tahsildars for the year 2003 in 2016 and to include the petitioners name in the panel of Deputy Collectors for the year 2008- 2009 in the appropriate position below Mr.S.Christy and grant promotion based on such inclusion in the relevant panel and seniority lists and consequential service benefits by duly following the decision of this Hon'ble court rendered in WA.626/2021 dated 2.09.2021 and the decision of the Hon'ble Apex Court in Contempt Petition (Civil) diary No. 6415/ 2021 dated 18.04.2023.

2. It is the case of the writ petitioner that she was appointed as Junior Assistant on 10.08.1994 and promoted as Assistant on 30.09.1994 by including her name in the panel of the year 1992, though the petitioner was entitled to be promoted in the panel of the year 1990. Aggrieved over the

erroneous fixation of seniority, she has approached the Tamil Nadu Administrative Tribunal, Chennai in O.A.No.2223 of 2002. The Tribunal, by order dated 27.08.2003 directed that the applicant shall be placed below Serial No.386 (Ravishankar) and above Serial No.387 (Muthulakshmi). In compliance of the Order of Tribunal, the Department revised the seniority in the place of Assistant on 19.07.2004 and her name was included in the panel for the year 1990. The petitioner was promoted as a Deputy Tahsildar on 11.02.2005 by including her name in the panel for the year 2000. Again, the petitioner made several representations seeking seniority in the panel of Deputy Tahsildar for the year 1996. Further, the department has rectified the erroneous fixation and revised the petitioner's seniority on 20.07.2015 by including her name in the panel of the year 1996. The petitioner, thereafter, was promoted as a Tahsildar on 01.09.2008 from the post of Deputy Tahsildar by wrongly fixing the seniority in the panel of the year 2006. Upon receipt of the petitioner's appeal, the department revised the seniority in the place of Tahsildar by including her name in the panel of the year 2003. The petitioner was further promoted to the post of the Deputy Collector on 11.02.2012 by fixing her seniority in the panel of the year 2010-2011, whereas, the petitioner's seniority ought to have been prescribed including her name in the panel of the 2008-2009. Immediately, the petitioner made appeal on 27.12.2016 to the Department to revise the seniority.

3. On 20.03.2017, the Department issued a charge memo alleging that she has made certain changes in the revenue accounts while implementing orders of Assistant Settlement Officer, Chennai without getting specific concurrence from the higher authorities. Further, the said charge memo was challenged in W.P.Nos.22472 & 22473 of 2018. This Court, by order dated 19.12.2019, quashed the charge memo dated 20.03.2017 and further directed to include her name in the panel of the year 2016. In compliance of the direction of this Court, the Government has promoted the petitioner as District Revenue Officer on 05.06.2020 by wrongly fixing the panel of the year 2016, whereas, the petitioner ought to have been promoted as a District Revenue Officer by re-fixing the seniority for the panel of the year 2012.

4. The petitioner was constrained to prefer a representation for re-fixing the seniority for the post of Deputy Collector for the year 2008-2009. In the meanwhile, the Department has issued charge memo dated 24.02.2021 alleging improperly approving sub-division of land. The said charge memo

was also challenged in W.P.(MD).No.6390 of 2021 before this Court and this Court vide Order dated 29.08.2022 quashed the charge memo dated 24.02.2021. Hence, it is the contention of the petitioner that when there is no legal impediment for the Department to place the petitioner in the seniority panel retrospectively; as the Department has already placed the petitioner retrospectively in the place of Assistant, Deputy Tahsildar and the Tahsildar in terms of the directions issued by the Administrative Tribunal in O.A.No.2223 of 2022 by order dated 27.08.2003.

5. The respondents have failed to re-fix the petitioner in the place of Deputy Collector and District Revenue Officer by citing pendency of the charge memo dated 20.03.2017 and 24.02.2021. Hence, it is the contention of the petitioner that her seniority has to be re-fixed on par with similarly situated official namely S.Christy. The said S.Christy was included in the panel of Tahsildar for the year 2003, hence, he made a representation to re-fix the seniority in the place of Deputy Collector by including his name in the panel of the year 2008-2009. The Government, vide Government Order in G.O.(2D).No.691, Revenue (Ser-1) Department dated 23.12.2010 revised the seniority of the said S.Christy in the place of Deputy Collector for the year

2008-2009. Consequently, the said S.Christy's name was included in the promotional panel for the year 2012 in the place of District Revenue Officer.

6. The petitioner's name was already included in the promotional panel of Tahsildar for the year 2003, she is entitled to claim the seniority in the panel of Deputy Collector on par with said S.Christy. As a consequence, the petitioner's seniority should be placed for the panel of the year 2008-2009 below the name of S.Christy. Consequently, she is entitled to seniority in the place of District Revenue Officer for the panel of the year 2012 on par with S.Christy.

7. The Government Order in G.O.(2D).No.691, Revenue (Ser-1) Department dated 23.12.2010 re-fixing the seniority of S.Christy in the place of Deputy Collector for the panel of the year 2008-2009 was implemented. As a consequence, seniority was conferred to the S.Christy in the place of District Revenue Officer for the year 2012 and the petitioner is also similarly situated persons and she is entitled to seniority on par with S.Christy. Admitting that the petitioner's seniority was re-fixed in the place of Assistant for the year 1990 and her seniority were revised in the place of Deputy

Tahsildar for the promotional panel of the year 1996 and the Tahsildar seniority was revised for the year 2003.

8. It is the contention of the respondent that the petitioner preferred an appeal for re-fixing the Tahsildar seniority which was again revised for the panel of the year 2003. Further, the petitioner preferred another appeal for re-fixing of seniority panel for the post of Deputy Collector for the year 2008-2009 instead of 2010-2011. The said appeal is still pending. Further, her name was deferred in the panel of District Revenue Officer for the year 2016. After quashing the charge memo dated 20.03.2017, by this Court by order dated 19.12.2009 in W.P.Nos.22472 & 22473 of 2018, she was placed in the panel of District Revenue Officer for the year 2016 vide G.O.Ms.No.151, Public (Special A) Department dated 28.02.2020. Though, she was promoted in the year 2020, she was included in the DRO panel, 2016. As on date, her appeal filed on 27.12.2016 and 16.06.2020 pending before the competent authority to consider for inclusion in Deputy Collector panel for the year 2008-2009 only if that appeal is allowed, she will be fixed for the panel of the year 2008-2009 thereafter.

9. It is the further contention that the Department has issued another

charge memo dated 05.04.2021 to the petitioner and the same is pending. Hence, the claim of re-fixing the seniority in the place of Deputy Collector and the District Revenue Officer cannot be considered. As per Schedule XI Section 7(1)(II)(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, pendency of the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Services (Discipline & Appeal) Rules pending against a member of service are merely stayed by a Court, his case shall be deferred till the judicial proceedings are concluded. Hence, opposed the writ petition.

10. The learned Senior Counsel appearing for the petitioner mainly contended that the petitioner's seniority has been fixed correctly up to the rank of the Tahsildar, when she was promoted to the post of Deputy Collector on 11.01.2012, her seniority has been fixed for the year 2010-2011, whereas, the petitioner's seniority ought to have been prescribed by including her name in the year 2008-2009 as done to one S.Christy in the Government Order in G.O.(2D).No.691, Revenue (Ser-1) Department dated 23.12.2010. Now, despite the petitioner made an appeal to revise the seniority in the rank of Deputy Collector, the same has not been revised citing the charge memo

dated 20.03.2017. It is the further contention that the said charge memo dated 20.03.2017 is also quashed by this Court in W.P.Nos.22472 & 22473 of 2018 vide order dated 19.12.2019 with a direction to promote the petitioner as a District Revenue Officer.

11. Though the petitioner was promoted as a District Revenue Officer pursuant to the direction of this Court, the seniority for the panel of the year 2016 was not considered in the case of petitioner. Instead of re-fixation of the seniority in the place of Deputy Collector wrong seniority has been fixed in the cadre of the District Revenue Officer. Hence, it is the further contention that another charge memo dated 24.02.2021 issued against the petitioner is also quashed by this Court in W.P.(MD).No.6390 of 2021 vide Order dated 29.08.2022. Therefore, on the date of crucial date of promotion, when there is no charge memo pending, the petitioner is entitled to re-fixation of the seniority retrospectively as fixed in the case of S.Christy in G.O.(2D).No.691, Revenue (Ser-1) Department dated 23.12.2010. Hence, it is the contention that while fixing the seniority of the Tahsildar, Deputy Collector and the promotional post of District Revenue Officer, the respondents ought to have followed the feeder category seniority of Tahsildar

for the post of Deputy Collector and promotional post to the District Revenue Officer. Hence, when, on the crucial date, there is no charge pending and charge memo is quashed, the petitioner is entitled to the seniority. Any charge memo issued and pending subsequent to the crucial date will not be a bar for consideration of the claim of fixing the seniority in the place of Deputy Collector and District Revenue Officer.

12. It is the main contention of the learned Additional Advocate General that though the petitioner has preferred an appeal seeking re-fixation of seniority for the post of Deputy Collector for the panel of the year 2008-2009. A charge memo was issued on 24.02.2021 and the same was quashed by this Court in W.P.(MD).No.6390 of 2021 vide Order dated 29.08.2022. Again challenge was proceeded on two charge memo dated 24.02.2021 and 05.04.2021 issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rule, wherein, the charge memo dated 24.02.2021 was quashed by this Court vide Order dated 29.08.2022. Further, the charge memo dated 05.04.2021 is stayed by this Court. Hence, according to him, Schedule XI under Section 7(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 that if any disciplinary proceedings

pending under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rule against a member of service are merely stayed by a Court, his case shall be deferred till the judicial proceedings are concluded unless a contrary order is passed by the Court and it is decided not to challenge the same.

13. Hence, it is the contention that the appointing authority for the inclusion of the name of the petitioner in Tahsildar is the District Collector, whereas, for a Deputy Collector is Government (Revenue Department) and promotion for the post of District Revenue Officer, it is the Government (Public Department). Since, the appointing authorities are different, the petitioner has to prefer appeal before the appointing authority and the petitioner cannot compare herself with her senior S.Christy, who was appointed as Junior Assistant on 27.01.1982 and is included in the Assistant panel for the year 1990 and promoted subsequently. The entire revision process, S.Christy was not facing any disciplinary proceedings on the date of consideration for the Deputy Collector and District Revenue panel. Hence, it is the contention that as on date, the petitioner is facing charges under under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rule and she

can be considered only after the finalisation of the charge memo. Hence, opposed the writ petition.

14. In light of the above submissions, now, the issue arises for consideration is that whether the petitioner is entitled to re-fix the seniority in the rank of Deputy Collector for the year 2008-2009 and also for the post of District Revenue Officer.

15. It is not disputed that the petitioner's seniority in the place of Assistant was re-fixed in the year 1990 which has been re-fixed at the Orders of the Administrative Tribunal. The Department has revised the seniority in the place of Assistant on 19.07.2004 and her name was included in the panel of the year 1990. Thereafter, she was promoted as Deputy Tahsildar on 11.02.2005 and her seniority has been re-fixed by including her name in the panel of the year 1996. Thereafter, she was promoted as Tahsildar on 01.09.2008 and her on her appeal, her seniority was revised by including her name in the panel of the year 2003. Thereafter, she was promoted to the post of Deputy Collector on 11.02.2012 by fixing her seniority for the panel of the year 2010-2011.

16. At this stage, the mistake has crept in her revision of seniority, in fact, the petitioner ought to have been included in the year 2008-2009. On the crucial date of promotion to the post of Deputy Collector, there was no charge memo whatsoever pending. Further, the petitioner has filed an appeal to the Department to revise the seniority in the cadre of Deputy Collector. However, the same has not been considered. In the meanwhile, a charge memo was issued on 20.03.2017 much after the promotion of the Deputy Collector and the same has been quashed by this Court in W.P.Nos.22472 & 22473 of 2018 vide order dated 19.12.2019. Thereafter, she was promoted as District Revenue Officer on 05.06.2020 by wrongly fixing the seniority for the panel of the year 2016, whereas, her seniority ought to have been revised for the panel of the year 2012 and her appeal and the representation is not considered citing that the charge memo issued subsequent to the crucial date of promotion was pending. The other charge memo dated 24.02.2021 is also quashed by this Court in W.P.(MD).No.6390 of 2021 vide Order dated 29.08.2022. The petitioner's seniority has not been revised in all these years citing the charge memo dated 20.03.2017 and 24.02.2021.

17. These two charge memos were admittedly, quashed by this Court

referred above. Thereafter, it appears now another charge memo is issued on 05.04.2021 and the same is stayed by this Court and charges are pending. Therefore, it is the stand of the respondent that as per the Schedule XI under Section 7(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, her seniority cannot be re-fixed, since, the charge is pending. It is relevant to note that the immediate senior of the petitioner, one S.Christy was given a similar benefit in G.O.(2D).No.691, Revenue (Ser-1) Department dated 23.12.2010, wherein, his seniority has been revised retrospectively, which is also not disputed.

18. The petitioner while promoting as a Deputy Collector, her name ought to have been included in the year 2008-2009. Similarly, while promoting her to the post of District Revenue Officer, her name should have been included in the panel of the year 2012, but, whereas, her name has been included in the 2010-2011 and 2016 respectively, wrongly, despite the fact that on the crucial date of promotion to the post of Deputy Collector on 11.02.2012, there was no charge memo issued against the petitioner nor any departmental proceedings were pending. The first charge was issued only on 20.03.2017 and the same is also quashed by Order dated 19.12.2019 in

W.P.Nos.22472 & 22473 of 2018. Therefore, while promoting the petitioner from the Deputy Collector to the District Revenue Officer, her seniority in the cadre of the Deputy Collector ought to have been fixed correctly in the year 2008-2009 which has been omitted, that was the reason which led to the subsequent mistake while promoting her as a District Revenue Officer by placing her in the promotional panel of the year 2016 instead of 2012.

19. It is relevant to extract Schedule Clause II (1 & 2) of the Schedule XI of the Tamil Nadu Government Servants (Conditions of Service Act), 2016:

> *"(1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of service and no specific charges have been framed, promotion or appointment of such member of service shall be considered on the basis of the merit revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion.*
>
> *(2) If the disciplinary proceedings under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules*

pending against a member of service are merely stayed by a Court, his case shall be deferred till the judicial proceedings are concluded, unless a contrary order is passed by the Court and it is decided not to challenge the same. If the Court quashes the charge memo, then the name of the member of service concerned shall be considered for inclusion in the approved list for promotion or for appointment, if he is otherwise qualified. "

20. The same clearly makes it clear that on exoneration or acquittal from the charges, a member of service shall be considered for promotion with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion. While promoting the petitioner in the post of Deputy Collector on 11.02.2012, there was charges issued against the petitioner and no enquiry was pending. Therefore, the petitioner's seniority ought to have been fixed in the year 2008-2009. The charge memo was issued only in the year 2017, however, the promotion has already been given wrongly fixing the seniority. The charge memo issued on 24.02.2021 which is also quashed.

21. Even the charges put against the petitioner also quashed. When the member of service is excluded from the charges, his case shall be considered for promotion with retrospective effect from the date on which his immediate junior was promoted. Therefore, the petitioner's seniority ought to have been

fixed in the category of the Deputy Collector in par with his immediate senior, S.Christy who has given a similar benefit in the Government Order referred above, whereas, she has been included in the panel for the year 2010-2011, which is, in fact, not proper. The petitioner was promoted as District Revenue Officer on 05.06.2020, at that time also, the charge issued on 20.03.2017 was quashed 19.02.2019. Such being the position, as per the Schedule XI para 2, the petitioner is entitled to promotion with retrospective effect on the date of his immediate senior was promoted to the post, whereas, in this case, the mistake is crept while promoting the petitioner to the Deputy Collector. At the relevant point of time, there was no charge whatsoever is pending. Any subsequent promotion also, she ought to have been given retrospective seniority since, the charge memo already been quashed in the year 2019 itself.

22. It is relevant to note that the Hon'ble Apex Court in the case of *Bank of India and another Vs. Degala Suraynarayana* reported in *(1999) 5 SCC 762* has held as follows:

> *"...14. However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted*

when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India etc. v. K.V. Jankiraman etc., AIR 1991 SC 2010 : 1991(3) SCT 317 (SC), 2113). As on 1.1.1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wipoing out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been restored to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on -1-1986."

Similarly, in the case of *Delhi Jal Board Vs. Mahinder Singh* reprted in *(2000) 7 SCC 210*, it has held as follows:

...5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the Disciplinary Enquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been

subjected to any Disciplinary Enquiry. The sealed cover procedure was envisaged under the rules to give benefit oi any assessment made by the Departmental Promotion Committee in favour of such an officer. if he had been found fit for promotion and it he was later exoneraied in the disciplinary inquiry which was pending at the time when the DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is. therefore, no question of referring the matter to a larger Bench."

23. As per the above judgment of the Hon'ble Apex Court, the disciplinary proceedings ended in favour of the member, it is as if the officer had not been subjected to any disciplinary proceedings. Such view of the matter, the petitioner is entitled to re-fixing the seniority in the cadre of the Deputy Collector by including her name for the year 2008-2009 and as a consequence, the cadre of District Revenue Officer by re-fixing the seniority for the panel of the year 2012. Mere subsequent charge memo is not a bar to fix the seniority retrospectively in respect of the post of the Deputy Collector and District Revenue Officer. Such view of the matter, this Court is of the view that merely because the authorities have not considered the appeal and the appeal is pending, without processing the same, the petitioner cannot be

non-suited in the writ petition. Accordingly, the writ petitioner has to succeed and the petitioner is entitled to re-fixing the seniority retrospectively in the cadre of Deputy Collector for the panel of the year 2008-2009 in the appropriate position, i.e., below her immediate senior, S.Christy and above her immediate junior and also in the cadre of District Revenue Officer by placing her in the promotional panel of the year 2012 placing her below her immediate senior.

24. Accordingly, the writ petition is ordered and the respondent shall re-fix the seniority of the petitioner and pass appropriate orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of this Order. No costs.

11.09.2023

dhk
Internet : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

To

1.The Additional Chief Secretary/
Revenue Secretary
The State of Tamil Nadu
Revenue and Disaster Management Department
Fort St.George, Chennai – 600 009

2.The Additional Chief Secretary/
Commissioner of Revenue Administration
Revenue and Disaster Management Department
Ezhilagam, Chennai – 600 005

<u>N.SATHISH KUMAR, J.</u>

dhk

Order in
W.P.No.16862 of 2023

11.09.2023