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W.P.No.26397 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.26397 of 2021
and W.M.P.Nos.27858 & 27859 of 2021

L.Saraswathy

...

Petitioner

/vs/

1. The State of Tamil Nadu,
Rep. by its Secretary to Government and
Agricultural Production Commissioner,
Agriculture and Farmers Welfare Department,
Secretariat,
Fort St. George, Chennai – 600 009.

2. Director of Horticulture and Plantation Crops,
Directorate of Horticulture and Plantation Crops,
3rd Floor, Agriculture Complex,
Ezhilagam, Chepauk,
Chennai – 600 005.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the respondent pertaining to the impugned G.O.(D) No.160 Agriculture and Farmer's Welfare (AA1) Department dated 11.10.2021 issued by the first respondent and the consequent proceedings bearing No.GES2/19500/2021



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dated 25.10.2021 issued by the second respondent and quash the same and consequently direct the respondents to post the petitioner in the post of Joint Director of Horticulture and place the petitioner at Sl.No.5(a) above the Petitioner's immediate junior R.Radjamany (TNPSC No.21/1986) in the said post and grant all notional and attendant benefits.

For Petitioner ... Mr.Richard Wilson
for Mr.P.Wilson Associates

For Respondents ... Mr.V.Arun
Additional Advocate General
Assisted by Mr.T.Arunkumar
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned proceedings in G.O.(D) No.160 Agriculture and Farmer's Welfare (AA1) Department dated 11.10.2021 issued by the first respondent and the consequent proceedings bearing No.GES2/19500/2021 dated 25.10.2021 issued by the second respondent and consequently direct the respondents to post the petitioner in the post of Joint Director of Horticulture and place the petitioner at Sl.No.5(a) above the Petitioner's immediate junior R.Radjamany (TNPSC No.21/1986) in the said post and grant all notional and attendant benefits.

2. According to the learned counsel for the petitioner, the petitioner



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has already been punished for the very same charges and stoppage of one increment was imposed as punishment and the petitioner had suffered the punishment also. Earlier the petitioner challenged the punishment by way of filing a Writ Petition in W.P.MD.10295/2009 and the same was allowed on 08.08.2014. The Government filed an appeal in W.A.(MD) No.1253 of 2015 and it was allowed. As against the same, the petitioner has filed a Special Leave Petition in SLP No. 26766/2017 and the same was dismissed. Now the grievance of the petitioner is that she has been given with another punishment by way of reversion subsequent to the dismissal of the Special Leave Petition. Even though there is no observation or direction that she should be reverted to any lower post by cancelling her promotions.

3. The net result of dismissing the Special Leave Petition filed by the petitioner is that the petitioner has to withhold one year increment with cumulative effect. The stoppage of one increment would run between the period from 01.01.2010 to 31.12.2010. Subsequent to the writ petition filed by the petitioner was allowed, she has been given with one more charge memo dated 07.06.2007 with the very same allegations. The



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petitioner challenged the same by way of filing another Writ Petition in W.P.No.18179/2010 and the same was allowed and the writ appeal filed challenging the said order in W.A.MD.200/2018 was dismissed. In the said judgment, the Division Bench has held that the petitioner had already undergone the punishment and there is no need for imposing any further punishment. The relevant portion of the order passed in W.A.No.200/2018 on 11.06.2018 is extracted hereunder:

“ 7. Therefore, considering the totality of the circumstances, especially, the inordinate and unexplained delay on the part of the Department in pursuing the matter, we are of the view that instead of allowing the Department to proceed against the official to the detrimental to his interest at the fag end of his career, who had already suffered a lot of mental agony and hardship due to the disciplinary proceedings and the consequent ailments, a proportionate portion of the loss alleged to have been caused to the Department could be recovered from the respondent for the alleged misconduct of non-vigilance on the part of the respondent in supervising her subordinates. However, such recovery does not mean to say that the charges against the respondent are proved or they had been accepted by the respondent. The amount so recovered could be used by the department to set right the loss



caused. So far as the quantum of recovery is concerned, since we find that the respondent is one among the three officials involved in the alleged incident, but, however, she is not directly involved and responsible for the financial loss, we direct that 1/6 of the actual loss caused to the Department shall be recovered from the respondent in four equal instalments to be recovered within one year from the date of receipt of a copy of this judgment. So far as the rest of the quantum of loss caused to the department to proceed as against the other officials concerned, if so advised. Except the above recovery, we are of the view that no other punishment needs to be imposed upon the respondent after continuing the disciplinary proceedings which had initiated about two decades ago.”

4. The Petitioner entered into service as a Horticulture Officer and she became Assistant Director in the year 2008 and Deputy Director in the year 2016 and Joint Director in the year 2019. The petitioner got retired on 31.07.2022. The pensionary benefits have been reduced due to the impugned order which reverted her to Horticultural Officer.



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5. The attention of the Court was invited to a similarly placed person by name Jayabharathi Malathi who was also given with the similar charges for the same transaction and at the end of the disciplinary proceedings, she was imposed with the similar punishment of stoppage of one increment vide the same G.O.(3D) No.96, Agriculture (AA8(2)) Department, dated 30.06.2009. Since the other officer by name Jayabharathi Malathi did not opt to challenge the punishment by way of preferring any writ petition, she did not face the risk of getting two punishment or reversion as it was done in the case of the petitioner. In fact the said individual has been promoted to next level subsequent to the period for which the increment was stopped. Since the petitioner has chosen to challenge the punishment by way of preferring the Judicial proceedings, she has been victimised and was given with second punishment of reversion which is illegal.

6. Mr.V.Arun, learned Additional Advocate General submitted that the Writ Petition in W.P.No.18179/2010 filed by the petitioner relates to the impugned charge memo Lr.No.18898/VeNi/98-47 dated 07.06.2011; but the impugned order in G.O.(3D) No.96, Agriculture Department dated 30.06.2009 relates to some other charges involved in ROC No.C.47/2002



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(Tribunal for Dicipinary Proceedings 1/2002) dated 24.01.2022; so the punishment now imposed for reversion of the petitioner to the Feeder cadre has got nothing to do with the earlier writ petitions filed by the petitioner; the very same order has also been challenged by the petitioner by way of filing the Writ Petition in W.P.(MD) No.10295 of 2009 dated 18.11.2010 wherein an order has been passed by setting aside the impugned order dated 13.10.2009 and the respondent went on appeal by challenging the above order by preferring a Writ Appeal in W.A.(MD)No.1253/2015 and the same was allowed; the petitioner has challenged the same by way of preferring a Special Leave Petition in S.L.P.No.26766 of 2017 which confirmed the order passed in W.A.(MD).No.1253/2015.

6.1 It is further submitted that reversing the petitioner to the post of feeder cadre was not for the same charges, but in view of the stay order during the proceedings and during which time the petitioner got the promotion. Since the punishment already imposed could be implemented only after the conclusion of the proceedings, the implementation exercise resulted in revision. On the strength of interim orders, the petitioner got the advantage of getting promotion each time and only after the SLP was



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dismissed on 17.02.2021, the punishment could be enforced.

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6.2 It is further submitted that if the petitioner had not obtained any interim order to stop punishment, she would not have been considered for promotion and hence after the conclusion of the Court proceedings, orders have been passed by the respondent authorities (impugned order) by reversing her to original position in which she was functioning as Horticulture Officer at the time of passing G.O.Ms.No.96, Agriculture Department dated 30.06.2009.

7. I am at a loss to understand how the petitioner could be reversed to her feeder cadre after she had been promoted to nearly two stages and she was very much in the seniority for getting promotion for the next stage of Joint Director before her retirement. In the name of implementing the punishment of stoppage of one increment, some unjustified orders has been passed to revert the petitioner to a lower post. In fact, Jayabharathi Malathi who was also given with the similar charges arose out of the same transaction and at the end of the disciplinary proceedings was imposed with the same punishment of stoppage of one increment without cumulative



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effect vide G.O.(3D) No.96, Agriculture (AA8(2)) Department, dated

30.06.2009 and she got her promotions at each stage and retired.

8. In fact, the punishment of stoppage of one increment for one year without cumulative effect imposed against the petitioner has also been implemented and hence the punishment has already been suffered. Even while allowing the Writ Appeal in W.A.(MD)No.1253/2015 or dismissing the Special Leave Petition S.L.P. (C) 26766/2017, nothing has been mentioned or directed to revert the petitioner to any lower post or that the promotions already given to the petitioner was invalid. Even if it is presumed that the reversion exercise has been done by taking notice of the rule that no promotion can be given within the check period of 5 years from the date of punishment, the same did not affect the other similarly placed person. Further the check period would only defer the promotion for 5 years. It will not disentitle the petitioner to get any promotion. It is to be noted that similarly placed person Jayabharati Malathi who was also punished with stoppage of one year increment for having connected in the similar transaction did not have any difficulty to get further promotion.



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9. Even if there was a currency of punishment, it can not always be presumed that the employee is not entitled to any promotion during the check period, though there are possibilities for postponement of promotion for a maximum period of 5 years. Just because the petitioner had come to court, the respondents should not penalise her unnecessarily. A responsible employer like the Government should not view its employees' right to seek legal recourse against its orders as something hostile and thus victimise the employee.

10. Since the orders of promotion has already been given in view of the orders of the court and about which no adverse observation or direction has been given, the reversion exercise done by the respondents through the impugned order is unjust and unnecessary.

11. The petitioner's position at any cost cannot be lowered than that of Jayabharathi Malathi, who also suffered similar punishment and who did not opt to challenge the disciplinary proceedings by filing a writ.



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Reversing the petitioner to the feeder cadre appears to be victimising her for having opted to come to court. Such hostility in the minds of the Government is something unpleasant and unwarranted. In fact, in the orders passed in W.A.No.200/2018 on 11.06.2018 itself, it has been observed that the petitioner has already suffered punishment and the loss of money suffered by the department has been apportioned in to 6 parts and the liability to pay one part was fixed on the petitioner and that was being recovered from her. Under such circumstances, the impugned order to reverse the position of the petitioner to the feeder cadre in the pretext of implementing the order of punishment is unfair, arbitrary and hence it is liable to be set aside.

12. Accordingly, this Writ Petition is allowed and the impugned G.O.(D) No.160 Agriculture and Farmer's Welfare (AA1) Department dated 11.10.2021 issued by the first respondent and the proceedings bearing No.GES2/19500/2021 dated 25.10.2021 issued by the second respondent is hereby quashed and the respondents are directed to extend all service, seniority and promotional benefits for which the petitioner would have been entitled, if the impugned orders have not been passed, with notional effect



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till her retirement and re-fix her pension accordingly with monetary effect

from the date of her retirement and pass appropriate orders within a period

of 6 weeks from the date of receipt of the copy of this order. No costs.

Connected miscellaneous petitions are closed.

16.11.2023

Index: Yes

Speaking order

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To:

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1. The Secretary to Government and
Agricultural Production Commissioner,
Agriculture and Farmers Welfare Department,
Secretariat,
Fort St. George, Chennai – 600 009.
2. Director of Horticulture and Plantation Crops,
Directorate of Horticulture and Plantation Crops,
3rd Floor, Agriculture Complex,
Ezhilagam, Chepauk,
Chennai – 600 005.



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R.N.MANJULA ,J.

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