BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.940 of 2016

P.Pitchappa ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Chief Secretary to Government,
Public (Special.A) Department,
Secretariat,
Chennai – 600 009.

2.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Revenue (Ser.I) Department,
Secretariat,
Chennai – 600 009.

3.The Additional Chief Secretary /
Commissioner of Revenue Administration,
Chepauk,
Chennai – 600 005.

4.The District Revenue Officer,
Virudhunagar District,
Virudhunagar.

5.G.Sampath

6.The Principal Accountant General,
(A & E) of Tamil Nadu,
361, Anna Salai,
Teynampet,
Chennai – 600 018. ... 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 relating to the punishment order No.Na.Ka.A.5/40456/2008 dated 02.02.2012 passed by the fourth respondent (singed on 21.05.2015) and the consequential order No.2484/A4/2014-7 dated 18.07.2015 passed by the first respondent and quash the same and consequently direct the first respondent to promote the petitioner as District Revenue officer from 08.03.2013 on par with the petitioner's junior i.e. fifth respondent and grant all the service, monetary and revised pensionary benefits and further direct the third respondent to repay Rs.8,892/- collected from the petitioner as punishment amount (increment benefit for 6 months) within a time limit to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy,
For M/s.Victory Associates.

For R-1 to R-4 : Mr.M.Lingadurai,
Special Government Pleader.

For R-6 : Mr.P.Gunasekaran,
Standing Counsel.

ORDER

This Writ Petition is filed to quash the order dated 02.02.2012 (singed on 21.05.2015) and the consequential order dated 18.07.2015 and consequently direct the respondents to promote the petitioner as District Revenue officer from 08.03.2013 on par with the petitioner's junior i.e. fifth respondent and grant all the service, monetary and revised pensionary benefits and further direct the third respondent to repay Rs.8,892/- collected from the petitioner as punishment amount (increment benefit for 6 months).

2. The petitioner was appointed in the respondent service as Junior Assistant on 25.01.1980. The contention of the petitioner is that he was falsely implicated in the charge by issuing legalheir certificate without verifying the proper records. Thereafter, the respondents have conducted enquiry. The petitioner has also submitted his explanation on 28.01.2008. Since the petitioner has not received any further communication from the respondents, the petitioner was under impression that the explanation was accepted and the show cause notice dated 30.11.2007 was dropped. In the meanwhile, the petitioner's name was dropped from the promotional panel of Deputy Collectors

for the year 2008-2009 and 2009-2010, due to pendency of Rule 17(b) charges. On 15.06.2010, the petitioner submitted representation to include the his name in the panel for the year 2008-2009 and the same was recommended by the District Collector on 23.06.2010. Pending Writ Petition, the petitioner's name was included in the panel for the year 2010-2011 and the petitioner was promoted as Deputy Collector on 16.02.2011 itself which is a State Level Category and posted as the District Backward Classes and Minorities Welfare Officer, Krishnagiri. Subsequent, the promotional panel of District Revenue Officer for the year 2012 was communicated in G.O.Ms.No.108 Public (Special-A) Department dated 29.12.2012. But the petitioner's name was not included in the panel, whereas the petitioner's junior who is the fifth respondent herein was included in Serial No.32 and promoted as District Revenue Officer on 08.03.2013. When the Deputy Collector panel was under consideration, the petitioner actually lost 4 years due to pendency of 17(b) charges. But subsequently all the 17(b) charges are dropped and the petitioner relieved from the charge. When the subsequent panel was under consideration, again the respondents have dropped the petitioner's name from the panel for promotion. Hence, the petitioner aggrieved over the non granting of promotion is now before this Court.

3. The respondents have filed a counter stating that the petitioner was facing disciplinary proceedings and the petitioner was imposed with the punishment of stoppage of increment for six months without cumulative effect vide order dated 02.02.2012. The crucial date for the preparation of the panel for the post of District Revenue Officer for the year 2012 is 01.04.2012. Since the petitioner was imposed with the punishment and due to currency of punishment, the petitioner was not considered for promotion. Hence, the respondents prayed to dismiss this Writ Petition.

4. Heard learned counsel on all sides and perused the records.

5. The learned counsel appearing for the petitioner submitted that the petitioner was under impression after issuance of show cause notice dated 30.11.2007, the petitioner had submitted his explanation on 28.02.2008, thereafter the respondents have not passed any order. Therefore, the petitioner was under impression that the respondents have accepted the explanation and dropped the show cause notice. But the contention of the respondents is that the respondents after considering the explanation has passed an order dated 02.02.2012 imposing the punishment of stoppage of increment for six months

without cumulative effect. Since there is a currency of punishment, the respondents have not included the same. But on perusal of the impugned order, it is seen that the respondents have drafted the order but not issued the order. On verifying the signature, it is seen that the respondents have signed the order on 21.05.2015 and issued the same to the petitioner on 30.04.2015. The learned counsel appearing for the petitioner submitted that any order of punishment will come into effect on the date of serving to the delinquent. It is an accepted proposition, any order will come into effect from the date of serving to the concerned person. In the present case, since it has been served on the petitioner on 30.04.2015, the petitioner has received the same on the date of superannuation that is on 30.04.2015. Therefore, the currency of punishment is started from 30.04.2015 only. Hence, this will not be a impediment for considering the petitioner's name for the promotional year 2012. Since as on the date of crucial date that is on 01.04.2012, the petitioner was not undergoing any punishment, the petitioner is entitled to notional promotion. The next contention of the petitioner is that the currency of punishment starts from 30.04.2015 but as on the date of 30.04.2015, the petitioner has attained superannuation. Therefore, the punishment will becomes unimplementable order. That is why the respondents have collected Rs.8892/- from the petitioner. Therefore, the respondents cannot collect the amount, since it has become an unimplementable order.

6. The learned counsel appearing for the petitioner further relied on the judgment rendered in *AIR 1966 Supreme Court 1313 (V 53 C253)* and the relevant portion is extracted hereunder:

> *"In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on the 3rd June 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May 1951".*

7. Therefore, the impugned orders are quashed. The respondents are directed to confer promotion as District Revenue Officer to the petitioner with consequential monetary and attendant benefits attached to the said post. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

8. In view of the above, this Writ Petition is allowed. There shall be no order as to costs.

15.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To
1.The Principal Secretary,
The State of Tamil Nadu,
School Education Department,
Secretariat,
Chennai.

2.The Accountant General,
O/o. the Accountant General (Accounts & Entitlements),
361, Anna Salai,
Teynampet,
Chennai – 600 018.

3.The Director of School Education,
O/o. the Director of School Education,
D.P.I.Complex,
College Road,
Chennai – 6.

4.The Chief Educational Officer,
O/o. the Chief Educational Office,
Collectorate Campus,
Ramanathapuram,
Ramanathapuram District.

S.SRIMATHY, J.

Nsr

W.P.(MD).No.940 of 2016

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