



W.P.No.5715 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2023

PRONOUNCED ON : 20.03.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.5715 of 2015

D.Vijayakumar

...Petitioner

versus

1.The Secretary to Government,
Revenue Department,
Secretariat,
Chennai.9.

2.The Principal Commissioner and
Commissioner for Revenue Administration,
Chepauk,
Chennai.5.

3.The District Collector,
Villupuram District.

4.The Tahsildar,
Thirukoilur.

Respondents

Prayer : This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to include the petitioner's name in the panel of Deputy



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Tahsildars for the year 2010 and consequently direct the respondents to give notional promotion above M.Pandian, as the petitioner become eligible as No.1 Promotee in the list of Deputy Tahsildars for the year 2010 and to pay the retirement benefits.

For Petitioner : Mr.S.Vijayakumar, Senior Advocate,
for Mr.G.Bharadwaj

For Respondents : M/s.M.Jayanthi,
Additional Government Pleader

ORDER

This Writ Petition is filed seeking for Mandamus directing the respondents to include the petitioner name in the panel of Deputy Tahsildar for the year 2010 and consequently to promote the petitioner and to place him above M.Pandian as Deputy Tahsildar and to grant consequential retirement benefits.

2. The petitioner joined in the respondent's revenue department on 25.11.1981 as Junior Assistant. He was promoted as Assistant in the year 1994 and after completion of 33 years of service, retired from service 31.05.2014 on attaining the age of superannuation. In the course of petitioner's service, he has passed the departmental test required for



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consideration to be promoted as Deputy Tahsildar except Criminal Test Part I. As per the G.O.Ms.1120, dated 30.10.1984, if an employee reaches 53 years of age and make at least five attempts to clear the departmental test, then such employee is eligible to be promoted even without passing of departmental test subject to satisfaction of the authorities.

3. The petitioner has submitted a representation to the fourth respondent requesting to promote the petitioner under G.O.Ms.No.1120 dated 30.10.1984. The fourth respondent in his proceedings No.Rc.No.A2/11333/10 dated 30.09.2010, recommended the third respondent for exemption as per G.O.Ms.NO.1120, dated 30.10.2010. Accordingly, the third respondent has accepted the same and vide proceedings No.ROC.A2/34855/2010, dated 27.10.2010 recommended to the first respondent for passing formal orders. However, first respondent has not passed orders giving exemption to the petitioner as per G.O.Ms.No.1120, even though, he was eligible for giving such exemption ultimately the petitioner retired from service on 31.05.2014.

4. The petitioner was subjected to departmental enquiry vide



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memo No.N.K.Service [1]/12725/99 dated 10.05.1999 by the second respondent. The petitioner has filed W.P.No.29134 of 2013 and the same was allowed and that memo against the petitioner was quashed, directing the respondents therein to pass orders within a period of twelve weeks. However, the first respondent issued G.O.[2D]No.376, dated 27.05.2014, just two days prior to his retirement. The petitioner has made several representations requesting the third respondent to impress upon to pass the orders basing on his request for exemption from passing the departmental test and to include his name in the panel of Deputy Tahsildar for the year 2010 and promote him.

5. Third respondent has filed counter affidavit and submitted that the request of the petitioner for giving exemption passing of departmental examination in Criminal Procedure Code, part I was recommended to the Government. However, the Government has sought for a clarification in connection with the condition No.3, mentioned in G.O.No.1120 dated 30.10.1984, as the petitioner was awarded punishment of stoppage of one increment for a period of six months as per proceedings of the Revenue Divisional Officer, Thirukovilur in



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No.A3/282/1998, dated 29.10.2005, thereby the request for giving exemption from passing of a Criminal Procedure Code Part I for consideration of the petitioner for the post of Deputy Tahsildar was pending.

6. It is mentioned in the counter affidavit that Charges under 17(b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules were framed against the petitioner and 10 others vide reference No.SEr.2(1)/12725/1999, dated 10.05.1999 on the allegations that petitioner and others have misappropriated the Government money while giving compensation to the victims of the cattle loss during the flood in 1996 in Thirukoilur Taluk. The petitioner was placed under suspension and charge memo has been issued and after lapse of three years and eight months, the suspension of the petitioner was revoked on 16.04.2003. The enquiry officer has submitted a report finding that out of five charges, three charges were proved and for awarding of punishment, the respondents have sought for clarification in the Tamil Nadu Public Service Commission which is mandatory.



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7. In the meanwhile, the petitioner has approached this Court in W.P.NO.29134 of 2013 and the same was allowed on 25.10.2013 and the relevant portion runs as under:

*“4) A perusal of the impugned order would show that the charges against the petitioner and other officials are very grave, namely, Fabrication of documents, sending wrong reports, obtaining compensation amount and sharing the same among them. However, this court is not inclined to go further as already, charges have been dropped in respect of a similarly placed person. Though the charge memo was issued on 10.05.1999, so far, final orders have not been passed in the disciplinary proceedings initiated, even after the **lapse of 14 years**. The criminal proceedings initiated as against the petitioner and other delinquent officials were dropped after perusal of **G.O (2D) No.497 Revenue Ser. 2(3) Department** dated 30.08.2013 issued in respect of one R.Prakash, who was also chargesheeted like the petitioner, would show that the Government has decided to drop further proceedings as against the said official. **When, in respect of a similarly placed person, the same charges have been dropped by the Government, the said benefit should also have extended to the petitioner and that is the dictum of the Honourable Apex court in Rajendra Yadav v. State of M.P and others reported in***



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(2013) 3 MLJ 101 (SC) Hence, there is no other option for that court, except to direct the respondents to drop the proceedings initiated as against the petitioner as well, extending the benefit that was given to R.Prakash by G.O (2D) 497 Revenue Ser. 2(3) Department dated 30.08.2013, within a period of 12 weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs. Connected M.P is closed.”

8. Basing on the orders of this Court, the Government has issued G.O.[2D]No.376, dated 27.05.2014, dropping of further proceedings. However, the petitioner retired from service on 31.05.2014.

9. Heard both sides and perused the materials placed on record.

10. The contention of the learned counsel for the petitioner is that the petitioner became eligible in the year 2010 to be included in the panel of Deputy Tahsildar and on account of not granting the exemption as per G.O.No.1120 dated 30.10.1984, the petitioner is deprived of the same and therefore sought for the relief as prayed for.



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11. It is clear that the petitioner's name was not included in the panel for the year 2010 for promotion as Deputy Tahsildar for two reasons. Firstly, the exemption under G.O.No.1120 dated 30.10.1984, was not given and secondly, the disciplinary proceedings was pending against the petitioner.

12. In respect of granting of exemption under G.O.No.1120 dated 30.10.1984 is concerned, admittedly, petitioner has not passed Criminal test Part I, which is mandatory for consideration of promotion for Deputy Tahsildar. However, G.O.No.1120 dated 30.10.1984, was issued giving exemption to the candidates who failed to clear the test even after making five attempts and that he has crossed the age of 53 years. However as per the said G.O, he has to make request to the concerned authorities who will give exemption only on satisfaction of the authorities in respect of the his service. The application submitted by the petitioner for exemptions under G.O.No.1120 dated 30.10.1984, was originally submitted to fourth respondent the0 Tahsildar which was forwarded to Deputy Collector who intends forwarded it to the State Revenue Authorities and first respondent the Secretary to State is expected to give



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proceedings. However as per the respondents, a doubt was entertained by the first respondent to the effect that whether such exemption can be given to the petitioner who has suffered a punishment of stoppage of one increment for a period of six months without cumulative effect as per the proceedings dated 29.10.2005 has charge of misconduct was proved against him

13. On account of such doubt, the matter was pending with the Government. Thereby may be considering one of the requirements under G.O.No.1120 dated 30.10.1984, that grant of such exemptions is subject to satisfaction of the authorities in respect of the service record of the petitioner, the grant of such exemption was pending with the Government. Admittedly, the petitioner was retired from service on 31.05.2014, orders giving exemptions to the petitioner under G.O.No.1120 dated 30.10.1984, was not passed. The petitioner has not questioned the in action of the respondents from taking decision of his request to give exemptions under G.O.No.1120 dated 30.10.1984. Clearing of all the departmental test including Criminal Test Part I is mandatory for consideration of the petitioner for promotion. Since



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petitioner has not cleared one of the departmental tests and since exemption of orders have not been passed, the petitioner is not entitled for the promotion and there is no merits on this ground.

14. The other ground on which the Writ Petitioner has sought for passing of orders is that though the disciplinary proceedings was pending against the petitioner, the said proceedings was set aside as per the orders of this Court in W.P.No.29134 of 2013 dated 25.10.2013 and therefore the petitioner is entitled for promotion. The disciplinary proceedings were initiated against the petitioner for a misconduct of alleged misappropriation of money while sanctioning the compensation to the victims of the cattle loss during 1996 floods at Thirukoilur Taluk and it is admitted fact that subsequent to enquiry, the Enquiry Officer found the petitioner guilty of three charges and explanation was sought for from the petitioner and matter was pending with the disciplinary authorities for passing final orders of imposing punishment. However the disciplinary authority has kept the said file for many years without passing any orders, thereby the petitioner has filed Writ Petition No.29139 of 2013 and the same was allowed quashing the disciplinary proceedings against



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him. The said orders have become final and this Court has directed the respondents to pass consequential order within 12 weeks. Though the orders were passed on 25.10.2013, ultimately after about seven months the respondent No.1 has issued G.O.[2D]No.376, dated 27.05.2014 dropping further action and accordingly the petitioner was retired from service on 31.05.2014.

15. In order to consider the inclusion of name of the petitioner in the panel for Deputy Tahsildar in the year 2010, there shall not be any disciplinary proceedings pending against him. The disciplinary proceedings which are pending since 1999 were ultimately quashed as per G.O.[2D]No.376 in the year 27.05.2014 until then petitioner's name cannot be included in the panel for promotion.

16. As rightly submitted by the learned counsel for the petitioner, since W.P.No.29134 of 2013 was allowed quashing the disciplinary proceedings atleast from the date of allowing of Writ Petition No.29134 of 2013 which is 25.10.2013, the petitioner is eligible to be promoted. Though, there is delay of seven months from the date of allowing of Writ



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Petition to the date of G.O, the delay of seven months in implementing the orders of W.P.No.29134 of 2013 is acceptable.

17. According to the petitioner his name has to be included in the year 2010 panel for Deputy Tahsildar. Once the enquiry pending against him was in force was pending until 2013, as on the date of allowing the Writ Petition, ie on 25.10.2013 petitioner's name cannot be included in the panel for promotion as Deputy Tahsildar. Further the crucial date of drawing of the candidates for preparation of panel for Deputy Tahsildar is 15th September of every year. The panel for the year 2010 must have been completed in the month of September 2009 and the petitioner's name cannot be considered for the said panel for the reasons that the disciplinary proceedings were pending against him and by the time proceedings were dropped by way of G.O., the petitioner was retired from service. Therefore his name could not be included in the panel of 2014 as well.

18. Further even if 25.10.2013, the date of allowing of Writ Petition No.29134 of 2013 is taken into consideration his name could not be



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included as the panel for the year 2013 had already been prepared.

Therefore considering from any angle there is no possibility to include the petitioner in the panel for promotion as Deputy Tahsildar from 2010 until he retired. In view of the discussions made, the petitioner to make out a case to issue direction to include the name of the petitioner in the panel for promotion as Deputy Tahsildar in the year 2010 or later. Accordingly, this Writ Petition is liable to be dismissed.

19. In the result, this Writ Petition is dismissed. No costs.

20.03.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
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Dr.D.NAGARJUN, J.
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To

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Secretariat,
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- 2.The Principal Commissioner and
Commissioner for Revenue Administration,
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Chennai.5.
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Villupuram District.
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Pre. Delivery order

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