IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2024

PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.17366 of 2010

S.R.M.Thirumaran ... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its,
Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.

2.The Special Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai – 5.

3.The District Collector,
Erode, Erode District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the first respondent vide G.O.[2D] No.62 dated 05.02.10 and to quash the same and consequently directing the respondents to give notional promotion to the post of Deputy Collector with pensionary benefits.

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

For R1 to R3 : Mr.D.Gopal Government Advocate.

ORDER

This Writ Petition has been filed to call for the records relating to the first respondent vide G.O.[2D] No.62, dated 05.02.10 and to quash the same and consequently direct the respondents to give notional promotion to the petitioner to the post of Deputy Collector with pensionary benefits.

2.Petitioner joined as Junior Assistant on 05.07.76. He was promoted to the post of Assistant and then to Deputy Tahsildar. In 1979, he was overlooked in the panel of Assistant. He approached the Tamil Nadu Administrative Tribunal. An order was passed in W.P.No.26650 of 2006, dated 16.11.2006, but no action was taken to include his name in 1979 panel for Assistant. Had it been done, he would have been promoted as Tahsildar in 1997 and Deputy Collector in the year 2006. He was served with charge memo under rule 17[b] of the Tamil Nadu Civil Service [Disciplinary and Appeal] Rules on 28.02.2003, alleging discrepancies in the disbursement of election funds. He offered his explanation and an enquiry was held after three years. Enquiry Officer submitted his findings on 17.04.2005. He was given a second show cause notice and he offered his explanation on 27.07.2005. He reached his age of superannuation on 29.02.2008. He was placed under suspension on the date of his retirement. The disciplinary authority failed to complete the disciplinary proceedings, but suspended him.

3.He filed three Writ Petitions in W.P.Nos.3360 of 2008, 3361 of 2008 & 5657 of 2008. W.P.No.3360 of 2008 has been filed to call for the records of the respondents in connection with the impugned charge memo issued by the second respondent in Memo No.Ser.2[2]/22027-3/2001, dated 28.02.2003 and the consequential show cause notice issued by the Secretary in letter No.35901/Ser.2[2] 2003, dated 19.04.2005 and quash the same. W.P.No.3361 of 2008 has been filed for directing the respondents to consider the claim of petitioner for promotion as Tahsildar in the year 1997 and Deputy Collector by transfer of service for the year 2006 without reference to the pending disciplinary proceedings initiated by the second respondent in Pani 2[2]/22027 2/2001, dated 28.02.2003 and promote the petitioner as Tahsildar and Deputy Collector on par with his junior M.Balachandran retrospectively with all consequential service and monetary benefits. W.P.No.5657 of 2008 has been filed to call for the records of the third respondent vide impugned order

Nos.[1] No.65814/06/A3, dated 27.02.2008 and ref.No.65814/2006/A3, dated 29.02.2008 and quash the same and consequently direct the respondents to settle all the retirement benefits. These Writ Petitions were disposed by a common order on 07.03.2008 with a direction to pass final orders in the disciplinary proceedings within a period of six weeks from the date of receipt of a copy of the order. Since respondents have not taken any action, petitioner filed W.P.Nos.13907 & 13911 of 2008. These writ petitions were disposed by directing the respondents to pass final order on or before 31.10.2008. It was made clear that if no final orders are passed within the said time, which is extended as per the request of the respondents, the charge memo leveled against the petitioner should be treated as dropped. The respondent has not passed final order as directed by this Court in W.P.No.13911 of 2008.

4.Petitioner filed a representation on 01.11.2008 to the respondents 2 & 3 to pay the retirement benefits due to him, but no order was passed on the same. He filed W.P.No.28317 of 2008 seeking directions to dispose of his representation. The same was ordered to dispose of his representation within a period of eight weeks from the date of receipt of a copy of the order. However, no final order was passed within the time stipulated. He filed contempt petition in Cont.P.No.229 of 2008. Respondents issued proceedings in SER.2[4]22027/2001, dated 09.07.2009, informing that the petitioner got notional promotion as Tahsildar after relaxing the Rules 8[a] and 7[b] of the Tamil Nadu Revenue Subordinate Rules. Respondents had six months time to comply with the order, however, second respondent did not choose to take any action to give notional promotion such as Deputy Tahsildar, Tahsildar and Deputy Collector respectively. After much persuasion by this Court, he was given Deputy Tahsildar promotion in the year 1993 and Tahsildar promotion in the year 1997. Because of the prolonged disciplinary proceedings, he was deprived of regular promotion. The first respondent issued a G.O.[2D] No.62, dated 05.02.2010, informing that petitioner is not fit for promotion for the post of Deputy Collector on the crucial date on 31.12.2004. It is not correct to state that the punishment is in currency and petitioner was not fit for inclusion. Disciplinary proceedings initiated under Rule 17[a] has been kept pending for more than five years and disposed only after the retirement of the petitioner. That resulted in denial of promotion to the petitioner. Therefore this Writ Petition.

5.The learned counsel for the petitioner submitted that the punishment of withholding the increment commences from the date of communication of the punishment order. Petitioner was inflicted with the punishment of withholding of increment for one year without cumulative effect commencing from 25.10.2005 and it got over by 21.04.2006. The claim made by the respondents that the punishment was under currency with effect from 01.10.2006 is not correct. In support of his submissions, he relied on the following judgments.

(i) W.P.No.21774 of 2014, dated 09.03.2015, A.Theerthagiri Vs. The Principal Secretary to Government and one another.

(ii) W.P.Nos.29297, 34829 & 42591 of 2006, dated 20.02.2007, M.K.Kandasamy, S.Sekar & V.Selvaraju Vs. State of Tamil Nadu represented by its Secretary to Government and five others.

6.In response, the learned counsel for the respondents submitted that petitioner along with certain staff had committed certain irregularities in respect of the expenditure met out in connection with the election work during the Lok Sabha election 1998. The total amount was Rs.17,54,855/-. Disciplinary proceeding was initiated against the petitioner under Rule 17(a) and he was awarded with the punishment of stoppage of increment for one year without cumulative effect vide the proceedings of the Collector, Erode, in

Proc.No.12479/2005/D1, dated 25.10.2005. Punishment has been given effect from 01.10.2006 to 30.09.2007. Petitioner preferred an appeal before the Special Commissioner & Commissioner of Revenue Administration and the punishment was confirmed. The Government has also confirmed the orders of the Special Commissioner and Commissioner of Revenue Administration vide G.O.(2D) No.66, Revenue [Ser-IV(2)] Department, dated 18.02.2009, on the review petition filed by the writ petitioner. Petitioner's representation dated 01.11.2008 seeking for the placement of his name in the panel of Deputy Collector for the year 2005-2006 and 2006-2007 was categorically rejected in G.O.(2D) No.62 Revenue [Ser-1]Department, dated 05.02.2010, for the reason that punishment of stoppage of increment for one year without cumulative effect was awarded against the petitioner. The crucial date of Deputy Collectors' panel for the year 2005-2006 is 31.12.2004, therefore, his name was not included in the said panel. The date of issue of Deputy Collectors' panel for the year 2006-2007 was 07.06.2007. The punishment was in currency and petitioner was over aged as per section 5 of the Special rules for the Tamil Nadu Civil Service for the panel year 2007-2008. Therefore, the request of the petitioner to include his name in the year 2006-2007 could not be considered.

7.Considered the rival submissions and perused the records.

8.Admittedly, petitioner was imposed with the punishment of stoppage of increment for one year without cumulative effect vide Collector, Erode, proceedings No.12479/2005/D1, dated 25.10.2005. The case of the respondents is that this punishment was effective from 01.10.2006 to 30.09.2007 for the reason that only on 01.10.2006, petitioner's next increment was due. That was the reason why petitioner's name was not considered for the panel of the years 2005-2006 & 2006-2007.

9.When similar questions arises with regard to the starting point of the the punishment of stoppage of increment for one year without cumulative effect, this Court ***W.P.Nos.29297, 34829 & 42591 of 2006, dated 20.02.2007, M.K.Kandasamy, S.Sekar & V.Selvaraju Vs. State of Tamil Nadu represented by its Secretary to Government and five others,*** held as follows:

> *16. This stand is also admitted in the counter affidavit by the respondents as also in the letter of the government dated 28.4.06. However, unfortunately by taking advantage*

of the misnomer given in the example, given by the government letter, the period of punishment given in these cases are extended, to which the respondents have no right or jurisdiction. It is also seen in these cases, it is not in dispute that the punishment period has been undergone by these petitioners and there is absolutely no other legal impediments excepting the letter of the government dated 28.4.06.

In view of the above facts and circumstances of the case, I have no hesitation to come to the conclusion that the reliance placed on by the respondents on the letter of the government dated 28.4.06 has no basis whatsoever, since the said letter is a total misnomer, in as much as the effect of such letter is not only to extend the period of punishment beyond the period given by the punishing authority but also to deny the claim of the delinquents, who have already completed the period of punishment undergone especially in cases where there has been stoppage of increment.

18. In view of the above facts and circumstances of the cases, the example given in the government letter dated 28.4.06 cannot be taken as a ruse device for the respondents in denying the petitioner's due promotion beyond the period of their punishment.

19. In the result, these writ petitions stand allowed, with a direction to the respondents to consider the claims of *the petitioners for next promotion without being influenced by the illustration given by government letter dated 28.4.06 and pass appropriate orders regarding promotion of the petitioner.*

10.It is also pertinent to refer to the order in ***W.P.No.21774 of 2014, dated 09.03.2015, A.Theerthagiri Vs. The Principal Secretary to Government and one another.*** The relevant portion of the order is extracted hereunder:

> *8. The punishment in question was imposed on the petitioner by order dated 25 October 2013. It was served on the petitioner on 11 November 2013. The petitioner wanted the respondent to implement the punishment forthwith so that there would not be any currency of punishment after a period of three months. The respondents on the other hand have taken up a contention that the next increment is due only on 1 July 2014 and as such, the punishment would be implemented only thereafter. The punishment in question is stoppage of increment for three months without cumulative effect. In case the punishment is implemented with effect from 12 November 2013, taking into account the date of communication, the period would expire by 12 February 2015.*

9. The respondents are relying on Government letter dated 28 April 2006 to postpone the implementation of punishment till the next date of annual increment. In case the stand taken by the first respondent is approved, the punishment would expire only on 30 September 2014. In this process, the punishment of stoppage of increment for a period of three months would become 9 ½ months.

10. The core question is whether in view of the Government Order in G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 24 February 2014, and the order dated 20 February 2007 in W.P.No.29297 of 2006, it was correct on the part of the respondents to postpone the implementation of punishment.

11. The Government letter dated 28 April 2006 relied on by the first respondent in the impugned order was the subject matter of consideration in W.P.No.29297 of 2006. The learned Single Judge deprecated the practice adopted by the respondents therein to postpone the implementation of punishment on the basis of the *letter dated 28 April 2006. While allowing the Writ Petition and issuing a writ of mandamus to respondents to consider the case of the petitioners therein for next promotion, the learned Single Judge made the following comments:-*

17. In view of the above facts and circumstances of the case, I have no hesitation to come to the conclusion that the reliance placed on by the respondents on the letter of the Government dated 28.4.2006 has no basis whatsoever, since the said letter is a total misnomer, inasmuch as the effect of such letter is not only to extend the period punishment beyond the period given by the punishing authority but also to deny the claim of the delinquents, who have already completed the period of punishment undergone especially in cases where there has been stoppage of increment.

12. The legality and correctness of the letters issued by the Government, clarifying certain issues without reference to the statutory rules came up for consideration before a Full Bench of this Court in W.A.(MD) Nos.315 of 2010 etc. batch. The Full Bench held that a detailed instruction given by the Government cannot be equated to statutory rules framed under proviso to Article 309 of the Constitution of India. The

Full Bench opined that the Government letters are not statutory in nature framed under the proviso to Article 309 of the Constitution of India and as such, it cannot be read either with the Tamil Nadu Government Servants Conduct Rules or under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

13. The validity of the Government letters were therefore considered by a learned Single Judge and Full Bench of this Court. In view of the decisions cited supra, the first respondent was not correct in placing reliance on the Government letter No.18667/S/2006-1, Personnel and Administrative Reforms Department dated 28 April 2006, to postpone the implementation of punishment.

14. There is one more aspect to be looked into in this matter, which was overlooked by the first respondent. The Government have issued an order in G.O.Ms.No.22 Personnel and Administrative Reforms (S) Department, dated 24 February 2014, making amendments to the General Rules under the Tamil Nadu State and Subordinate Services.

The Government inserted 1(k) which reads thus :-

"(1-K) Any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over."

15. The amended Rules very clearly provide that punishment would take effect from the date on which it was served on the concerned member of service. The first respondent has virtually flouted this order passed by the Government by rejecting the claim made by the petitioner for implementation of punishment. The rules are applicable not only to the petitioner but equally so, to the first respondent. When the Statute says that punishment would be implemented from the date on which it was served on the employee, the first respondent cannot be heard to say that he would follow only the letter issued by the Government, which has no statutory force. I am therefore of the view that the first respondent erred in rejecting the request made by the petitioner for implementing the punishment forthwith.

Disposal :-

16. In the result, the impugned order dated 10 June 2014 is set aside. The first respondent is directed to implement the punishment with effect from 12 November 2013. The first respondent is further directed to pass a consequential order regarding implementation of punishment as expeditiously as possible and in any case within a period of 15 days from the date of receipt of a copy of this order.

11.From these orders, it is made clear that punishment of withholding of increment without cumulative effect will commence from the date of communication of the order and therefore, the claim of the respondents that the punishment was under currency with effect from 01.10.2006 to 30.09.2007 is not correct. The punishment of stoppage of increment for one year without cumulative effect commences from 25.10.2005 and got over by 21.04.2006. In that case, petitioner should have been considered for promotion for the post of the Deputy Collector in 2006-2007 panel.

12.In this view of the matter G.O.[2D] No.62, dated 05.02.10, is quashed and the respondents are directed to give the petitioner notional promotion as Deputy Collector from 07.06.2007, the crucial date for preparation of panel for the year 2006-2007 and give him all the monetary and pensionary benefits.

13.Accordingly, this Writ Petition stands allowed. Consequently, connected Miscellaneous Petition, if any, is also closed. No costs.

sli **26.03.2024**
Internet:Yes
Index:Yes/No
Speaking/Non speaking order
NCC: Yes/No

To:
1.The State of Tamil Nadu,
represented by its,
Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.

2.The Special Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai – 5.

3.The District Collector,
Erode, Erode District.

G.CHANDRASEKHARAN, J.

sli

Pre-delivery Order in W.P.No.17366 of 2010

26.03.2024