

(2017) 01 MAD CK 0128

In the Madras High Court

Case No : Writ Petition Nos. 589, 2991 and 5465 of 2016 and W.M.P. Nos. 428, 4805, 4806 and 2467 of 2016

Ms.A.Annie Sheela Rani

APPELLANT

Vs

Principal Secretary to Government, Planning, Development
and Special Initiatives

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Constitution of India, 1950 — Article 16, Article 226, Article 309, Article 309

Fundamental Rules — Rule 14(b), Rule 15(a)

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 1, Rule 9

Citation : (2017) 3 CTC 309 : (2017) LIC 1386

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : Mrs. Narmadha Sampath, Advocate, for the Petitioner; Mr. K. Venkataramani, AAG-VII, assistant by Mr.K.Dhananjayan, Spl GP, for the Respondents No. 1 and 2 in all the above WPs; Mrs. P.V. Rajswari, Advocate, for the Respondents No. 3 W.P. 5465 of 2016

Final Decision : Disposed Off

Judgement

1. Writ Petition No.589 of 2016 has been filed by the petitioner, challenging the proceedings of the 1st respondent in his Letter No.4060/SPC/2014-4, dated 03.09.2015, in and by which the 2nd respondent was directed to take action against the petitioner either to revert her to parental department (Social Welfare Department), or to take necessary disciplinary action as per Rules for her false and frivolous petitions to the government maligning the State Planning commission or to take both of the actions; and also challenging the consequential order passed by the 2nd respondent vide his proceedings in Rc.No.3728/A1/SPC/2015, dated 14.12.2015, reverting the petitioner to her parental department on administrative grounds relieving her duties in State Planning Commission with effect from 14.12.2015.

2. The second writ petition in W.P.No.2991 of 2016 has been filed by the same

petitioner challenging the proceedings of the 2nd respondent in Proc.Rc.No.2801/A1/SPC/2015, dated 20.10.2015, in and by which the petitioner was imposed with a minor punishment of stoppage of increment for three months without cumulative effect.

3. The third writ petition in Writ petition No.5465 of 2016 has also been filed by the same petitioner challenging the order passed by the 2nd respondent in Letter No.66/SPC/2016, dated 28.01.2016, dismissing the petitioner's representation; and seeking to direct the 2nd respondent to draw a panel of seniority as per G.O.Ms.No.22 P & AR Dept, dated 24.02.2014 and G.O.Ms.No.24 P & AR Dept dated 17.02.2010.

4. Since the issues involved in these writ petitions are inter-related to each other, these writ petitions are disposed of by way of this common order.

5. The issue raised in W.P.No.586 of 2016 is substantive in nature. The brief facts, which necessitated the petitioner to file the above writ petition, are as follows-

5-1.The petitioner was recruited by TNPSC as a Junior Assistant in the 1986 batch, under the Tamil Nadu Ministerial Service. She was allotted to work in the Social Welfare Department. She joined the service on 22.08.1989. She completed her probation in the substantive post on 21.08.1991. She was promoted as an Assistant in the same department with effect from 13.07.1994.

5-2.While so, since there were vacancies in the 2nd respondent's department viz., State Planning Commission Department, the petitioner was selected and appointed temporarily, by recruitment by transfer, as Planning Assistant by the proceedings of the 2nd respondent dated 18.09.2001. Accordingly, the petitioner joined the said post of Planning Assistant with effect from 28.09.2001, in the State Planning Commission. The petitioner's service in the said post was also regularized with effect from the same date, by the orders of the 2nd respondent dated 24.12.2012. She was assigned the seniority in the said post at Serial No.15. Thereafter, she was also promoted in the 2nd respondent's department, as a Senior Planning Assistant in the year 2013.

5-3.While things being so, when promotions were given in the petitioner's original department viz., Social Welfare Department, the petitioner sent a representation requesting the Higher Officials in the Social Welfare Department to consider her case for promotion to the post of Superintendent on the ground that she continued to have a lien in the parent department. But, she was informed by the Director of Social Welfare by a letter dated 03.07.2006, which was communicated to the petitioner through the 2nd respondent vide his proceedings in Rc.No.8050/A1/SPC/2005, dated 28.07.2006. In the said letter, it was stated as follows-

"The Director of Social Welfare, Chennai-5 vide his D.O.Lr.No.59813/Admn 2(2)/2005, dated 03.07.2006, has rejected her claim stating that as per the

provisions contained in F.R. 14(b) read with Rule 14(A) Sub-Rule (d), since the individual has been transferred and posted substantively in the cadre outside the control of the Directorate of Social Welfare, she had acquired a lien in a post outside the cadre on which she is borne and hence her lien in the Directorate of Social Welfare ought to have been suspended or terminated."

It is further stated by the petitioner that she has put in 25 years of service in Government and she was given a certificate of Commemoration dated 22.1.2015, wherein the 2nd respondent has certified as follows-

"Certified that Selvi.A.Annie Sheela Rani working as Planning Superintendent in State Planning Commission has completed 25 years of unblemished service on 21.08.2014. The unblemished services rendered by the above employee is commemorated by Government."

During the period of her service, the petitioner had not received any punishment, this is proved by the proceedings issued by the 2nd respondent vide Rc.No.197/A1/SPC/2015, dated 22.01.2015, wherein it was stated as follows-

"It is certified that no punishments were found recorded in the service Records of the above individual."

5-4.The petitioner was regularly promoted as a Planning Superintendent in the 2nd respondent's Department with effect from 29.04.2013. The Government of Tamil Nadu by G.O.Ms.No.203, Planning & Development (OP) Department, dated 28.11.1990, had created the post of Administrative Officer in the State Planning Commission. The appointment to the said post was to be made by "recruitment by transfer" from among the holders of the post of Planning Superintendent in the Tamil Nadu Ministerial Service. The qualification for the said post was that a person must have worked as a Planning Superintendent for a period of not less than 5 years. It is alleged by the petitioner that the State Government did not fill up the post in a regular manner for the years 2013-2014 and 2014-2015, since there was Nil vacancy as per G.O.(D).No.1, Planning, Development and Special Initiatives (SPC) Department, dated 14.01.2015. However, on the same day, the State Government estimated for the vacancy for the year 2015-2016 as one, as per G.O.(D).No.2, Planning, Development and Special Initiatives (SPC) Department, dated 14.01.2015.

5-5.It is further stated by the petitioner that the 1st respondent by invoking the power under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules promoted one Murugan and posted him as Administrative Officer in the State Planning Commission. It is the allegation of the petitioner that the said Murugan is not fully qualified to hold the said post of Administrative Officer; hence, challenging his temporary appointment, the petitioner had filed an appeal dated 27.08.2014 to the 1st respondent. Since the said appeal preferred by the petitioner had not been considered by the 1st respondent, the petitioner had earlier filed a writ petition W.P.No.37611 of 2015 and when the said writ petition came up on 26.11.2015, this Court disposed of the said writ petition, directing

the 1st respondent to dispose of the petitioner's appeal dated 27.08.2014, within a period of four weeks.

5-6. In the meantime, the 1st respondent issued proceedings dated 03.09.2015, directing the 2nd respondent to pursue action against the petitioner either to revert back her to her parental department (Social Welfare Department), or to take necessary disciplinary action as per Rules for her false and frivolous petitions to the Government maligning the State Planning commission, or to take both of the actions. On the basis of the direction given by the 1st respondent, the 2nd respondent passed the impugned order dated 14.12.2015 in Rc.No.3728/A1/SPC/2015, reverting the petitioner to her parental department on administrative grounds and relieving her duties in State Planning Commission with effect from 14.12.2015. Challenging the said two orders, the petitioner has filed the writ petition No.589 of 2016.

5-7. It is further stated by the petitioner that in the meantime, by the proceedings in Memo No.2801/A1/SPC/2015, dated 22.07.2015, disciplinary action was initiated against the petitioner alleging several lapses on her part. The petitioner had given her explanation denying all the allegations levelled against her and requesting to conduct a proper enquiry. However, according to the petitioner, without conducting any enquiry and without giving any opportunity to the petitioner, the 2nd respondent issued the proceedings in Rc.No.2801/A1/SPC/2015, dated 20.10.2015, imposing the punishment of stoppage of increment for three months without cumulative effect, on the petitioner. Hence, challenging the same, the petitioner has filed the writ petition in W.P.No.2991 of 2016.

5-8. Similarly, challenging the rejection of the petitioner's appeal/representation by the 2nd respondent vide his proceedings in Letter No.66/SPC/2016, dated 28.01.2016, stating that the promotion given to the said Murugan as Administrative Officer is in order, the petitioner has filed the writ petition in W.P.No.5465 of 2016.

6. When the matter was taken up for consideration, the learned counsel appearing for the petitioner made a detail argument, by adverting to the averments made in the affidavits filed in support of the writ petitions. It is the main submission of the learned counsel appearing for the petitioner that initially, the petitioner was appointed as Junior Assistant in the Social Welfare Department on 22.08.1989 and she was promoted as Assistant in the same department with effect from 13.07.1994. Subsequently, in the year 2001, by way of recruitment by transfer the petitioner was appointed as Planning Assistant in the State Planning Commission Department, by the proceedings of the 2nd respondent dated 18.09.2001 and she joined the said post with effect from 28.09.2001. When she came to know that promotions were given in her parental department viz., Social Welfare Department, she made a request to the authorities concerned in the Social Welfare Department to consider her case for promotion. But, she was informed by the Director of Social Welfare vide his proceedings in D.O.Lr.No.59813/Admn 2(2)/2005, dated 3.7.2006, which was communicated to

the petitioner through the 2nd respondent vide his proceedings dated 28.07.2006, that since she was transferred and posted substantively in the cadre outside the control of the Directorate of Social Welfare, she had acquired a lien in a post outside the cadre on which she is borne and hence her lien in the Directorate of Social Welfare ought to have been suspended or terminated. Thus, by relying upon the said communications, dated 3.7.2006 & 28.07.2006, the learned counsel for the petitioner submitted that the petitioner had acquired a lien in the State Planning Commission; when that being so, the question of reverting her to the parental department does not arise.

7. Further, the learned counsel for the petitioner has submitted that from the very date on which the petitioner joined the State Planning Commission, as Planning Assistant, viz., 28.09.2001, the petitioner's service in the State Planning Commission was regularized by the 2nd respondent by his order dated 24.12.2012 and the petitioner was subsequently given promotion to the post of Senior Planning Assistant in the year 2013. Since her service was regularized and she was given promotion in the State Planning Commission, the impugned order passed by the 2nd respondent reverting her to the parental department viz., Social Welfare Department, is not legally sustainable and the same is liable to be quashed.

8. In this regard, the learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court reported in (1989) 4 SCC 99 [Ramlal Khurana v. State of Punjab], wherein it has been held that generally when a person with a lien against a post is appointed substantively to another post, he/she acquires a lien against the latter post; then the lien against his/her previous post automatically disappears; the principle being that no government servant can have simultaneously two liens against two posts in two different cadres.

9. The learned counsel for the petitioner has also relied upon the decision reported in (2009) 4 SCC 700 [State of Rajasthan v. S.N.Tiwari] and submitted that lien of an employee is terminated from previous post when he is appointed substantively on another post and acquires lien on that post. For the similarly proposition, the learned counsel for the petitioner has also relied upon the decision reported in (1997) 8 SCC 372 [State of Punjab v. Inder Singh]. Thus, by relying upon the above said decisions, the learned counsel for the petitioner sought for quashing the impugned orders and for suitable directions to the respondents.

10. Countering the submissions made by the learned counsel appearing for the petitioner, the learned Additional Advocate General appearing for the respondents (R1 & R2) would contend that the petitioner originally belonged to Social Welfare Department. While she was working as Assistant in the Social Welfare Department, she was selected and appointed, on temporary basis, as Planning Assistant in State Planning Commission. She joined duty on 28.09.2001. The petitioner was in the habit of making unsustainable, false, baseless and frivolous allegations against the officers/staff members in the

Planning Commission. The petitioner made a representation dated 08.02.2008 to the Member Secretary, State Planning Commission, to regulate the panel for the post of Technical Assistant from the year 2003-2004 and also questioned the appointment of one Tmt.S.Rajalakshmi and Tmt.D.Abirami, as Technical Assistant in the State Planning Commission. Her petition/representation was suitably replied. In fact, the petitioner made a petition dated 06.07.2009 to the Government directly to regulate the panel for the post of Technical Assistant year 2003-04, which is in violation of the Government Servants Conduct Rules; as the representation should be sent only through the proper channel. However, on 02.08.2009, a suitable reply was given to the petitioner's representation, mentioning about the Rule position and also substantiating that the appointments were made in accordance with the Rules.

11. It is further submitted by the learned Additional Advocate General that in the meanwhile, a panel for Technical Assistant was prepared for three vacancies and in that, three persons were included, including the petitioner herein also. But, the petitioner did not join duty immediately in spite of reminders given to her on a number of occasions. The petitioner's representation was duly considered by the Government and holding that the petitioner is making unsustainable allegations and maligning the State Planning Commission, the Government rejected her claim by a letter dated 03.05.2011.

12. It is further submitted by the learned Additional Advocate General that one Murugan, Planning Superintendent, was promoted to the post of Administrative Officer on 01.08.2014. The petitioner objected the appointment of the said Murugan, making false and baseless allegations and she also proceeded to question the integrity of the other staff Venkatesan, Planning Superintendent and also M.S.Seetha, Technical Assistant. The allegations made by the petitioner are baseless. The appeal filed by the petitioner against the appointment of the said Murugan as Administrative officer was rejected by the respondents. Since the continuity of the petitioner in the department was found to be spoiling the working atmosphere of the State Planning Commission, it was decided to take disciplinary action against her and after issuing of the charge-memo following the procedure established under Rules, she was issued with an order relieving her and reverting her to the parent department as her lien in the Social Welfare Department has not been terminated so far. The said action has been made as per Rule 15(A) of the Fundamental Rules, wherein it has been stated that a government servant serving in one post can be sent to another post on account of inefficiency. In the case of the petitioner, the petitioner's post in the Social Welfare Department has not been terminated so far and the procedure has been very strictly followed and even if she is allowed to continue in the department it will endanger and spoil the working atmosphere of the office and also malign the department.

13. The learned Additional Advocate General would further contend that the petitioner was not substantively absorbed in the State Planning Commission and

her lien in the parental department viz., Social Welfare Department has not been cut off, since no specific order has been passed by the Director of Social Welfare terminating her lien in the department. In this regard, the learned Additional Advocate General has also invited the attention of this Court to the letter in D.O.Rc.No.8050/A1/SPC/2015 dated 14.08.2006 sent by the Member Secretary, State Planning Commission, to the Director of Social Welfare, Chennai, wherein it has been clarified that the petitioner's appointment has not been made substantively as stated in the letter dated 03.07.2006 of the Director of Social Welfare and further, F.R.14(b) r/w Rule 14(A) Sub-Rule (d), quoted in the letter dated 03.07.2006 of the Director of Social Welfare, are not applicable to the case of the petitioner. Hence, according to the learned Additional Advocate General, no infirmity could be found in the impugned order passed by the 2nd respondent, reverting the petitioner to her parental department. In this regard, the learned Additional Advocate General has also invited the attention of this Court to Rule 14(b) & Rule 15(a) of the Fundamental Rules. Thus, the learned Additional Advocate General sought for dismissal of the writ petitions.

14. I have carefully heard the submissions made by the learned counsel for the petitioner as well as the learned Additional Advocate General and the learned counsel appearing for the respondents 3 & 4, and perused the materials available on record.

15. Though very many contentions have been raised on either side on the factual aspects, the core questions that have to be decided in the case are that whether the petitioner has acquired lien in her post in the 2nd respondent Department viz., State Planning Commission and whether the order passed by the 2nd respondent reverting her to the parental department is legally sustainable?

16. It is the main submission of the learned counsel appearing for the petitioner that during the year 2005, when promotions were given in her parental department viz., Social Welfare Department, she sent a representation to the authorities in the Social Welfare Department, requesting to consider her case for promotion and at that time, she was informed by the Directorate of Social Welfare, vide his letter dated 03.07.2006, which was intimated to the petitioner through the 2nd respondent through his letter dated 28.07.2006, that she had acquired a lien in the post outside the cadre on which she is borne, as such, her lien in the Social Welfare Department ought to have been suspended or terminated. Therefore, according the learned counsel for the petitioner, the said letters dated 03.07.2006 & 28.07.2006 would go to show that the petitioner had already acquired her lien in the State Planning Commission.

17. But, a mere reading of the letter dated 03.07.2006 of the Director of Social Welfare and the letter dated 28.07.2006 of the 2nd respondent, would show that Social Welfare Department has to pass an order to suspend or terminate or cut off the lien from the said department. In fact, in the materials placed before this Court on the side of the respondents, it could be seen that the Member Secretary, State Planning Commission, has already sent a letter in

D.O.Rc.No.8050/A1/SPC/2015, dated 14.08.2006, to the Director of Social Welfare, Chennai, clarifying the position, stating that the petitioner's appointment has not been made substantively as stated in the letter dated 03.07.2006 of the Director of Social Welfare and further, F.R.14(b) r/w Rule 14(A) Sub-Rule (d), quoted in the letter dated 03.07.2006 of the Director of Social Welfare, are not applicable to the case of the petitioner. From the said communication dated 14.08.2006 sent by the Member Secretary, State Planning Commission, it is clear that to claim lien in the 2nd respondent-department (State Planning Commission), the petitioner's lien in the Social Welfare Department ought to have been terminated by passing a specific order and the petitioner ought to have been substantively absorbed in the 2nd respondent-department. As per Rule 14-A sub-Rule (a), except as provided in clause (c) and (d) of Rule 14-A of the Fundamental Rules, a Government servant's lien on a post in no circumstances can be terminated even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. So far as the case of the petitioner is concerned, the petitioner's lien in the Social Welfare Department has not been terminated by passing a specific order. The petitioner was appointed in the State Planning Commission, while she was working in the post of Assistant in Social Welfare Department. She is still having lien only in the Social Welfare Department. Only in these circumstances, by the impugned order, the petitioner was reverted to her parental department Social Welfare Department and she was relieved from the duties in the State Planning Commission with effect from 14.12.2015. Further, as per Rule 15(a) of the Fundamental Rules, a Government servant may be transferred from one post to another post on account of inefficiency or misbehaviour. Rule 15(a) reads as follows:-

"Government may transfer a Government servant from one post to another provided that, except-

- (1) on account of inefficiency or misbehaviour; or
- (2) on his written request a Government servant shall not be transferred substantively to or appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended under Rule 14."

Therefore, I am of the opinion that only in accordance with the above said Fundamental Rules, the impugned orders have been passed by the respondents, reverting her to parental department. When the petitioner's lien in the Social Welfare department was not terminated and when she was not substantively absorbed in the 2nd respondent-department, now the order passed by the 2nd respondent reverting her to her parental department, cannot be said to be legally unsustainable. Under such circumstances, the petitioner's regularization and promotion given in the year 2013 in the 2nd respondent-department, cannot be taken as an incident to show that her lien in the Social Welfare Department was terminated and she was substantively absorbed in the said post in the State

Planning Commission. Therefore, absolutely, I do not find any infirmity in the impugned order passed by the 2nd respondent reverting her to the parental department. The judgments relied upon by the learned counsel for the petitioner cannot be made applicable to the present facts of the case as they were delivered in different facts and circumstances. Accordingly, the writ petition in W.P.No.589 of 2016 is liable to be dismissed and the same is hereby dismissed.

18. So far as the Writ Petition in W.P.No.2991/2016 is concerned, which has been filed against the punishment imposed on the petitioner, as contended by the learned Additional Advocate General, as against the punishment imposed on the petitioner, she is having appeal remedy under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, to the Principal Secretary to Government, Planning, Development and Special Initiatives Department, Secretariat, Chennai. When she is having alternative remedy, she has to work out her remedy in the manner known to law. Under such circumstances, this Court is not inclined to entertain the writ petition; accordingly, the said writ petition in W.P.No.2991 of 2016 is also liable to be dismissed.

19. As regards the writ petition in W.P.No.5465 of 2016, the petitioner sought for a direction to the respondents to draw a seniority panel, alleging that promotions given to one Murugan as Administrative Officer is in violation of the Rules. But, materials placed on record would show that the said Murugan is the senior most Planning Superintendent and he was fully qualified for the promotion to the said post of Administrative Officer. Hence, the petitioner's representation was rejected by the impugned order dated 28.01.2016. Under such circumstances, I do not find any infirmity in the said impugned order. Moreover, when the writ petition in W.P.No.589 of 2016, which was filed challenging the order reverting to her parental department, itself is dismissed, now, nothing survives in this writ petition for adjudication. Hence, this writ petition is also liable to be dismissed.

20. For the foregoing reasons, all the above writ petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.