

(2010) 11 MAD CK 0118

In the Madras High Court

Case No : Writ Petition No. 43979 of 2006

N. Gopalakrishnan

APPELLANT

Vs

The Special Commissioner and Commissioner of Revenue
Administration and The Collector

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2010) 11 MAD CK 0118

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : R. Krishnan, for A. Shivaji, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The Petitioner was selected and appointed as Junior Assistant on 24.08.1966. He was promoted as Assistant in

the year 1974. In the year 1984, the Petitioner's name was included in the panel of Deputy Tahsildar and he was promoted and acted as Deputy

Tahsildar till 13.02.1998. His name was included in the panel of Tahsildar for the year 1997. From 13.02.1998, he acted as Tahsildar.

2. While so, the first Respondent issued a show-cause notice dated 20.03.2000, directing the Petitioner to show-cause as to why his name should

not be deleted from the list of Tahsildars for the year 1997. The show-cause notice was based on the order dated 18.10.1996, imposing the

punishment of stoppage of increment for a period of two years without cumulative effect on the Petitioner. The show-cause notice was also based

on the Letter No. 248, Personnel and Administrative Reforms Department, dated

20.10.1997, stating that whenever there is currency of punishment on the crucial date, the name should be passed over at the time of first consideration irrespective of the time of occurrence of irregularities. Since there was currency of punishment as on the crucial date of 01.07.1997 for the drawal of the list of Tahsildars for the year 1997, the name of the Petitioner was erroneously included in the list of Tahsildars and he was erroneously promoted as Tahsildar.

3. The Petitioner submitted explanation dated 09.05.2000. The first Respondent passed the impugned order dated 21.06.2000, removing the Petitioner's name from the panel of Deputy Tahsildars fit for promotion to the post of Tahsildars for the year 1997. The impugned order was based on the Letter No. 248, Personnel and Administrative Reforms Department, dated 20.10.1997. Based on the impugned order, the consequential order dated 06.07.2000 was passed by the second Respondent, reverting the Petitioner from the post of Tahsildar to Deputy Tahsildar.

4. The Petitioner has filed the Original Application in O.A. No. 5018 of 2000 (W.P. No. 43979 of 2006) to quash the aforesaid order dated 21.06.2000 of the first Respondent and the order dated 06.07.2000 of the second Respondent and for a consequential direction to the second Respondent to reinstate the Petitioner as Tahsildar with all benefits.

5. The Respondents filed reply affidavit refuting the allegations made by the Petitioner. The Respondents sought to justify the impugned order on the ground that since there was currency of punishment as on the crucial date, the Petitioner was not entitled to be included in the panel of Tahsildars for the year 1997, as per Letter No. 248, Personnel and Administrative Reforms Department, dated 20.10.1997.

6. Heard Mr. R. Krishnan, learned Counsel for the Petitioner and Mrs. Lita Srinivasan, learned Government Advocate for the Respondents.

7. The learned Counsel for the Petitioner submits that the crucial date for the drawal of the list of Tahsildars for the year 1997 was 01.07.1997. According to him that the Petitioner was issued the order dated 18.10.1996, imposing the punishment of stoppage of increment for two years without cumulative effect under Rule 17(a) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. The Disciplinary Proceeding related

to the occurrence took place between 23.02.1987 to 23.03.1987. The Disciplinary Proceeding was relating to the allegation that the Petitioner took closed files for audit purpose and the same were not returned to the Record Section. But, according to the Petitioner, he was transferred in the meantime and that therefore he did not return the files. There was no other allegations made against him. It was not the case of the Respondents that the Petitioner failed to return the closed files to the records room with some bad intentions. The learned Counsel for the Petitioner further submits that the crucial date being 01.07.1997 for the drawal of list of Tahsildars for the year 1997, the first Respondent was not correct in relying on Letter No. 248, Personnel and Administrative Reforms Department, dated 20.10.1997, as it did not exist then. According to him, the first Respondent should have relied only G.O.Ms. No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993. If G.O.Ms. No. 368 alone is relied on, the first Respondent could not have come to the conclusion that the Petitioner was disqualified to be included in the panel of Tahsildars for the year 1997. The learned Counsel furthermore submits that pursuant to the interim order granted by the Tamil Nadu Administrative Tribunal, the Petitioner continued in the same post of Tahsildar and he also retired from service in 2002. On these reasons, the learned Counsel for the Petitioner prays to allow the writ petition as prayed for.

8. On the other hand, the learned Government Advocate friarly submits that the impugned order was not correct in relying the Letter No. 248, Personnel and Administrative Reforms Department, dated 20.10.1997. According to the learned Government Advocate, the instructions contained in G.O.Ms. No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993 as well as Letter No. 27336/S/96-1, dated 28.06.1996 should alone to be considered to decide as to whether the Petitioner should be included in the panel of Tahsildars for the year 1997. However, the learned Government Advocate seeks to justify the impugned order based on G.O.Ms. No. 368 and the aforesaid letter dated 28.06.1996.

9. I have considered the submissions made on either side and perused the materials available on record.

10. The Petitioner was initially included in the panel of Tahsildars for the year

1997. It is not in dispute that the crucial date for the drawal of the list of Tahsildars for the year 1997 was 01.07.1997. It is also not in dispute that the Petitioner faced Disciplinary Proceeding under Rule 17(a) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, alleging that he was negligent in duties and not handed over the closed files that were received from the Records Section. The occurrence took place during February-March 1987. This resulted in the order dated 18.10.1996, imposing the punishment of stoppage of increment for a period of two years without cumulative effect. Para (vi) of G.O.Ms. No. 368 deals with effect of punishment on promotion. Paras (vi)(1) and (vi) (2)(c) are relevant for this case and the same is extracted here-under:

(vi) Effect of punishment on promotion/recruitment by transfer

(1) The effect of a punishment on promotion/recruitment by transfer will depend upon:-

(a) The nature of the higher post, i.e., whether it is a ""Selection Category"" or an ordinary post;

(b) the period during which the irregularity took place; and

(c) the nature of the irregularities (rather than quantum of punishment). For example, an Assistant tears off the current file. On the charges framed

against him for the above lapse, one officer may merely award him a ""censure"" taking a lenient view while another officer may impose the

punishment of ""stoppage of increment with or without cumulative effect"" holding the lapse as ""serious"". Yet another officer may even ""dismiss"" him

from service holding the lapse as ""grave"". Thus, different officers may taken different views and impose different punishments for one and the same

lapse. Therefore, the quantum of punishment is not the objective criterion to access the gravity of the charge.

(2)(c) For ordinary promotions, the fitness of the person with reference to all relevant factors has to be considered. The unfit persons have to be

eliminated. As far as punishments are concerned, (except where a specific punishment of withholding of promotion for a specified period is

awarded), it should be examined whether the proved irregularities took place within the specified period of service taken up for analysis and

whether the irregularities were such as to make the case is considered for inclusion in the panel for appointment to the higher post by promotion/by

recruitment by transfer.

11. The learned Government Advocate has placed before this Court a Letter No. 27336/S/96-1, dated 28.06.1996 of the Personnel and

Administrative Reforms (S) Department. The said letter prescribes norms based on G.O.Ms. No. 368. Clause 3 of the norms prescribed in the

said G.O. is relevant for this case and the same is extracted here-under:

(3) If any punishment ordered is within a period of 5 years as on the crucial date, but the date of occurrence falls beyond the period of five years

then it is not held against the officer.

12. As per para vi of G.O.Ms. No. 368, one has to see whether the nature of higher posts is a selection post or an ordinary post. Here the post of

Tahsildars is not a selection post. It is filled by way of ordinary promotion. The other factor that has to be looked into is the period during which

irregularity took place. Hence, the irregularity took place long back in 1987. Further, the nature of irregularities also is of minor in nature and

therefore Rule 17(a) only was invoked. The allegation was that the Petitioner was negligent in not returning the closed files to the Record Section.

According to the Petitioner, he was transferred in the meantime and that therefore he was not able to return those files taken by him for some audit

work. These factors have to be taken note of by the first Respondent to decide as to whether, the Petitioner has to be included in the panel of

Tahsildars for the year 1997. But, these facts were not taken note of by the first Respondent. On the other hand, the first Respondent took note of

Letter No. 248, Personnel and Administrative Reforms Department, dated 20.10.1997 and more particularly following passage from the aforesaid

letter:

Whenever an officer is undergoing a punishment and there is currency of punishment on the crucial date, the name should be passed over at the

time of first consideration irrespective of the time of occurrence of irregularity.

13. Paras 14, 15 and 16 of the impugned order extracted here-under, make it very clear that the first Respondent deleted the name of the

Petitioner from the list of Tahsildars for the year 1997 solely based on the aforesaid Letter No. Ms.248, Personnel and Administrative Reforms

Department, dated 20.10.1997.

14. The instructions of the Government issued in Government letter 248, P&AR Department dated 20.10.1997 are reproduced below:

Whenever an officer is undergoing a punishment and there is currency of punishment on the crucial date, the name should be passed over at the time of first consideration irrespective of the time of occurrence of irregularity.

15. Though the date of occurrence of irregularity which took place in the year 1987 in the case of Thiru. N. Gopalakrishnan, the punishment of stoppage of increment for a period of 2 years without cumulative effect ordered on 17.10.1996 was in currency on the crucial date for the drawal of list of Tahsildar for the year 1997 (i.e., 01.07.1997) and also within the check period of five years.

16. Therefore, the action of the Collector for having included the name of Thiru. N. Gopalakrishnan, Deputy Tahsildar in the list of Tahsildar for 1997 is not correct and also against the instructions issued in Government Lr. No. 248, P&AR Department, dated 20.10.1997 and it has to be cancelled.

14. In these circumstances, I am of the view, the impugned order is liable to be interfered with. Accordingly, the impugned orders are quashed.

The matter is remanded back to the first Respondent to consider the matter afresh and to decide as to whether the Petitioner name has to be

deleted based on G.O.Ms. No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993 and the norms prescribed by the

Letter No. 27336/S/96-1, dated 28.06.1996. The first Respondent is also directed to take into account the fact that the Petitioner served as

Tahsildar pursuant to the interim order and also until his date of retirement. Therefore, the whole issue is relating to his terminal benefits. The first

Respondent is directed to pass an appropriate order, taking into account the aforesaid observations, within a period of eight weeks from the date

of receipt of a copy of this order.

15. The writ petition is allowed on the above terms. No costs.