

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2016

Coram

The Hon'ble Dr. Justice S.VIMALA

W.P.No.17135 of 2016

E.Mohankumar

.. Petitioner

Vs

1.The State of Tamil Nadu rep. by
Principal Secretary to Government,
Commercial Taxes and Registration
Department, Secretariat,
Fort St. George, Chennai - 9.

2.The Principal Secretary/Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 5.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the second respondent to immediately dispose of the petitioner's representation dated 15.04.2016 in the light of the judgment of this Court dated 27.11.2014 in the case of S.Abdul Salam Sahib Vs. K.Parameshwari (W.A.No.2583/2012 etc.,) and the provisions of G.O.Ms.No.22 (Personnel and Administrative Reforms Department) dated 24.02.2014.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice on behalf of the respondents. With the consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Seeking a direction to the second respondent to consider the representation of the petitioner dated 15.04.2016, the present writ petition is filed.

3.The brief facts: the petitioner joined service as Junior Assistant in the year 1985 and subsequently, promoted as Assistant Commissioner. The petitioner's name was included in the panel for promotion to the post of Deputy Commissioner. However, the said panel could not be operated due to the interim stay obtained by certain individuals by filing writ petitions. Subsequently, the petitioner was informed that he was not considered for promotion because of the pendency of the charge memo issued against him on 11.03.2016. Therefore, the petitioner made a representation dated 15.04.2016 and as no response was forthcoming, the petitioner is before this Court.

4.Learned counsel for the petitioner would contend that the charge memo was not in existence either on the crucial date for promotion panel of the year 2015 i.e., on 01.1.2015 nor on the date of drawing of the panel during the month March 2015, and therefore there is no impediment for the petitioner being considered for promotion. The judgment of the Division Bench of this Court in W.A.No.2583 of 2012 etc., batch (S.Abdul Salam Sahib Vs. K.Parameshwari) is relied upon. The relevant observation reads as under :

"It cannot be disputed and it is also admitted by the parties that as on the crucial date, namely 01.03.1987, no charge memo had been issued and only thereafter, but before the publication of the regular panel dated 18.10.1987, he was issued with a charge memo dated 18.08.1987. As rightly contended by the learned counsel for the appellant in W.A.No.2583/2012, since no charge was pending on the crucial date, his name ought not to have been omitted and he should have been included in the panel for the year 1987."

5.Heard the learned Additional Government Pleader on the above submission made by the learned counsel for the petitioner and perused the materials available on record.

6.The learned Additional Government Pleader also relies upon para 11 of the judgment (cited supra), wherein it has been held as under:

"11..... Even though a person's name is included in the panel for promotion, if a punishment is imposed before the actual date of promotion, there can be no infirmity in denying promotion, because during the currency of the punishment and during the check period, one cannot claim to be promoted even though his name appears in the panel for promotion."

7.The representation needs to be considered in the light of the judgment referred supra. The prayer sought for may be completely right or partly right or may be incorrect also. However, the representation cannot be kept pending without an order being passed.

8. In view of the above, the second respondent is directed to consider the representation of the petitioner dated 15.04.2016, in the light of the observations made by the Division Bench of this Court (cited supra) and pass necessary orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mmi/ds

To

1.The Principal Secretary to Government,
Commercial Taxes and Registration
Department, Secretariat,
Fort St. George, Chennai - 9.

2.The Principal Secretary/Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 5.

1 cc to Mr.Adithya Reddy, Advocate, sr.28096

1 cc to Special Government Pleader, sr.28131

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gj ii co
kra 12.05.2016

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