IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.20597 of 2016

A.Kalaiselvan ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By the Principal 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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the respondent in Ref.No.CD1/37815/2013, dated 10.05.2016 and quash the same and direct the second respondent to grant the petitioner his due promotion.

For petitioner : Mr.Adithya Reddy
For Respondents : Mr.S.Kanmani Annamalai, AGP (T)

ORDER

With the consent of the counsel appearing on either side, the main writ petition itself is taken up for final disposal.

2. By way of filing this writ petition, the petitioner seeks to quash the impugned proceedings dated 10.05.2016 of the respondent, in and by which, the request of the petitioner in seeking promotion was rejected citing pendency of a charge memo. He further sought a direction to the respondent to grant his due promotion.

3. The grievance of the petitioner is that though his name was included in the panel prepared for the year 2015 to the post of Deputy Commissioner, he was not given promotion due to

the pendency of a charge memo dated 29.04.2015, which is much after the crucial date i.e. 01.01.2015 for the promotion. Therefore, the main contention of the petitioner is that the charge memo issued on 29.04.2015 to the petitioner cannot operate as a bar for considering the petitioner for promotion to the post of Deputy Commissioner, in the light of various judgments of the Hon'ble Apex Court as well as this Court.

4. In reply, learned Additional Government Pleader (Tax) appearing for the respondents submitted that it is not in dispute that the charge memo has been issued only after the crucial date for promotion, but, since the charges levelled against him are of very serious in nature, he cannot claim promotion as a matter of right.

5. Heard both sides.

6. It is an admitted fact that the name of the petitioner was included in the panel prepared for promotion to the post of Deputy Commissioner for the year 2014-15. It is also not in dispute that the crucial date for promotion to the said post was on 01.01.2015. The petitioner was issued with a charge memo on 29.04.2015. These facts are not disputed by the learned Additional Government Pleader appearing for the respondents. In such circumstances, the only question that falls for consideration is, whether the subsequent charge memo issued after the preparation of panel can be a bar in seeking promotion? In this regard, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of Union of India and others v. Anil Kumar Sarkar ((2013) 4 SCC 161), wherein it is held thus:

> "17. Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows:-
>
> "16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed

cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant- authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge- sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.

In para 17, this Court further held:

17. … The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee…."

After finding so, in the light of the fact that no charge sheet was served on the respondent-employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that

> "the Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date of his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits….. We see no reason to interfere with this order. The appeal, therefore, stands dismissed.""

7. In Bank of India and others v. V.Degala Suryanarayana ((1999) 5 SCC 762), the Hon'ble Apex Court, while dealing with the same issue, held thus:

> "14. However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion , increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India etc. etc. v. K.V. Jankiraman etc.etc, AIR (1991) SC 2010, 2113. As on 1.1.1986 the only proceedings pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3.12.1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, mere were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the

respondent was found entitled as on 1.11986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1.1.1986."

8. A mere reading of the above said judgment clearly depicts that when there is no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. Therefore, in the case on hand, as stated above, the subsequent charge memo issued against the petitioner after the crucial date cannot stand as a bar for promotion to him. Thus, the impugned proceedings of the respondent in denying to consider his case for promotion citing pendency of a charge memo is unsustainable in law. However, it is also made clear that the petitioner will have to cooperate with the authorities to complete the disciplinary proceedings pending against him in accordance with law.

9. In fine, for the reasons stated above, this Court, by setting aside the impugned proceedings, remits the matter back to the authorities, who, in turn, are directed to consider the grievance of the petitioner in the light the above said judgments of the Hon'ble Apex Court immediately, as the petitioner is going to retire on 30.06.2016. It is made clear that the promotion, yet to be given to the petitioner with effect from the said crucial date, is subject to the result of the disciplinary proceedings. With these directions, the writ petition stands allowed. No Costs. WMP.No.17700 of 2016 is closed.

rkm

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

1.The Principal 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 M/s.J.Adithya Reddy, Advocate SR 36046
+ 1 cc to Spl. Govt.Pleader Taxes SR 36200

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