

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-06-2016

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Writ Petition No.21095 of 2016
and W.M.P.No.18037 of 2016

S.Rajarethinam .. Petitioner
Assistant Commissioner (CT)
Zone IX Audit
Greens Road
Chennai-06.

Vs.

1.The State of Tamil Nadu
rep. by 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

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents in Ref.No.CD2/25881/2015, dated 10.05.2016 and quash the same and direct the 2nd respondent to grant the petitioner promotion and pass such further orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.Perumal
Senior Counsel
for M/s.Adithya Reddy

For Respondents : Mr.Kanmani Annamalai
Standing Counsel

O R D E R

By consent, the Writ Petition is taken up and disposed of at the admission stage itself.

2. This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents in Ref.No.CD2/25881/ 2015, dated 10.05.2016 and quash the same and to direct the 2nd respondent to grant promotion to the petitioner.

3. The petitioner entered into service as Junior Assistant, in the year 1987. From 2010, he was working as Assistant Commissioner. The petitioner's name was included in the panel for promotion to the post of Deputy Commissioner for the year 2014-15. Thereafter, he was issued with a charge memo, on 18.02.2016 i.e., much after the crucial date for the promotion for the year 2015 and it was much after the inclusion of his name in the approval list/promotion panel. According to the petitioner, such a charge memo can never be a bar to the petitioner's promotion, since, there was no charge on the date when his name was included in the panel for promotion. In this regard, he has given representations to the 2nd respondent, on 16.03.2016 and 03.04.2016. The 2nd respondent, by proceedings dated 10.05.2016, conveyed the reasons for rejection of the petitioner's promotion at present. Aggrieved against the same, seeking the relief stated supra, the present Writ Petition has been filed.

4. Mr.Perumal, the learned senior counsel for the petitioner, would submit that the charge memo issued, subsequent to the inclusion of his name in the approved list/promotion panel, cannot be a bar for giving him promotion. To substantiate his contention, he would rely on the judgments of the Hon'ble Apex Court reported in (1999) 5 SCC 762, Bank of India and another vs. Degala Suryanarayana and (2000) 7 Supreme Court Cases 210, Delhi Jal Board vs. Mahinder Singh. He would further point out to the clarification issued by the Government in G.O.Ms.No.22 (Personnel and Administrative Reform(s) Department), dated 24.02.2014, which reads as under:-

"(1-F) Pendency of charges framed under Rule 17
(b) of the Tamil Nadu Civil Services (Discipline and
Appeal) Rules against a member of service shall be a
bar for inclusion of his name in the approved list."

Placing reliance on the said Government Order, the learned senior counsel would submit that, since the charge memo was issued after the crucial date for promotion, the petitioner

cannot be denied promotion. He would further submit that the petitioner is restricting his relief and he would be satisfied, if a direction is given to the 1st respondent to consider his representation, dated 29.04.2016, and to pass appropriate orders.

5. Mr.Kanmani Annamalai, the learned standing counsel for the respondents, on instructions, would submit that in the light of the clarification issued in G.O.Ms.No.22, dated 24.02.2014, the petitioner's representation, dated 29.04.2016, may be directed to be considered by the 1st respondent.

6. At this juncture, it is relevant to refer to the judgment of the Hon'ble Apex Court reported in (1999) 5 Supreme Court Cases 762, Bank of India and another vs. Degala Suryanarayana, relied upon by the learned senior counsel for the petitioner, wherein, in paragraph No.14, it was held as under:-

"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 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. As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in 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, there 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 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given to which the respondent was found entitled as on 1-1-1986. 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."

(emphasis supplied)

7. It is also relevant to refer to the judgment of the Hon'ble Apex Court reported in (2000) 7 Supreme Court Cases 210, Delhi Jal Board vs. Mahinder Singh, relied upon by the learned senior counsel for the petitioner, wherein, in paragraph No.5, it was held as under:-

" 5.The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection."

8. Taking into consideration the grievance expressed by the learned senior counsel for the petitioner that the petitioner's promotion is in half-way and that if somebody else is promoted, he will be put to serious hardship and loss, and also the fact that the petitioner has restricted the relief sought for in the Writ Petition, this Court, without going into the merits of the claim made by the petitioner, directs the 1st respondent to consider the representation of the petitioner, dated 29.04.2016, and pass appropriate orders, on merits and in accordance with law, in the light of the judgments of the Hon'ble Apex Court cited supra and also the clarification issued by the Government in G.O.Ms.No.22 (Personnel and Administrative Reform(s) Department), dated 24.02.2014, as expeditiously as possible, preferably within a period of one month from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion with regard to the merits of the claim made by the petitioner.

9. The Writ Petition is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Paa

To

1.The Principal to Government
State of Tamil Nadu
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.34836

1 cc to Special Government Pleader, sr.34857

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kra 19.07.2016

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