



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.12748 of 2014

and

M.P (MD) Nos.1 and 2 of 2014 and 1 of 2015

M.Selvakumar

: Petitioner

Vs.

1.The Director/Commissioner,
Rural Development & Panchayat Raj Department,
Panagal Maligai, Saidapet, Chennai - 15.

2.The District Collector,
Collectorate,
Villupuram District.

3.The District Collector,
(Development Section),
Collectorate,
Sivagangai District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Charge Memo in Na.Ka.No.Pa.A5/9536/2013, dated 26.06.2014 on the file of the second respondent and quash the same as illegal and consequently for a direction, directing the respondents 1 to 3 to consider the petitioner for promotion to the post of Assistant Engineer in the light of the Promotion Seniority Panel for the year 2012-13 drawn by the first respondent.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.A.Muthukaruppan,
Additional Government Pleader.

O R D E R

This Writ of Certiorarified Mandamus was filed to quash the Charge Memo in Na.Ka.No.Pa.A5/9536/2013, dated 26.06.2014 on the file of the second respondent as illegal and consequently to direct the respondents 1 to 3 to consider the petitioner for promotion to the post of Assistant Engineer in the light of the Promotion Seniority Panel for the year 2012-13 drawn by the first respondent.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents. By consent, the writ petition itself is taken up for final disposal.



3. The brief facts leading to the filing of this writ petition are as follows:

The petitioner served as Union Overseer at Kallal Panchayat Union in Sivagangai District. He was selected through Employment Exchange to work under National Rural Employment Guarantee Scheme and he had joined in the Rural Development Agency, Collectorate, Sivagangai District Office on 09.06.2008. His service was regularized on 10.12.2009 by the Project Director, Rural Development Agency (DRDA), Sivagangai District. Now, he is working in the Block Development Office, Sivagangai Union Office. During his service, he completed B.E. Degree, after getting permission from the Rural Development Agency (DRDA), Sivagangai District.

3.1. In these circumstances, the first respondent vide order dated 21.05.2010, transferred him from Sivagangai District to Villupuram District. Aggrieved over the same, the petitioner filed W.P(MD)No.7186 of 2010, wherein, on 03.06.2010, this Court granted an order of interim stay of operation of the transfer order. Despite the said order of interim stay, he has not been allowed to join duty at Kallal, Sivagangai District and therefore he filed a Contempt Petition No.425 of 2011 and thereafter he was allowed to join in the post of Overseer at Thirupuvanam Panchayat Union, Sivagangai District, by the proceedings dated 18.08.2011.

3.2. W.P(MD)No.7186 of 2010 was disposed of directing the respondents therein to pay the salaries due to the petitioner during the period of operation of the interim stay granted by this Court i.e., from 21.05.2010 to 23.08.2011 and the said period shall be regularized with all attendant and monetary benefits and the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of the order. In view of the said order, the period from 04.06.2010 to 23.08.2011 was regularized by deeming it as waiting period, by the third respondent, vide proceedings dated 18.05.2013.

3.3 In these circumstances, the second respondent issued the impugned charge memo dated 26.06.2014, stating that the petitioner did not report for duty for the period from 29.07.2010 to 10.06.2011.

3.4. The petitioner is presently kept in S.No.105 in the seniority panel list for promotion to the post of Assistant Engineer for the year 2012-2013. Due to the issuance of the impugned charge memo, his right to be considered for promotion, is curtailed. Therefore, this writ petition has been filed.



4. The first respondent has filed a counter affidavit, wherein it is stated that the petitioner willfully did not attend the duty for the period from 29.07.2010 to 10.06.2011, which is claimed to be unauthorized absence.

5. The period from which the petitioner is stated to be on medical leave i.e., for the period from 25.08.2010 to 10.09.2010 for 17 days and the period mentioned in the impugned charge memo i.e., from 29.07.2010 to 10.06.2011 are covered by the order of interim stay granted by this Court in W.P(MD)No.7186 of 2010.

5.1. The fact remains that the order of stay passed by this Court was not implemented and only after the petitioner filing contempt petition, the petitioner was allowed to join duty. Therefore, there is no question of the petitioner willfully absenting himself from duty. No order copy has been produced by the respondents showing that medical leave has been rejected.

5.2. Therefore, the impugned charge memo dated 26.06.2014, issued by the second respondent is liable to be quashed and accordingly the same is quashed and the respondents 1 to 3 are directed to consider the petitioner for promotion to the post of Assistant Engineer in the light of the Promotion Seniority Panel for the year 2012-13, drawn by the first respondent.

6. The writ petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Director/Commissioner,
Rural Development & Panchayat Raj Department,
Panagal Maligai, Saidapet, Chennai - 15.
 2. The District Collector,
Collectorate,
Villupuram District.
 3. The District Collector,
(Development Section),
Collectorate,
Sivagangai District.
- +1cc to Mr.T.Lajapathi Roy, Advocate in SR No.68775
+1cc to the Spl.Govt.Pleader in SR No.68615

ORDER MADE IN
W.P (MD) No.12748 of 2014
and
M.P (MD) Nos.1 and 2 of 2014 and 1 of 2015
14.11.2016