



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2017

CORAM:

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.794 of 2016
and
C.M.P.(MD).No.4811 of 2016
IN
W.P.(MD).No.64 of 2012

The Director of Medical and Rural
Health Services,
Chennai - 6.

... Appellant / Respondent

Vs.

R.Premkumar,
S/o.V.Ramasamy,
Assistant,
Office of the Joint Director of Health Services,
Madurai at Usilampatti,
Madurai District.

... Respondent / Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, against the order dated 27.02.2013 made in W.P.(MD).No.64 of 2012, on the file of this Court.

Prayer in WP(MD). 64/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of mandamus or any other appropriate writ order or direction in the nature of writ directing the respondent to consider the representation of the petitioner dated 03/01/2012 and to include the petitioners name in the panel published by the respondent vide his proceedings Ref.No.77800/E2/3/2010 dated 02/01/2012 with proper seniority and to grant promotion as office superintendent

For Appellant	: Mr.T.S.Mohamed Mohideen Additional Government Pleader
For respondent	: Mr.AL.Kannan

**JUDGMENT**

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

This Writ Appeal is directed against the order dated 27.02.2013 made in W.P.(MD).No.64 of 2012 filed by the respondent herein.

2. The respondent herein was working as Assistant in the office of the Joint Director of Health Services, Madurai at Usilampatti, from 2008 onwards. The next promotional post for the writ petitioner was the post of Superintendent. The crucial date for promotion to the said post was 15.03.2011 and the subject matter pertained to preparation of panel for the year 2010-2011. The panel was finalised in January 2012. The writ petitioner's name did not find a place in the said panel. The writ petitioner contended that on the crucial date, i.e., 15.03.2011, he was not issued with any charge memo. Accepting the case of the writ petitioner, the learned single Judge allowed the writ petition. Aggrieved by the same, the department has filed this intra-Court appeal.

3. According to the learned Additional Government Pleader appearing for the appellant, it is beyond the dispute that even though on the crucial date i.e. 15.03.2011, there is no charge memo issued to the writ petitioner, it came to be issued later on 09.05.2011. Thus, when the panel was finalised on January 2012, the said charge memo was very much pending. Pendency of the charge memo is obviously a bar to include the name of the petitioner in the promotion panel. Therefore, the name of the writ petitioner was rightly not included in the said panel. This Court is therefore of the view, that the learned Judge was not right in ignoring this aspect and allowing the writ petition. Hence, this Court set aside the order dated 27.02.2013 made in W.P. (MD).No.64 of 2012.

4. At this stage, the learned counsel for the respondent would contend that the charges framed against the writ petitioner were subsequently dropped. The cause of action arising out of such development would have to be worked out in separate proceedings. The issue before this Court is as to whether the authority was justified in not including the name of the petitioner in the promotional panel, which was finalized in January, 2012.

5. We are of the view that the name of the writ petitioner could not have been included in the said panel for promotion, as the charge memo was pending against him at the time of release of the panel.



6. The Writ Appeal is, therefore, allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Assistant Registrar (Records)

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Sub Assistant Registrar

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MK/MR KKR/SAR-1/12.10.2017/3P/1C

**JUDGMENT MADE IN
W.A (MD) No.794 of 2016
23.08.2017**