



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.13048 of 2017

and

WMP (MD) No.10111 of 2017

D.Saminathan

... Petitioner

vs.

The Director of Public Health and
Preventive Medicine,
No.256, Annasalai,
Theynampettai,
Chennai-600 006.

... Respondent

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pursuant to the impugned order passed by the Respondent in impugned order issued by the Respondent in R.No.52991/E4/S1/2017 dated 22.06.2017 and quash the same and direct the Respondent to include the petitioner's name in the regular panel for the promotion to the post of Superintendent for the year 2017-2018.

For Petitioner

: Mr.K.Mahendran

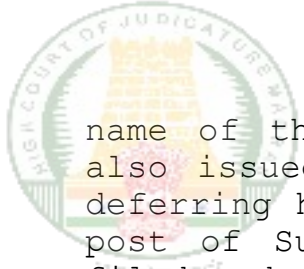
For Respondent

: Mr.D.Muruganantham

Additional Government Pleader

ORDER

The petitioner was appointed as Junior Assistant under the Tamil Nadu Ministerial Service in the respondent's department on 19.01.1998 and after 9 years, he was promoted as Assistant on 17.06.2009. When the respondent conducted counselling for transfer of Assistants of the Department, the petitioner had chosen the office of the Designated Officer, Madurai and joined there on 11.04.2012. Thereafter, he applied for mutual transfer and he was also transferred to Food Analysis Laboratory, Madurai, on 04.02.2015. In the meanwhile, the respondent issued a seniority list of Assistants in R.No.39320/E4/S2/2016 dated 15.05.2016 placing the petitioner's name in Serial No.92 above that of J.Manimozhi (serial No.93) and further, the respondent also prepared the names of Assistants for the regular panel for promotion to the post of Superintendent in R.No.33082/E4/2016/S1 dated 10.08.2016, but the



name of the petitioner was curiously left out and the respondent also issued a communication dated 10.08.2016, giving a reason for deferring his name from inclusion in the panel for promotion to the post of Superintendent, citing a reason that a criminal case is filed and the same is pending against him. Immediately thereafter, the petitioner made a representation on 11.08.2016, to the respondent requesting him to include his name in the light of G.O (Ms)No.105, Personnel and Administrative Reforms Department (S), dated 09.10.2015 communicated by the respondent in R.No.105371/E4/S5/2015 dated 19.02.2016, wherein, it is clearly stated that it is not a bar to include the names of persons for promotion if charge sheet has not been filed in the criminal case. The said representation given by the petitioner to consider his case in the light of G.O(Ms)No.105, Personnel and Administrative Reforms Department (S), dated 09.10.2015, has not been considered, therefore, he has been advised to come to this Court questioning the correctness of the impugned communication in R.No.52991/E4/S1/2017 dated 22.06.2017.

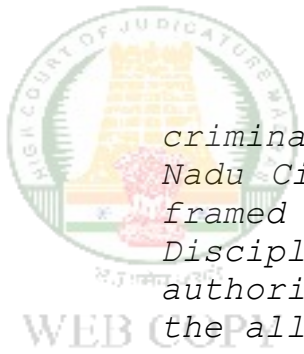
2.The learned counsel for the petitioner taking support from Clause II(5) to Part-A, Schedule-XI[see Section 7(1)] of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 would submit that when the relevant provision under the Act clearly shows that mere filing of cases in Courts by the appropriate Investigating Authority against a member of service shall not be a bar for inclusion of his name in the approved list, the respondent cannot exclude the name of the petitioner from the promotional panel for the post of Superintendent, more particularly, when there is no any specific charge framed or charge sheet has been filed in criminal case on the crucial date namely, 31.05.2017, a direction should be issued to include the name of the petitioner.

3.When the writ petition came up for admission, the learned Additional Government Pleader taking notice for the respondents sought time to get instructions.

4.Today, when the matter was taken up for hearing, he submitted that although investigation was over, till date, no charge sheet has been filed in the Criminal Court. He has further submitted that since the FIR was filed on 19.08.2014, presuming that after completion of the investigation, charge sheet would have been filed, the respondent passed the impugned order refusing to include the name of the petitioner.

5.But, till date, the charge sheet has not been filed, therefore, the respondent has to act on the basis of G.O(Ms)No.105, Personnel and Administrative Reforms Department (S) dated 09.10.2015 communicated by the respondent in R.No.105271/E4/S5/2015 dated 19.02.2016 which is extracted hereunder:-

''Where it is necessary to appoint an officer against whom an enquiry into allegations of corruption or misconduct is pending but no charge sheet has been filed in the



criminal case or where no charges under rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules have been framed or no proceedings before the Tribunal for Disciplinary Proceedings is pending, the appointing authority may appoint him temporarily pending enquiry into the allegations against him.'

6.This apart, Clause II(5) to Part-A, Schedule-XI[see Section 7 (1)] of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is extracted hereunder:-

'Mere filing of cases in Courts by the appropriate Investigating Authority against a member of service shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list.'

7.A mere reading of Clause II(5) to Part-A, Schedule-XI[see Section 7(1)] of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, clearly shows that if specific charges are framed or charge sheet has been filed in the criminal case on the crucial date, the name of the incumbent shall not be considered for inclusion in the approved list. However, mere filing of cases in Courts by the appropriate Investigating Authority against a member of service shall not be a bar for inclusion of the name in the approved list.

8.Therefore, in view of Clause II(5) to Part-A, Schedule-XI[see Section 7(1)] of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which says that mere filing of cases in Courts by the appropriate investigating authority against a member of service shall not be a bar for inclusion of his name in the approved list, the impugned order passed by the respondent in R.No.52991/E4/S1/2017, dated 22.06.2017, is set aside and the respondent is directed to include the name of the petitioner in the list drawn on 31.05.2017 for promotion to the post of Superintendent for the year 2017-18 and proceed further.

With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



To

The Director of Public Health and
Preventive Medicine,
No.256, Annasalai,
Theynampettai,
Chennai-600 006.

+ 1 CC TO Mr.K.MAHENDRAN ADVOCATE IN SR No. 67664
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 68323

NBI

TE/MR-KKR/SAR-I : 22/08/2017 : 4P/4C

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WMP (MD) No.10111 of 2017
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