BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.02.2017
CORAM:
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.3305 of 2017
and WMP (MD) No.2649 of 2017

T.Suresh Jeyaraj ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by it's Secretary to Government,
Commercial Tax and Registration Department,
Chennai - 9.
2.The Additional Chief Secretary/
Commissioner of Commercial Tax,
Chennai - 9.
3.The Joint Commissioner,
O/o. the Joint Commissioner (CT),
Tirunelveli Division,
Tirunelveli District. ... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st and 2nd respondent to consider the petitioner for promotion to the post of Assistant Commissioner (CT) as on 01.01.2016 without reference to the charge memo issued by the 3rd respondent subsequently after the crucial date in A5/6597/2016 dated 07.12.2016 within the period that may be stipulated by this Hon'ble Court.

For Petitioner :Mr.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates

For Respondents :Mr.R.Raja Karthikeyan Additional Government Pleader

O R D E R

Mr.R.Raja Karthikeyan, the learned Additional Government Pleader takes notice for respondents.

2.The prayer in the writ petition is for a Writ of Mandamus, directing the respondents 1 and 2 to consider the petitioner for promotion to the post of Assistant Commissioner (CT) as on 01.01.2016 without reference to the charge memo issued by the 3rd respondent, subsequently after the crucial date, in A5/6597/2016 dated 07.12.2016 within the period that may be stipulated by this Court.

3.By consent of both sides this writ petition itself is taken up for final disposal.

4.The case of the petitioner is that the petitioner is working as Commercial Tax Officer. The next avenue of promotion of the petitioner is Assistant Commissioner of Commercial Taxes. A panel with crucial date fixed for the promotion of Assistant Commissioner were prepared. During the said period based on the panel dated 01.01.2016, there was no charges pending against the petitioner and no enquiry was pending and there is also no currency of punishment pending against the petitioner. Now, the third respondent has issued a charge memo dated 07.12.20016, and the said charges are pending against him only from 07.12.2016.

5.Mr.Ajmal Khan, the learned Senior Counsel appearing for the petitioner by relying upon the judgment of this Court reported in 2016 Writ L.R. 679 in the matter of A.Kalaiselvan v. The State of Tamil Nadu & another has submitted that the issuance of subsequent charges to a Government servant cannot be a bar for inclusion in the panel, which has been already based on the earlier crucial date. In this regard the learned counsel for the petitioner would rely upon paragraphs 7 and 8 of the said judgment, which reads thus:

> "7.In Bank of India and others v. V.Degala Suryanarayan ((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.Janik,raman etc. etc., AIR (1991) SC 2010, 213. 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 03.12.1991. 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 1.1.1986. 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.”

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 had, 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.”

In view of the said judgment of this Court, following the judgment of the Hon'ble Apex Court reported (1999) 5 SCC 762 in the matter of Bank of India and others v. V. Degala suryanarayana, there can be no impediment for the respondents to consider the name of the petitioner for promotion as per panel prepared based on the crucial date, namely, 01.01.2016. If at all the petitioner has to face charges framed subsequently almost after one year it is open to the petitioner to face the same in the manner known to law and merely on the charges framed after the crucial date the petitioner's chance of getting included in the panel and further considering his candidature for promotion would not be denied. Therefore, the learned Senior Counsel for the petitioner would submit that a direction to that effect may be given to the respondents to consider his candidature for grant of promotion.

6.Mr.Raja Karthikeyan, the learned Additional Government Pleader would submit that it is not sure that the petitioner's name had been included in the panel based on the cut of date 01.01.2016. Even assuming that the petitioner's name has been included in the panel, it is valid for one year from the date of crucial date i.e., from 01.01.2016 till 31.12.2016 as the next panel has to be prepared subsequent to the crucial date i.e., 01.01.2017. Therefore, according to the learned Additional Government Pleader appearing for the respondents, assuming that the petitioner's name had to be included in the panel based on the crucial date of 01.01.2016, unless it had not been considered within one year the panel automatically vanished or extinguished and only in the next year panel the petitioner would be considered and for the next year panel certainly the charges framed against the petitioner would stand in the way as the said charges had been issued on 07.12.2016. Therefore, the learned Additional Government Pleader would submit that the petitioner would not be entitled to get included in the panel based on 01.01.2017 clearly on the reason that the charge memo was subsequently given on 07.12.2016 and on the crucial date there was charge memo pending against him.

7.This Court has considered the rival submissions made by both sides.

8.On reading the said judgment as cited supra, this Court is of the view that as already decided that when there was no currency of punishment on crucial date, the subsequent charge memo cannot be a bar for promotion. In view of the said legal proposition as has been propounded by the Hon'ble Apex Court reported in (1999) 5 SCC 762 and in the matter of A.Kalaiselvan v. The State of Tamil Nadu & another (2016 WLR 679), this Court is of the considered view that in the present case also when subsequently charge has been framed in the month of December, 2016, where as the crucial date for the panel for the year 2016 is 01.01.2016 and on that date, if the petitioner is otherwise eligible and qualified, there can be no impediment for considering his name for promotion. As has been apprehended by the learned Additional Government Pleader whether the name of the petitioner has been considered for inclusion in the panel 2016 fit for promotion of Assistant Commissioner post on the crucial date 01.01.2016 is not known and if at all the name of the petitioner has also been included in the panel for the year 2016, the same can be acted upon unmindful of framing charges against the petitioner in the month of December, 2016.

9.In the said facts and circumstances of the case and in view of the decisions cited supra, the following directions are issued in this writ petition:

(i) If the name of petitioner has already been included in the panel based on the crucial dated 01.01.2016, fit for promotion to the post of Assistant Commissioner (Commercial Tax), the said panel shall be acted upon, where the name of the petitioner found place, he can be considered for further promotion of Assistant Commissioner (Commercial Tax) unmindful of the subsequently framed charges against the petitioner in the month of December, 2016.

(ii) If the name of the petitioner is considered as directed and any promotion given to him that will be subject to the out come of the decision to be taken in the departmental proceedings to be conduced pursuant to the charges dated 07.12.2016.

8.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Commercial Tax and Registration Department,
State of Tamil Nadu,
Chennai - 9.

2.The Additional Chief Secretary/
Commissioner of Commercial Tax,
Chennai - 9.

3.The Joint Commissioner,
O/o. the Joint Commissioner (CT),
Tirunelveli Division,
Tirunelveli District.

+1cc to M/s Ajmal Associates,SR No.10839

W.P.(MD)No.3305 of 2017
and WMP (MD) No.2649 of 2017
24.02.2017

AAM/SV.MMS/SAR1/1.3.2017/5P.5C