

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.11.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Writ Petition Nos.14154 & 14165 of 2018

V.Tamilselvi .. Petitioner in WP No.14154/2018
M.Saravana Bava Kuhan .. Petitioner in WP No.14165/2018

- Vs -

1. The Principal Secretary to
Government of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai 600 009
2. The Director of Medical and Rural Health Services,
Chennai 600 006
3. The Director of Medical Education,
Kilpauk, Chennai 600 010
4. The Dean, Government Theni Medical
College, Theni
5. Mr. Subramania Pillai, Junior Administrative Officer,
Office of the Deputy Director of Medical and Rural
Health Services and Family Services,
Nagercoil, Kanyakumari .. Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the second respondent to promote the petitioners to the post of Administrative Officer in line with G.O.(3D) No.10 Health and Family Welfare (AA1) Department, dated 31.05.2018 issued by the first respondent, approving the temporary panel for the year 2017-18 immediately.

For Petitioner in both W.Ps.: Mr. R.Ramachandran
For Respondents in both W.Ps: Mrs. P.Kavitha, Govt. Advocate
1to 4

C O M M O N O R D E R

These writ petitions have been filed by the petitioners seeking directions to the second respondent to promote the petitioners to the post of Administrative Officer, in tune with G.O.(3D) No.10 Health and Family Welfare (AA1) Department, dated 31.05.2018 issued by the first respondent, approving the temporary panel for the year 2017-18 immediately.

Brief facts:-

2. The petitioners have been working as Junior Administrative Officers from 07.03.2016. In the meantime, a Government Order was issued on 31.05.2018 approving the temporary panel for the post of Administrative Officer. The petitioners' names were also included in the panel to the said Post. However, their juniors were promoted and allowed to hold the promoted post. Since the petitioners, being seniors in the panel, have not been promoted, as per the panel issued by the Government Order, these writ petitions have been filed seeking direction to the second respondent to promote the petitioners to the post of Administrative Officer.

3. Heard both sides.

4. The learned counsel appearing for the petitioners submitted that there was no charges pending against the petitioner neither on the cut off date of the panel nor on the date of the Government order, viz., 01.09.2017 and 31.05.2018. In support of the said contention, the learned counsel also relied upon the decision reported in T.Suresh Jeyaraj v. The State of Tamil Nadu and two others, in W.P.(MD) No.3305 of 2017, dated 24.02.2017.

5. The learned Government Advocate was heard on the submissions made by the learned counsel appearing for the petitioners.

6. The factual aspects are not under dispute. It is trite in law 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 cases on hand, the subsequent charge memo issued against the petitioners after the crucial date cannot stand as a bar for promotion to them. Thus, the impugned proceedings of the respondents in denying to consider the names of the petitioners for promotion, citing the pendency of a charge memo, is unsustainable in law.

7. Further, the Hon'ble Apex Court in the case of Bank of India and others v. V.Degala, reported in (1999) 5 SCC 762, has held that there can be no impediment for the respondents to consider the names of the petitioners for promotion as per panel prepared based on the crucial date. If at all the petitioners have to face the charges framed subsequently, it is open to the petitioners to face the same in the manner known to law and merely on the charges framed after the crucial date, the petitioners chance of getting included in the panel and further being considered for promotion would not be denied.

8. A perusal of the materials available on record would show that the petitioner in W.P.No.14152 of 2018, V.Tamilselvi, find a place in Sl.No.2 and the petitioner in W.P.No.14165 of 2018, ***M. Saravana bava kuhan**, find a place in Sl.No.14, in the panel prepared for promotion to the post of Administrative Officer.

9. In the above circumstances, these writ petitions are disposed of, directing the respondents to consider the names of the petitioners for promotion to the post of Administrative Officer, approving the temporary panel for the year 2017-18, irrespective of the subsequent pending charge memos against them (which are not relevant) and to pass appropriate orders. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS IX)
Dated: 07.12.2018

*** Corrected order
to be issued;
sd/- Sub Assistant Registrar
Dated: 10.12.2018**

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to
Government of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai 600 009
2. The Director of Medical and Rural Health Services,
Chennai 600 006

3. The Director of Medical Education,
Kilpauk, Chennai 600 010

4.The Dean, Government Theni Medical College, Theni

+2cc to Mr.R.Ramachandran, Advocate, S.R.No.80347 & 80348

+1cc to the Government Pleader, S.R.No.81398

W.P.Nos.14154 & 14165 of 2018

KJ(CO)

GSP(07/12/2018)

GSP(10/12/2018)