

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

Writ Petition Nos. 25619 to 25621 of 2017, 26497 and
26498 of 2017 and WMP.Nos.27007 to 27012 of 2017

B.Saravanan	...Petitioner in W.P.No.25619 of 2017
P.Manickavelu	...Petitioner in W.P.No.25620 of 2017
Mohammed Khaleelullah	...Petitioner in W.P.No.25621 of 2017
S.P.Velavan	...Petitioner in W.P.No.26497 of 2017
A.Arumugam	...Petitioner in W.P.No.26498 of 2017

..Vs..

1. The Commissioner/Spl.Officer
Corporation of Greater Chennai,
Ripon Building
Chennai.

2. The Assistant Commissioner (GA & P)
Corporation of Greater Chennai
Ripon Building
Chennai.

... Respondents in all W.P.'s

PRAYER in all W.P.'s: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent to include the name of the petitioner in the panel for the post of Assessor in the 1st respondent office for the year 2015-2016 the crucial date 01.02.2015 with all monetary and other service benefits.

For Petitioners : Mr.R.Singaravelan
(in all W.P.'s) Senior counsel
for Mr.R.Ramanlaal

For Respondents : ***Mrs.Narmadha Sampath AAG**
(in all W.P.'s) **assisted by Mr.R.Arunmozhi**
Standing Counsel

O R D E R

Since, all the above Writ Petitions have been filed by the Writ petitioner in the respective Writ petitions against the same respondents claiming the same relief and also facts and law involved in all these Writ Petitions being similar, by consent of the parties, all the Writ petitions are heard together and disposed of by this common order.

2. As it appears that the petitioners were initially appointed as Golla in Chennai Corporation, now the greater Chennai Corporation. But, in course of their employment they came to be promoted to the post of License Inspector. Their next avenue of promotion is Assessor. However, before the promotion for the panel year 2015-2016 were taken up, for which the crucial date is 01.02.2015, all the petitioners were issued with the charge memo for minor charges under Rule 9 (i) of the Chennai Corporation Class III and IV Service (Discipline and Appeal) bylaws, 1983 (hereinafter referred to as bylaws in short) on 22.01.2015. Though issuance of such charge memo is not a disqualification for promotion, they were not considered for promotion in the said panel year. On the said ground their case for promotion was not considered even in the panel year 2016-2017 inspite of the fact that issuance of charge memo for minor charges is not a disqualification. The said disciplinary proceeding was culminated on 29.06.2016 with a punishment of stoppage of increment for one year without cumulative effect. In the panel year 2016-2017 also the case of the petitioner was not considered as on the crucial date was during the currency of punishment imposed. The petitioners thereafter preferred statutory appeals against the said punishment, which ended in 'censure'. However, the names of the petitioners, inspite of the same has also been not included for the panel year 2017-2018 on the ground that the aforesaid 'censure' has a check period of one year which falls on the crucial date for consideration of promotion of the petitioners for the panel year 2017-2018. In such premises, the petitioners came to challenge the same on the ground that since issuance of charge memo for minor charge under Rule 9 (i) of the bylaws is not an impediment, the same cannot have been taken into consideration for disqualification of the petitioners for promotion and moreparticularly when the petitioners punishment was ended in 'censure' which wipes out on the very date of punishment. Hence, they cannot have been denied with the promotion, moreparticularly in the panel year 2015-2016.

3. A reply affidavit has been filed by the respondent corporation indicating therein that the petitioners being guilty of lapses to carry out their duty i.e, of the issuance of licence and also collecting license fees and professional tax as per the target given and hence they were issued with the charge memo for minor charges on 22.01.2015. No doubt, the aforesaid is not a disqualification for consideration of their case for promotion. But, in the said year 2015-2016 none of the juniors of the petitioners having been promoted, the petitioners cannot have any grievance in the writ petitions for non consideration of their promotion in the panel year. But, so far as the subsequent year is concerned, i.e, 2016-2017, no doubt on the crucial date they cannot be said to have any disqualification but when the promotion was taken up for the said panel year they had been imposed with the punishment of stoppage of increment for one year without cumulative effect, the same was a disqualification, in view of the Tamil Nadu Government Servants (Conditions of Service) Act, which is adopted by the Corporation. So far as the panel year 2017-2018 is concerned, it appears that the petitioners' appeals have been allowed with a 'censure', such censure though expires on the date of punishment i.e, 23.06.2016, but the same has a check period as per the aforesaid Act of one year. Within the said one year, the crucial date for promotion in the said panel year i.e, 01.02.2017 being fallen, the petitioners have also no case for consideration of promotion and hence the prayers made in these Writ Petitions are devoid of merits and as such all the writ petitions are liable to be dismissed.

4. Mr.Singaravelan, the learned senior counsel appearing for the petitioners fairly concedes that though the prayer was made for the year 2015-2016 for empanelment of the petitioners for promotion, as it is an undisputed fact that issuance of charge memo for the minor charge under Rule 9 (i) of the bylaws is not a disqualification during pendency of the charge memo, but as none of the juniors of the petitioners were promoted in the said year, they have no case for the said panel year. However, in the subsequent panel year on the crucial date they had no disqualification and their juniors were promoted. But their cases were not considered. The same is on the ground that by the date the promotion in the above said panel year was taken up, the petitioners were already imposed with punishment that was a disqualification. He would also submit that even the same is accepted, but such punishment of the petitioners having been modified in the appeal to one that of 'censure' which had no check period earlier and as such expired on the very date of punishment, the same could not stand in the way of the petitioners for consideration of their promotion as the Tamil

Nadu Government Servants (Condition of Service) Act, 2016, came into force on 14.09.2016 i.e., after the aforesaid punishment was imposed. Therefore, the contention that is advanced in the reply affidavit that the petitioners could not have been promoted in the panel year 2016-2017 and 2017-2018 as they were in the check period in view of the said Act is without any substance, inasmuch as the same would make the act an retrospective operation, which was neither intended in the act not specifically indicated in the said Act. Hence, the denial to consider the promotion to the petitioners in the year 2017-2018 is illegal and arbitrary. Therefore, it is contended by the learned senior counsel for the petitioners that the respondents be directed to accord promotion to the petitioners in the panel year 2016-2017 from the date their juniors were promoted or in worse view to consider them for promotion in the panel year 2017-2018.

5. The learned Additional Advocate General appearing for the respondents fairly submits that issuance of charge memo for minor charges under Rule 9 (i) of the bylaws is not a disqualification for consideration of promotion, but the petitioners being not eligible for promotion in the year 2015-2016 could not have claimed for the same, which has been fairly conceded by the learned senior counsel appearing for the petitioners. But, so far as the next panel year is concerned, admittedly by the time the promotion was taken up, the petitioners had disqualification and as such they were not accorded promotion. No doubt the same is modified in an appeal to that one of 'censure'. The same admittedly being disqualification having check period under the Tamil Nadu Government Servants (Condition of Service) Act for the year which is falling in the year 2016-2017 and 2017-2018, the petitioners have no case. However, it is fairly conceded that the aforesaid Act came into operation on 14.09.2016 and has no retrospective operation and earlier to that Tamil Nadu State and Subordinate Service Rules, had no check period of punishment of 'censure'.

6. Keeping in mind the undisputed position that issuance of a charge memo under Rule 9 (1) of the bylaws is not a disqualification for consideration of promotion but punishment imposed therein at times is a disqualification and by the time the promotion is taken up such disqualification has been incurred in such a charge memo, an employee of the Corporation is disqualified to be considered for promotion, the contention

of the parties is required to be addressed. So also it has to be kept in mind the petitioner has fairly conceded that for panel year 2015-2016 they have no case on the aforesaid grounds as none of their juniors were promoted in the said year. Now coming to the panel year 2016-2017 by the time the promotion was taken up the petitioners being imposed with punishment of stoppage of increment of one year without cumulative effect, they were disqualified to be promoted. So also for the next year such punishment imposed on 23.06.2016 was modified to be one of 'censure', as per the existing rule then applicable that is Tamil Nadu State and Subordinate Service Rules, the aforesaid punishment imposed had no check period and as such the same dies on the very date of punishment. The petitioners in that year also on the crucial date had no disqualification as the charge memo was under rule 9(1) of the byelaws. Hence, on modification of the sentence in the appeal, the petitioners can stated to have a case for promotion as by the time promotion was taken up in the panel year they had no disqualification in the eye of law. However, the same has been denied to them in that panel year taking into consideration the provisions of Tamil Nadu Government Servants (Condition of Service) Act 1916, which has a check period of one year for the punishment of 'censure' also and the said check period covers the date of promotion for the panel year 2016-2017 and also crucial date 2017-2018. The same appears to be fallacious inasmuch as the aforesaid act came into force on 30th September 2016 that is after the death of the punishment of 'censure' which was not a disqualification then for to be considered for promotion. Accepting such contention of the counsel for the respondents would tantamount to giving retrospective operation to the aforesaid provisions of the said act which was never specifically provided in the Act. Therefore, the petitioners appears to have a case seeking promotion from in the panel year 2016-2017 to the post of Assessor inasmuch as in that year some of their juniors were promoted and they had no other disqualification except the check period with regard to the punishment and the check period is not applicable to such punishment of 'censure' as held by this Court for the reasons stated earlier.

7. I would therefore allow all these writ petitions and direct the respondents to accord the promotion to the petitioners to the post of Assessor on the date their juniors were promoted notionally in the panel year 2016-2017 with all service benefits except the monetary benefit inasmuch as the petitioners were not holding the said post, within a period of eight weeks from the date of receipt of a copy of this Order. However, if no post is available to accord promotion to the petitioners from the said date, the juniors who have been promoted should not be disturbed but supernumerary posts be

created to accommodate the petitioners against the said post, which shall be exhausted in the subsequent vacancies arising in the said post. However in the circumstances there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

Dated : 14/11/2018

***Corrected as per letter dated 26/11/18
made in WP.No.25619 to 25621/17 & WP No.26498/17
given by court for respondent.**

Sd/-

Assistant Registrar(CS-IX)

dated 28/11/2018

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner/Spl.Officer
Corporation of Greater Chennai,
Ripon Building
Chennai.
2. The Assistant Commissioner (GA & P)
Corporation of Greater Chennai
Ripon Building
Chennai.

**To be substituted
the order already
Despatched on
19/11/18**

+5cc to Mr.R.Arunmozhi, Advocate Sr.74168

+5cc to Mr.R.Raman Laal, Advocate Sr.74187 to 74191

Writ Petition Nos. 25619 to 25621 of 2017, 26497 and

26498 of 2017 and
WMP.Nos.27007 to 27012 of 2017

rj[col]

srg 15/11/2018

GMV 28/11/2018