



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2018

CORAM:

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**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN**

W.P. (MD) .No.17925 of 2018  
and W.M.P. (MD) .Nos.15802 to 15804 of 2018

M.Sivajothi

.. Petitioner

**-Vs-**

1. The Principal Secretary to Government,  
Revenue and Disaster Management Department,  
Services Wing, Service - I Section,  
Secretariat, Chennai - 0.

2. The Principal Secretary/  
Commissioner of Revenue Administration,  
Chepauk, Chennai - 5.

.. Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records of the impugned order of the 1<sup>st</sup> respondent in letter No.46979/Ser.I/2017-5, dated 30.05.2018 and quash the same as illegal and so far as the petitioner is concerned and consequently direct the respondents to promote the petitioner as Deputy Collector with effect from 30.05.2018 with attendant benefits.

For Petitioner : Mr.M.Kannan  
For Respondents : Mr.K.Chellapandian,  
Additional Advocate General assisted by  
Mr.J.Gunaseelan Muthiah  
Additional Government Pleader

**ORDER**

This writ petition has been filed for issuance of writ of Certiorarified Mandamus to call for the records of the impugned order of the 1<sup>st</sup> respondent in letter No.46979/Ser.I/2017-5, dated 30.05.2018 and quash the same as illegal insofar as the petitioner is concerned and consequently, direct the respondents to promote the petitioner as Deputy Collector with effect from 30.05.2018 with attendant benefits.

<https://hcservices.ecourts.gov.in/hcservices/> 2.Hear both sides.

3.The grievance of the petitioner is that though she was due for



the next promotion to the post of Deputy Collector, her name was dropped from the temporary panel for promotion list in the year 2017-2018 on the ground that charge sheet in a criminal case where the petitioner herein was arrayed as one of the accused was filed before the crucial date of drawing the panel.

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4.To ascertain whether there was any charge sheet filed before the crucial date which was on 31.12.2016, this Court called for the records from the learned Judicial Magistrate, Srivaigundham on whose file charge sheet is stated to be filed in Crime No.109 of 2015 by the Investigating Officer of Seidunganallur Police Station. The perusal of the records indicates that the FIR was registered on 19.05.2015 for the offences under Sections 294(b), 342, 506(ii), 394, 109, 417 and 392 r/w 34 and 120 (b) of IPC. Initially, the petitioner's name was not in the FIR. But later on, investigation the petitioner's name has been included and final report has been filed.

5.It is contended by the respondents in their affidavit that the final report was filed on 10.11.2016, but due to some defects pointed out by the Public Prosecutor the same was returned and after rectification of those defects, the final report was filed before the Judicial Magistrate and the same was taken on file on 20.09.2018. Since the investigation was completed and final report was filed by the Investigating Officer before the crucial date, the provision of Schedule XI (5) will apply to the petitioner herein.

6.For better understanding Schedule XI (5) is extracted below:

*"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.According to the respondents, final report was presented to the Court and the same was returned due to some defects. The learned public prosecutor in-charge of the case has advised to carry out certain corrections in the final report and after due corrections, the same was presented to the Court and it was taken on file. Therefore non inclusion of the petitioner's name in the panel list is justifiable.

8.This Court is unable to accept the submissions of the respondent, after perusing the original records called for from the Magistrate. Though the contention of the respondents may be factually correct, but law is very clear that when the charge sheet has not filed in the appropriate court or the charges are not framed against the person, mere filing of the case in the court by the proper investigation Authority against the member of the service shall not be a bar for inclusion of her name in the approved list.



As the charge sheet has been filed only on 20.09.2018, the respondents ought to have included the name of the petitioner in the approved list for the year 2017-2018 for the promotion to the post of Deputy Collector.

9. In view of the above, reasons stated in the impugned order that her name is not included in the final panel for promotion due to pendency of charge sheet, is now held to be factually incorrect. Therefore, the entry made against her name is to be deleted. The respondents herein shall look into the issue afresh and include her name. If any other reasons are there, then, the authority has to intimate it to the petitioner and call for her explanation or objection and then, the respondents herein shall act upon in accordance with law. The respondents shall do the above exercise within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

**To**

1. The Principal Secretary to Government,  
Revenue and Disaster Management Department,  
Services Wing, Service - I Section,  
Secretariat, Chennai - 0.
2. The Principal Secretary/Commissioner of  
Revenue Administration,  
Chepauk, Chennai - 5.

**Copy To :-**

The Section Officer,  
E.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

(To return the original records)

- + 1 CC TO Mr.M.KANNAN, ADVOCATE IN SR No. 99031
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 99327

TM

TE/PM/SAR-2 : 13/12/2018 : 3P/6C