IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.3536 of 2013

K.Padmanaban .. Petitioner

.Vs.

1.The Secretary to Government,
Commercial Taxes & Regn.E1 Department,
Fort St.George, Chennai-9.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai-5. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection with the impugned order passed in Ref. No.CP2/35974/2011 dt.8.11.12 and quash the same and further direct the respondents to consider the claim of the petitioner for promotion as Commercial Tax Officer for the year 2006-07 as communicated by the 1st respondent in G.O Ms.No.65 CT Regn.E1 Dept dt.7.3.07 and promote him notionally as Commercial Tax Officer from the date on which his junior got promoted and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani, Sr.Counsel
for Mr.M.Muthappan

For Respondents: Mr.V.Haribabu
Additional Government Pleader(Tax)

O R D E R

The present writ petition is one for Certiorarified Mandamus, calling for the records of the Commissioner of Commercial Tax, in connection with an order dated 8.11.12 in Ref.No.CP2/35974/2011, and direct the respondents to consider the claim of the petitioner for promotion as Commercial Tax Officer for the year 2006-07 as communicated by the 1st respondent in G.O Ms.No.65 CT Regn.E1 Dept dated 7.3.07.

2.The petitioner was appointed in the Commercial Taxes Department as Typist. He was promoted as a Deputy Commercial Tax Officer on 04.10.2001. The promotional post to the Deputy Commercial Tax Officer is the Commercial Tax Officer. The Panel for promotion to the post of Commercial Tax Officer for the year 2006-2007 was drawn on 07.03.2007 and there were 157 names excluding the petitioner. The petitioner's name was not excluding in the Panel for the reason that he was facing an enquiry under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules issued by the 2nd respondent. The petitioner challenged the charge memo by filing W.P.No.11609 of 2008. This Court by an order dated 20.06.2008, quashed the charge memo on the short ground that it had been initiated by an Officer not competent to initiate any disciplinary proceedings. Paras 7, 8 and 9 of the said order read as under:

> "7.At the out set, I have to state that G.O.Ms.No.26 cited supra came into force only with effect from 15.2.2008 and therefore it cannot be retrospectively applied to the case of the petitioner. In respect of the circular dated 3.4.1996, I have to state that when the statutory Rule prescribes that it is only for the appointing authority to initiate the disciplinary proceedings, by means of circular the first respondent cannot override the said Rule. It is needless to state that such kind of circular would never override the statutory Rule. Therefore, as on the date of issuance of the impugned charge memorandum, the competent authority as per Rule 9-A of the Tamil Nadu Civil Services (Displine and Appeal) Rules was the second respondent, but the second respondent has not issued any charge memorandum. Instead, the first respondent has issued the charge memorandum. As rightly contended by the learned senior counsel for the petitioner, since the charge memorandum has been issued by the incompetent authority, as held by the Hon'ble Supreme Court in 1994 SCC (L& S) 768 (UNIN OF INDIA VS. UPENDRA SINGH), the charge memo is liable to the quashed.
>
> 8.The learned Additional Government Pleader would also submit that since the petitioner can very well raise the said objection before the authorities concerned, this Writ Petition should not be entertained. In my considered , the said argument cannot be accepted at all for the simple reason that it is a settled law that when the disciplinary proceedings is initiated by an incompetent

authority, necessarily this court has to exercise its jurisdiction under Article 226 of the Constitution of India so as to quash the charge memorandum.

9.In view of the above points, I am inclined to quash the charge memorandum. In the result, the Writ Petition is allowed and the impugned charge memorandum is quashed. The second respondent is at liberty to initiate fresh proceedings, if so advised. No costs. Consequently, the connected miscellaneous petitions are closed".

3.The respondents have issued a subsequent charge memo dated 28.06.2008. The petitioner reached the age of superannuation on 30.06.2008. The petitioner filed a representation on 20.07.2008, stating that on 07.03.2007 when the Panel was drawn for promotion to the post Commercial Tax Officer there was no disciplinary proceedings pending against him. However, the representation was rejected by an order dated 8.11.2012 on the ground that in the subsequent charge memo by an order dated 10.09.2012, disciplinary proceedings had ended against the petitioner and the petitioner has been given the punishment of cut in pension at the rate of Rs.1000/- per month for a period of one year.

4.Against the order dated 08.011.2012 rejecting the representation, the petitioner has filed the instant writ petition.

5.The writ petitioner has contended that on the material date on which the Panel was drawn i.e., on 07.06.2007, no enquiry was pending and there was no impediment for the petitioner being considered for promotion to the post Commercial Tax Officer. The respondents have filed a counter. In the counter, the respondents have taken a stand that even though the charge memo dated 25.01.2007, had been quashed by this Court on 20.06.2008, liberty had been given to the respondents to initiate fresh proceedings against the petitioner if so advised and therefore, a fresh charge memo dated 28.06.2008 had been issued. It is therefore, the submission of the respondents that he is not entitled for being considered for promotion.

5.Heard the learned counsel for both sides.

6.The facts are not in dispute. A Panel for 157 Deputy Commercial Tax officer was prepared on 07.03.2007 for being promoted as Commercial Tax Officers. It is also not in dispute that the petitioner's name was not considered because of the pendency of the proceedings initiated pursuant to the charge memo dated 25.01.2007. The charge memo had been quashed by an order dated 20.06.2008, passed by this Court in

W.P.No.11609 of 2008 referred supra. Therefore on the date when the Panel was drawn on 07.03.2007, there was no impediment to consider the name of the petitioner and re-include the petitioner. The short issue is whether the subsequent charge memo issued to the petitioner would dis-entitle him from being considered for promotion to the post of Commercial Tax officer. The learned counsel for the petitioner relies on the judgments of this Court in G.Anburaj .Vs. Government of Tamilnadu and Another reported in (2013) 6 MLJ 305 , wherein, this Court while considering an identical issue has observed as under :

> "15. I have considered the submissions made on either side.
>
> 16.The name of the petitioner was not included in the panel of District Registrar for the year 2010-2011 on the sole ground that disciplinary proceedings relating to the charge memo, dated 8.4.2010 was pending. Subsequently, charges were dropped by the Government vide (G.O.(D).No.260, Commercial Taxes and Registration Department, dated 19.9.2011. The Government also included the name of the petitioner in the panel, by issuing G.O.(D).501, Commercial Taxes and Registration Department, dated 16.11.2012. At this juncture, the second respondent passed an order, dated 23.03.2013 stating that the petitioner cannot be given promotion on the ground that subsequent charge memo dt.7.3.2013 was issued to the petitioner.
>
> 17.In my view, subsequent charge memo cannot be put against the petitioner for promotion for the year 2010-2011. As rightly contended by the learned counsel for the petitioner, the only impediment is charge memo, dated 08.04.2010. When the same was dropped, he has to be promoted pursuant to inclusion of his name in the panel for promotion to the post of Asst. Inspector General of Registration for the year 2011-2011. Subsequent charge memo, dated 7.3.2013 cannot be put against the petitioner, particularly when the juniors included in the panel for the year 2010-2011 were promoted on 22.06.2010. Hence, the impugned letter dated 23.3.2013 is quashed and a direction is issued to the respondents to promote the petitioner as Asst. Inspector General of Registration, from the date on which his immediate juniors were promoted on notional basis, since G.O(D).No.501, Commercial Taxes and Registration Department made it clear that

promotion shall be on notional basis. The respondents are directed to complete the aforesaid exercise, within a period of six weeks from the date of receipt of copy of this order".

Similarly, in A.Kalaiselvan .Vs. The State of Tamil Nadu, and Another reported in [2016 writ L.R.679], once again this Court observed as under:

> 7. In Bank of India and others v. V.Degala Suryanarayana ((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. Jankiraman etc.etc, AIR (1991) SC 2010, 2113. 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 3.12.1991. 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 1.11986. 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 hand, 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.

9. In fine, for the reasons stated above, this Court, by setting aside the impugned proceedings, remits the matter back to the authorities, who, in turn, are directed to consider the grievance of the petitioner in the light the above said judgments of the Hon'ble Apex Court immediately, as the petitioner is going to retire on 30.06.2016. It is made clear that the promotion, yet to be given to the petitioner with effect from the said crucial date, is subject to the result of the disciplinary proceedings. With these directions, the writ petition stands allowed. No Costs. WMP.No.17700 of 2016 is closed.

7.A reading of the two judgments show that when there is no currency of punishment on the crucial date a subsequent charge memo cannot be a bar for being considered for promotion for the relevant year. The issue is squarely covered by the said two judgments of this Court. In view of the same, the writ petition is allowed. The respondents are directed to consider the name of the petitioner for inclusion in the Panel on 07.03.2007, and consequently promote the petitioner as Commercial Tax Officer if he is otherwise qualified and entitled to the same. The said exercise is to be completed within a period of eight weeks from the date of communication of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Secretary to Government,
Commercial Taxes & Regn.E1 Department,
Fort St.George, Chennai-9.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

+1cc to M/s.M.Muthappan, Advocate SR.86044

W.P.No.3536 of 2013

SJ(CO)
CB(11/12/2019)