

IN THE HIGH COURT OF JUDICATURE AT MADRAS

15.03.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.7986 of 2017

and

W.M.P.Nos.8727 and 8728 of 2017

S.Ramkumar

... Petitioner

vs.

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj
(E1), Department.
Fort St.George,
Chennai-09.

2.The Director of Rural Development
and Panchayat Raj,
Panagal Building, Saidapet,
Chennai-15.

3.The District Collector,
Villupuram District,
Villupuram

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the impuged order passed by him in G.O.(D).No.126, dated 17.03.2017 and quash the same and further direct the respondents to promote the petitioner as Assistant Director(RD & PR) on par with his junior.

For Petitioner

.. Mr.K.Venkatramani, Sr.Counsel
for M/s.S.Sivakumar

For Respondents

... Mr.J.Ramesh,A.G.P.for RR1 to 3

ORDER

The petitioner was appointed as Junior Assistant in the Rural Development Department and was promoted as Block Development Officer, on 07.06.2008. In 2009, according to the petitioner, he was implicated falsely in a criminal case by the Vigilance and Anti Corruption Wing and he was suspended from service on 03.03.2009. The next avenue of promotion to the post of Block Development Officer is the post of Assistant Director. The Seniority List, in the cadre of Block Development Officer, as on 01.01.2009, was published on 13.09.2009, in which, the name of the petitioner was shown at Serial No.43. In 2011 also Seniority List was published, showing the petitioner's name at Serial No.152. While so, on 07.09.2013, the petitioner's Junior, whose name was at Serial No.215 in the Seniority list as on 07.07.2011, came to be promoted as Assistant Director, overlooking the claim of the petitioner on the only ground that a criminal case was pending against him. On 21.12.2013, the Sub-Court, Villupuram, passed an order in Spl.C.C.No.01 of 2010 and acquitted the petitioner in the Criminal case initiated against him, on merits. On being acquitted, the petitioner's suspension was revoked and he was reinstated in service on 21.07.2014. In view of the criminal Court giving him clean chit, the petitioner appears to have given a representation to the respondents on 31.07.2014, seeking to promote him as Assistant Director from the date on which his immediate Junior was promoted during the panel year 2012-13. Since his representation was not considered, the petitioner approached this Court and filed W.P.No.16910 of 2015 and this Court, vide order dated 15.06.2015, disposed of the writ petition by directing the respondents to consider the representation of the petitioner for promotion, on merits and in accordance with law, within the time stipulated. According to the petitioner, on 26.08.2015, the third respondent has also sent a proposal recommending his name for promotion on par with his Junior.

2.While matter stood thus, on 18.10.2016, the third respondent issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in regard to the same set of allegations, which were the basis of the criminal case initiated against him. Thereafter, on 17.3.2017, in pursuance of the direction passed by this Court in the aforesaid writ petition, the first respondent passed an order rejecting the claim of the petitioner on the ground that the charges are pending against him as per memo dated 18.10.2016. The said rejection order is under challenge in the present writ petition.

3. According to Mr.K.Venkatramani, the learned Senior counsel appearing for the petitioner, on the date when the panel was drawn for 2012-13, only criminal case was pending against the petitioner and because of that, he was not granted promotion on 07.09.2013, when the petitioner's Junior was promoted. However, subsequently, the Criminal Court has acquitted the petitioner on merits on 21.12.2013 and thereafter, the petitioner has given representation seeking promotion as Assistant Director on par with his Junior. The learned Senior counsel would submit that for the crucial year 2012-13, only the criminal case was pending, which ended in acquittal subsequently and therefore, the petitioner was entitled to be considered for promotion on par with his Junior in 2013 itself. He would submit that the subsequent charge memo given for the same set of allegations, on 18.10.2016, cannot be a bar for consideration of the petitioner's name for promotion in the panel year 2012-13.

4. The learned Senior counsel would draw the attention of this Court to the Rule provision as provided under the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. He would draw the attention of this Court to Schedule 11 paragraph No.II, which is extracted hereunder.

"II.Consideration of Members for inclusion in the approved lists:-

(1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of service and no specific charges have been framed, promotion or appointment of such member of service shall be considered on the basis of the merit revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion."

According to the above Rule, if an employee is acquitted from the criminal case or charges of the Departmental proceedings, he ought to be considered for promotion from the date on which his immediate Junior was promoted.

5.The learned Senior counsel would also rely on a decision of the learned Single Judge of this Court, rendered in W.P.No.3405 of 2014, dated 07.02.2014. The learned Judge, in identical circumstances, allowed the writ petition. He would draw the attention of this Court to Paragraph Nos.4 to 7, which are extracted hereunder.

"4. I have heard the submissions made on either side and perused the materials available on record.

5. Now, the question that falls for consideration is, whether the subsequent charge memo dated 17.12.2013 issued by the Deputy Inspector General of Police, after the pronouncement of the judgment in the criminal case acquitting the petitioner, will be a bar to include the name of the petitioner in the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the panel year 2011-2012.

6. In this regard, the order of this Court made in W.P.No.1277 of 2009 dated 15.9.2009 in the case of P.Chinnadurai vs. 1.The Secretary to Government, Commercial Taxes & registration Department, Fort St. George, Chennai-9 and another, which was relied on by the learned Senior Counsel appearing for the petitioner, gives a fitting answer to the said question. In the said writ petition, this Court has held as follows:-

" 19. the mere pendency of second charge memo dated 17.11.2008 cannot be a bar for inclusion of the petitioner in the panel for District Registrar for the year 1999-2000 considering the fact that in respect of the panel for District Registrar for the year 1999-2000, either on the crucial date viz., 1.4.1999 or on the date of consideration viz., 3.4.2003 or on the date of actual promotion viz., 30.4.2003 in which his junior was promoted as District Registrar, there was no formulated charge memo pending against the petitioner except the criminal case which ultimately ended in acquittal, and the petitioner was not kept under suspension. In such circumstances, the reliance placed by the respondents on the instructions of the Government letter dated 7.10.2005, to deny the promotion on the basis of pendency of criminal case which later ended in acquittal is not sustainable and

therefore, the writ petitioner is entitled to the reliefs claimed in this writ petition. "

A reading of the said order would show that when there is no currency of punishment on the crucial date or on the date of consideration, the subsequent charge memo cannot be a bar for inclusion of the petitioner's name in the panel for promotion. In the instant case, the only hurdle for including the name of the petitioner on the crucial date viz., 1.6.2011 and the date of consideration viz., 4.8.2012, is the pendency of the criminal case pending against the petitioner. In the said criminal case, judgment was delivered on 23.1.2013 acquitting the petitioner. When once the petitioner gets acquittal in the criminal case, absolutely there is no legal impediment in including the petitioner's name in the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the panel year 2011-2012, since there is no currency of punishment on the date of preparation of the panel and on the date of consideration. The second charge memo issued subsequent to the acquittal, will not be a bar for including the name of the petitioner in the panel. Therefore, I am of the opinion that the petitioner is entitled for the relief that has been sought for by him.

7. In the result, the impugned order of the first respondent dated 22.1.2014 is set aside and the writ petition is allowed. The respondents are directed to promote the petitioner as Inspector of Police, category-I by including his name in the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the year 2011-2012 without reference to the charge memo issued to the petitioner on 18.12.2013 in P.R.No.94 of 2013 and grant him all consequential service and monetary benefits on par with his juniors. The said exercise has to be carried out within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

The learned Senior counsel would submit that therefore, in all force, the petitioner is entitled to succeed and the impugned order passed by the first respondent is liable to be interfered with.

6.Per contra, the learned Additional Government Pleader would submit that the charge Memo issued on 18.10.2016 is not on the basis of fresh set of allegations, but it was in continuation of the same allegations, which were the basis of the criminal proceedings. Therefore, it must be construed that the Departmental proceedings is only in continuance of the earlier charges framed against the petitioner, in which event, the petitioner cannot be considered for promotion and rightly the first respondent passed the order rejecting the claim of the petitioner. According to the learned Additional Government Pleader, once on the date when the promotion is to be effected the petitioner is facing departmental action, he cannot be considered for promotion.

7.Heard the learned Senior counsel for the petitioner and the learned Additional Government Pleader for the respondents.

8.The above facts have been admitted. As rightly contended by the learned Senior counsel for the petitioner, when the Criminal Court has acquitted the petitioner and once the petitioner was denied his due promotion only on the basis of pendency of criminal case, the petitioner, on being acquitted, is entitled to be considered for promotion on par with his immediate Junior. The Rule position as extracted above is very clear on that aspect. Although it may be a fact that the Departmental charge memo dated 18.10.2016 is on the basis of same set of allegations, nevertheless, the said subsequent charge memo issued in 2016 cannot be a bar for considering the promotion of the petitioner as Assistant Director for the panel year 2012-13. The reliance placed by the learned Senior counsel on the decision of the learned Single Judge in W.P.No.3405 of 2014, dated 7.2.2013, is squarely on that point. The learned single Judge, in identical circumstances allowed the claim of the petitioner therein. Even otherwise, the legal principle, which has been laid down by the Courts are very clear that when an employee is either acquitted or exonerated from the criminal or departmental charges, he is entitled to be considered for promotion on par with his immediate Junior from the date on which his immediate Junior was promoted. Any subsequent action either on the same set of allegations or otherwise, cannot be an embargo to consider the employee for promotion to the next higher grade. The State Government Rule on this aspect, as extracted above, is supportive to the stand taken by the learned Senior counsel for the petitioner. Even otherwise, the law on this aspect is very clear that once the employee is acquitted of the criminal charges and the promotion was withheld only on the basis of such pendency of criminal action, on being acquitted, the employee statutorily is entitled to all benefits which would

have been otherwise derived, but for the pendency of the criminal action.

For the aforesaid reasons, the writ petition is allowed. The impugned order passed by the first respondent in G.O.(D) No.126, dated 17.03.2017, is hereby set aside. The respondents are directed to grant promotion to the petitioner as Assistant Director (RD & PR) on par with the his immediate Junior with all consequential and attendant benefits. The respondents are directed to comply with this direction within a period of eight weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj
(E1), Department.
Fort St.George,
Chennai-09.

2.The Director of Rural Development
and Panchayat Raj,
Panagal Building, Saidapet,
Chennai-15.

3.The District Collector,
Villupuram District,
Villupuram

+1 CC to Mr.S.Sivakumar, Advocate sr 24564.

SP(05/04/2019)

W.P.No.7986 of 2017

WEB COPY