



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.9002 of 2015

WEB COPY

V.Visweswaran,

... Petitioner

- Vs. -

1.The Director of Handloom and Textiles,
Kuralagam 2nd Floor,
Chennai 108

2.The Assistant Director of Handloom and Textiles,
Collectorate Complex,
Virudhunagar 626 002.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent i.e. Director of Handloom and Textiles, Chennai relating to R.C.No. 22330/2014/E3-2 dated 29.01.2015 and quash the same in respect of item No. 16 alone and consequently direct the first respondent to include the name of the petitioner in the approved list of Handloom Officers of the year 2014-2015 according to his feeder category seniority within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.K.Mu.Muthu

Additional Government Pleader

ORDER

The order impugned dated 19.02.2015, deferring the name of the writ petitioner for promotion to the post of Handloom Officer, is under challenge in the present writ petition.

2.The writ petitioner is presently serving as a Selection Grade Handloom Inspector in the office of the Assistant Director of Handloom and Textiles. He had served about 20 years in the Department. The writ petitioner is fully qualified for promotion to the post of Handloom Officer. However, his name was not included in the approved list of Handloom Officers in the panel of the year 2014-15 on the ground that the disciplinary proceedings against him was initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was pending before grant of pension.

3.The learned counsel for the writ petitioner states that the crucial date for drawing of the list of Handloom Officers for the year 2014-15 is 01.03.2014. However, the disciplinary proceedings were initiated against the writ petitioner only on 12.01.2015 and

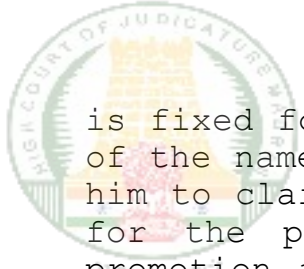


the same was communicated to the writ petitioner on 29.01.2015. Thus, the writ petitioner is entitled to be promoted to the post of Handloom Officer. The learned counsel for the writ petitioner states that as on the crucial date, there was no charge pending against the writ petitioner and therefore he is entitled to be promoted to the post of Handloom Officer.

4.The learned Additional Government Pleader appearing on behalf of the respondents opposed the contention by stating that the Government issued G.O.(Ms).No.22, Personnel and Administrative Reforms (S) Department, dated 24.02.2014. As per the G.O., clause (1f) states that "pendency of charges framed under Rule 17(b) of the Civil Services (Discipline and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list." This apart, the counter filed by the second respondent clarifies that in the case of the writ petitioner, a charge memo was issued against him in proceedings, dated 12.01.2015 under Rule 17(b) of Tamilnadu Civil Services (Disciplinary and Appeal) Rules. As per amendment issued to Rule 4(a) of General Rules of Tamilnadu State and Subordinate Services, the individual is not eligible for inclusion in the panel, he should be deferred till the final orders are passed in the departmental disciplinary proceedings.

5.This Court is of the considered opinion that the pendency of the charges or currency of punishment are considered as a demerit for inclusion of a name of an Officer for promotion to the higher post. In the present case, admittedly, the writ petitioner was facing Departmental disciplinary proceedings. The only contention raised by the writ petitioner is that as on the crucial date, on 01.03.2014, there was no pendency of charge memo and therefore, he is entitled to be promoted. Such a contention deserves no merits consideration. In view of the fact that it is not as if the Government servant should maintain clean records as on the crucial date the very concept of treating the pendency of the charges as demerit is to consider the person to promote him to the higher post. Thus, the pendency of the charges even after the crucial date, before the actual date of promotion is also a bar for promotion. In other words, when the pendency of the charges are considered as a demerit for promotion, irrespective of the facts whether the charges are framed before the crucial date or after the crucial date, the same should be held against the Officer concerned for the purpose of grant of promotion.

6.Promotion can never be claimed as a matter of right. All promotions are to be granted strictly in accordance with the rules in force. However, consideration for promotion is a fundamental right of an employee. Thus, all the eligible employees, who all are waiting for promotion, are to be considered for inclusion of their respective names in the panel to be prepared by the competent authority. However, at the time of grant of promotion, the authorities competent are bound to verify whether there is any impediments are there, for promoting the employee. The crucial date



is fixed for the purpose of preparing the panel and mere inclusion of the name of a person in the panel would not confer any right on him to claim promotion. The relevancy of the crucial date is only for the purpose of preparation of panel and not for grant of promotion as a matter of right. Promotions are to be granted only on merits and by following the rules in force. This being the principles to be followed, the writ petitioner has not established any acceptable grounds for the purpose of considering his case. Admittedly a charge memo was framed against the writ petitioner and at the time of finalising the approved list for promotion, the writ petitioner was facing a Departmental disciplinary proceedings and therefore, his name was rightly deferred, only after the conclusion of the departmental proceedings, the case of the writ petitioner is to be considered, with reference to the rules in force. If any other grievance exists to the petitioner in respect of the promotion of the junior, then the writ petitioner is at liberty to redress his grievance in the manner known to law.

7. With these observations, these Writ Petitions stand dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar(CS)

To

1. The Director of Handloom and Textiles,
Kuralagam 2nd Floor,
Chennai 108
2. The Assistant Director of Handloom and Textiles,
Collectorate Complex,
Virudhunagar 626 002.

+1 CC to Mr.S.VISVALINGAM, Advocate SR-70087.
+1 CC to SPL GP SR-70678.

W.P. (MD) No. 9002 of 2015
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CS: 11/07/2019 3P 5C