



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :15.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

WP (MD) No.19525 of 2018

WEB COPY

M.Chandran

... Petitioner

Vs.

1.The Director of School Education,
Directorate of School Education,
DPI Complex,
Chennai 600 006.

2.The Joint Director of School Education (Personal),
Chennai - 600 006.

3.The Chief Educational Officer,
Office of the Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

4.The District Educational Officer,
Ramanathapuram District,
Ramanathapuram.

5.The Head Master,
Government Higher Secondary School,
Sathirakkudi,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the 1st respondent to include the petitioner's name in the seniority list as on 01.01.2018 for the promotion of Head Master in Government High School without reference to the charge memo issued by the 2nd respondent vide his proceedings in Na.Ka.No.028930/C2/E3/2018 dated 10.05.2018 subsequently after the crucial date, ie., 01.01.2018 and consequently to grant promotion of Head Master in Government High School to the petitioner from the date of promotion of his immediate junior with all attendant and consequential benefits, including the arrears of salary within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Prabhurajadurai for
Mr.M.S.Jeyakarthik

For Respondents : Mrs.S.Srimanty,
Special Government Pleader



petitioner's name in the panel as on 01.01.2018, for promotion to the post of Head Master in Government High School and consequently to grant promotion to the petitioner with all attendant and consequential benefits, the petitioner is before this Court.

2.The case of the petitioner is that he is working as B.T.Assistant. The next avenue of promotion of the petitioner is Head Master. A panel with a fixed crucial date for the promotion to the post of Head Master was prepared. On the date of the said panel, ie., 01.01.2018, neither any charge nor was there any enquiry pending against the petitioner. On account of a criminal case against the petitioner, he was suspended from service by proceedings dated 08.05.2018, which was revoked subsequent to the order dated 30.05.2018 passed by this Court in WP(MD)No.11464 of 2018 filed by the petitioner. In the meanwhile, the second respondent issued a charge memo to the petitioner on 10.05.2018, for which the petitioner had submitted his explanation on 18.05.2018. Even till date the charges are pending against the petitioner and his name has not been included in the panel as on 01.01.2018.

3.The learned Counsel appearing for the petitioner by relying upon the judgment of this Court in the matter of **A.Kalaiselvan v. The State of Tamil Nadu and another**, reported in **2016 Writ L.R. 679** submitted that the issuance of subsequent charges to a Government servant cannot be a bar for inclusion in the promotion panel, which was prepared earlier based on the crucial date. In this regard the learned Counsel for the petitioner relied upon paragraph Nos. 7 and 8 of the said judgment, which read thus:

"7.In **Bank of India and others v. V.Degala Suryanarayan ((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.Janik, raman etc. etc., AIR (1991) SC 2010, 213**. 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 03.12.1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings there were no departmental enquiry proceedings pending against the



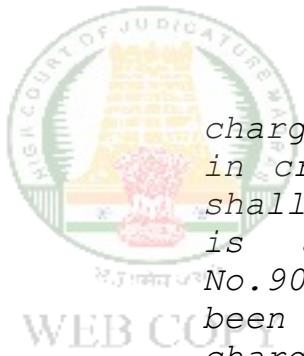
respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. Proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent was found entitled as on 1.1.1986. 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."

4.The learned Counsel for the petitioner further submitted that in view of the said judgment of this Court, which was rendered following the judgment of the Hon'ble Apex Court reported in **(1999) 5 SCC 762** in the matter of **Bank of India and others v. V.Degala suryanarayana**, there can be no impediment for the respondents to include the name of the petitioner for promotion as per the panel prepared on the basis of the crucial date, namely, 01.01.2018. If at all the petitioner has to face charges framed subsequently after nearly five months, it is open to the petitioner to face the same in the manner known to law and merely on the charges framed after the crucial date, the petitioner's chance of getting included in the panel and further consideration of his candidature for promotion should not be denied. Therefore, the learned Counsel for the petitioner submitted that a direction to that effect may be issued to the respondents to consider his candidature for grant of promotion.

5.Upon notice, the third respondent has filed a counter affidavit, the relevant portion whereof, reads as follows:

"7.It is submitted that the petitioner himself has admitted that he was issued with the charge memo by the 2nd respondent by an order dated 10.05.2018 made in Na.Ka.No.02890/C2/E3/2018. The petitioner has submitted his explanation on 18.05.2018. The disciplinary proceedings is still pending. It is submitted that as per GO(Ms)No.367 Personnel and Administrative reform (Per-S) Department dated 12.11.1992, para 3(ii) it has been specifically stated that in cases, where specific



charges have been framed or charge sheet has been filed, in criminal case, promotion/appointment to such persons shall be deferred till the proceedings are concluded. It is also submitted that in a Government Letter No.90588/94-2, dated 17.05.1995, para 2 amendment has been issued that if specific charges are framed or charge sheet is filed in the criminal cases before actual promotion, the person concerned shall not be promoted notwithstanding the fact that his name has been included in the panel. The disciplinary proceedings are still pending and due to the fact that the disciplinary proceedings are still pending, it should be held against the officer and promotion cannot be given until the disciplinary proceedings is settled. In view of the fact that the disciplinary proceedings are pending, on the date of preparation of the panel, his name could not be included in the panel. Hence, the prayer of the petitioner either to include his name in the panel or to give him promotion is against the rules in force and cannot be sustained. The writ petition is not maintainable and is liable to be dismissed.

6.The learned Special Government Pleader submitted that the crucial date was 01.01.2018 and the panel for the said period was prepared on 01.08.2018. Admittedly, on the date of preparation of the panel, the petitioner was facing the disciplinary proceedings. Thus, the petitioner cannot be considered for promotion on the crucial date ie., on 01.01.2018, on account of the pendency of the disciplinary proceedings against the petitioner.

7.Heard the learned Counsel on either side.

8.On reading the said judgment as cited supra, this Court is of the view that as already decided, when there was no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. In view of the said legal proposition, as has been propounded by the Hon'ble Apex Court in **Bank of India and A.Kalaiselvan**, cases referred to supra, this Court is of the considered view that in the present case also, the subsequent charge has been framed during the month of May' 2018, whereas the crucial date for the panel for the year 2018 was 01.01.2018 and on that date, if the petitioner was otherwise eligible and qualified, there can be no impediment for considering his name for promotion.

9.Under such facts and circumstances of the case and in view of the decisions cited supra, the following directions are issued in this writ petition:

(i)The name of the petitioner shall be included in the panel based on the crucial date 01.01.2018, fit for promotion to the post of Head Master and the said panel shall be acted upon, where the petitioner is found place, he can be considered for further promotion of Head Master, unmindful of the subsequently framed charges against the petitioner during May 2018.

(ii) If the name of the petitioner is considered as directed and any promotion is given to him, that will be subject to the result of the departmental proceedings initiated against the petitioner on 10.05.2018.

10. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Director of School Education,
Directorate of School Education,
DPI Complex,
Chennai 600 006.
 2. The Joint Director of School Education (Personal),
Chennai - 600 006.
 3. The Chief Educational Officer,
Office of the Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.
 4. The District Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- +1cc to Mr. Mr. M. S. Jeyakarthik Advocate, SR.No. 47533
+1cc to M/s. Special Government Pleader, SR.No. 47903

WP (MD) No. 19525 of 2018
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