



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.19281 of 2019

and

W.M.P (MD)Nos.15702, 15703 and 17863 of 2019

WEB COPY

S.Parthasarathy

... Petitioner

Vs.

1.The Principal Secretary,
Department of Municipal Administration
and Water Supply,
Government of Tamilnadu,
Chennai-28.

2.The Commissioner of Municipal Administration,
Urban Administrative Office Campus,
No.75, Santhome High Road,
M.R.C.Nagar, Chennai-28.

3.Chandra,
Municipal Commissioner,
Thiruppathur,
Vellore District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent in ROC No.4239/2018/C-1 dated 05.08.2019 and the impugned proceedings issued by the first respondent in G.O.(D)No.339, Municipal Administration and Water Supply (ME.1) Department, dated 27.08.2019 and quash the same as illegal in so far as the non-inclusion of the petitioner is concerned and consequently direct the respondents 1 and 2 to promote the petitioner as Special Grade Municipal Commissioner on par with the petitioner's junior.

For Petitioner: Mr.D.Farjana Ghoushia
for Veera Associates

For R1 & R2 : Mr.VR.Shanmuganathan,
Special Government Pleader

For R3 : Mr.P.Srinivas



ORDER

The present writ petition is filed challenging the impugned order of the Second respondent in ROC No.4239/2018/C-1 dated 05.08.2019 and the impugned proceedings issued by the first respondent in G.O.(D)No.339, Municipal Administration and Water Supply (ME.1) Department, dated 27.08.2019.

2. The petitioner was appointed as Grade-II Municipal Commissioner on 30.09.2013. After completion of probation period, probation was declared in the year 2016. Subsequently, he was promoted as Grade-I Municipal Commissioner, on 20.08.2016. Thereafter, he was temporarily promoted as Selection Grade Municipal Commissioner on 31.08.2018 by G.O.Ms.No.354, Municipal Administration and Water Supply (ME.1) Department, dated 31.08.2018. Now, he is working as Selection Grade Municipal Commissioner at Virudhunagar. His next avenue of promotion is Special Grade Municipal Commissioner. In the panel for promotion to the post of Selection Grade Municipal Commissioner, the petitioner was placed at Serial No.7 and his juniors were placed at Serial Nos.8 to 10. While so, in the list prepared for eligible candidates to be promoted as Special Grade Municipal Commissioner in the year 2018, the petitioner's name was not included. His juniors were included in the said list. The petitioner gave representations to the respondents 1 & 2, dated 04.07.2019 and 27.07.2019. The respondents did not consider the representations of the petitioner. Therefore, he filed a writ petition in W.P(MD)No.16911 of 2019 seeking for a direction to the respondents to include his name in the promotion panel for the post of Special Grade Municipal Commissioner for the year 2019-2020, by considering his representations, dated 04.07.2019 and 27.07.2019 and promote him as Special Grade Municipal Commissioner on par with his juniors.

3. When the writ petition was taken up for hearing, the learned counsel appearing for the respondents produced the impugned memo, dated 05.08.2019 and represented that the request of the petitioner was rejected on the ground that the first respondent has recommended the Commissioner of Disciplinary Proceedings, Madurai, to initiate disciplinary proceedings against the petitioner. The first respondent, by the impugned G.O.Ms.No.339, Municipal Administration and Water Supply (ME.1) Department, dated 27.08.2018, promoted 11 Selection Grade Municipal Commissioners to Special Grade Municipal Commissioners, without including the petitioner. Challenging the above two orders, the petitioner has come out with the present writ petition.

4. The learned counsel appearing for the petitioner submitted



that for preparation of panel for promotion to the post of Special Grade Municipal Commissioner, the crucial date is 15.03.2019. On that date, no disciplinary proceeding was pending against the petitioner. The disciplinary proceedings starts only when the charge memo is issued to the delinquent employee. In the present case, no charge-memo was issued to the petitioner as on 15.03.2019. Mere recommendation of the first respondent to the Commissioner of Disciplinary Proceedings to initiate disciplinary action against the petitioner, is not a ground for denial of promotion to the petitioner as Special Grade Municipal Commissioner. In any event, as per Section 47(1) of the Tamilnadu Government Servants (Conditions of Service) Act, 2016, the petitioner can be promoted temporarily. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in **Union of India and others vs. Anil Kumar Sarkar** reported in **(2013) 4 Supreme Court Cases 161**, wherein the Hon'ble apex Court has held as follows:-

"19. In *Coal India Ltd., v. Saroj Kumar Mishra* this Court, in AIR Para 22, has held that: (SCC p.632, para 18)

"18.A Departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued."

20. In *Coal India Ltd., v. Ananta Saha* this Court held as under: (SCC p.155, para 27)

"27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (vide *Union of India v. K.V.Jankiraman* and *UCO Bank v. Rajinder Lal Capoor.*)"

21. We also reiterate that the disciplinary proceedings commence only when a charge-sheet is issued. Departmental proceeding is normally said to be initiated only when a charge-sheet is issued."

5. The learned counsel appearing for the petitioner submitted that the charge-memo, dated 30.05.2019 was issued after the crucial date and the same was issued on 25.09.2019 after filing of the writ petition.

6. Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 & 2 submitted that the crucial date for promotion is 15.03.2019. On 30.04.2018, the first respondent has recommended the Commissioner of Disciplinary Proceedings, Madurai, to initiate disciplinary action against the petitioner for certain allegations. The Commissioner of Disciplinary Proceedings, Madurai, by memo, dated 30.05.2019, issued charge-memo to the petitioner. In view of the same, the petitioner's name was not considered for promotion as Special



Grade Municipal Commissioner. He was not included in the panel for promotion. Non-inclusion of the name of the petitioner in the panel, is valid and legal. Section 47(1) of the Tamilnadu Government Servants (Conditions of Service) Act, 2016, deals with only temporary promotion and the said section is not applicable to the petitioner and prayed for dismissal of the writ petition.

7. The learned counsel appearing for the third respondent contended that the third respondent is fully qualified to be promoted as Special Grade Municipal Commissioner and the promotion of the third respondent is valid and legal and prayed for dismissal of the writ petition.

8. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents 1 & 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

9. From the materials on record, it is seen that the petitioner was promoted as Selection Grade Municipal Commissioner on 31.08.2018. He was placed at Serial No.7 in the panel for promotion. When the list of candidates for the promotion to the post of Special Grade Municipal Commissioner was prepared, the petitioner's name was not included in the list. The representation of the petitioner for inclusion of his name in the list, was returned by the second respondent on the ground that the first respondent has recommended to the Commissioner of Disciplinary Proceedings, Madurai, to initiate action against the petitioner. It is admitted by the petitioner as well as the respondents 1 & 2 that crucial date for preparation of panel for promotion to the post of Special Grade Municipal Commissioner is 15.03.2019. From the records, it is seen that the charge-memo was issued to the petitioner only on 30.05.2019.

10. From the records, it is seen that as on 15.03.2019, there was no disciplinary proceeding pending against the petitioner. Later on only, charge-memo was issued to the petitioner by the Commissioner of Disciplinary Proceedings, Madurai, as stated by the second respondent. Even, in the counter affidavit, it has been stated that only on 30.05.2019, the charge-memo was issued. Except the recommendation of the first respondent to the Commissioner of Disciplinary Proceedings to initiate action against the petitioner, there was no proceeding pending as on 15.03.2019. As rightly contended by the learned counsel for the petitioner that the disciplinary proceeding starts only when a charge-memo is issued to the delinquent employee. The ratio in the judgment relied on by the learned counsel for the petitioner, is squarely applicable to the facts of the present case. The order of the second respondent rejecting the representation of the



petitioner on the ground that the first respondent has recommended the Commissioner of Disciplinary Proceedings to initiate action against the petitioner, is erroneous, invalid and illegal and the same is liable to be set aside. Admittedly, there was no disciplinary proceedings pending against the petitioner as on crucial date i.e., on 15.03.2019. The respondents 1 & 2 are directed to promote the petitioner as Special Grade Municipal Commissioner, if he is otherwise eligible to be promoted and place him above his immediate juniors in the seniority list of the Special Grade Municipal Commissioner.

11. With the above observations and directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

am
To

1.The Principal Secretary,
Department of Municipal Administration
and Water Supply,
Government of Tamilnadu,
Chennai-28.

2.The Commissioner of Municipal Administration,
Urban Administrative Office Campus,
No.75, Santhome High Road,
M.R.C.Nagar, Chennai-28.

+2 CC to M/s.VEERA ASSOCIATES, Advocate (SR-102553,102804[F]
dated 29/11/2019)

+1 CC to Mr.P. SRINIVAS, Advocate (SR-102621[F] dated
29/11/2019)

+1 CC to SPL GP (SR-102833[F] dated 29/11/2019)

W.P. (MD)No.19281 of 2019
28.11.2019

_KM/ (20.12.2019) 5P 7C