



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.21879 of 2019

and

W.M.P. (MD) No.18641 of 2019

WEB COPY

Jaber Sadiq

... Petitioner

-Vs-

The District Collector,
Dindigul District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent in his proceedings in Na.Ka.No.2974/2019/Ou.Va.2, dated 03.07.2019 and quash the same as illegal and consequently, direct the respondent to include the petitioner's name in the promotion list of Block Development Officer, 2019-2020 in Dindigul District.

For Petitioner : Mr.D.Venkatesh

For Respondents : Mr.V.Anand,

Government Advocate.

ORDER

The order of the respondent dated 03.07.2019 is sought to be quashed in the present Writ Petition and further direction is sought for to direct the respondent to include the petitioner's name in the promotion list of Block Development Officer, 2019-2020 in Dindigul District.

2.According to the petitioner, while he was working as Deputy Block Development Officer, (Admin) Panchayat Union, Thooppampatti, he was arrested on 07.04.2015 by the Inspector of Police, Vigilance and Anti-Corruption, Dindigul, in a trap case. Therefore, the petitioner was suspended from service and was paid subsistence allowance. The petitioner gave representation for revoking the suspension. The respondent, by his order dated 08.02.2016, has rejected the request of the petitioner on the ground that final report has been filed by the Vigilance and Anti-Corruption Department in the criminal proceedings and based on the outcome of the case only, the request of the petitioner for revoking the suspension will be considered. The petitioner has filed W.P.(MD) No.4666 of 2016 and this Court, by the order dated 08.03.2016, has granted an order of interim stay. In view of the interim stay granted by this Court, the respondent, by his order dated



21.09.2016, has revoked the order of suspension and posted the petitioner as Deputy Block Development Officer Camp Office, Dindigul.

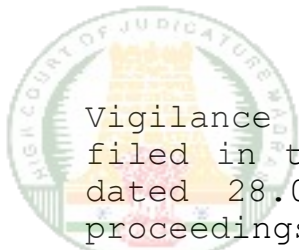
3.The petitioner while was working as such, the panel for promotion to the post of Block Development Officer for the year 2019-2020 was prepared. Out of 9 names in the panel, the petitioner's name was shown at Serial No.7 in the list. However, the petitioner was not promoted. The respondent, by the proceedings dated 14.06.2019, has informed the petitioner that in view of the pendency of the criminal case as well as the charge memo dated 28.08.2017 issued to the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, (hereinafter referred to as 'the Rules'), the petitioner's name was not considered. Therefore, the petitioner has filed an appeal dated 21.06.2019 before the respondent. The respondent, by the impugned order dated 03.07.2019, has rejected the appeal filed by the petitioner. Against the said order, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner submitted that the order of suspension was stayed by this Court and the petitioner is working as Deputy Block Development Officer from 22.09.2016. Though the charge memo, dated 28.08.2017, has been issued to the petitioner and he has submitted his explanation on 06.10.2017, no progress was made in the departmental disciplinary proceedings. Further, the petitioner is co-operating for the conclusion of criminal case, but there is no progress in the criminal case. Pendency of the disciplinary proceedings and criminal case for a long period will not be a reason for denying the promotion to the petitioner. The petitioner can be given temporary promotion, after giving undertaking that he is willing to be reverted, if any adverse orders are passed against him in the criminal case and disciplinary proceedings.

5.The learned Government Advocate appearing for the respondent submitted that the petitioner demanded and accepted bribe and he was arrested in a trap case and disciplinary proceedings are initiated against the petitioner and charge memo dated 28.08.2017 was issued under Rule 17(b) of the Rules. In view of the pendency of the disciplinary proceedings and criminal case, the petitioner is not entitled to be considered for promotion to the post of Block Development Officer and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondent and perused the materials available on record carefully.

7.From the materials on record, it is seen that the petitioner was arrested on 07.04.2015 by the Inspector of Police,
<https://hccservices.in/hccservices>



Vigilance and Anti-Corruption, Dindigul and final report is also filed in the criminal case. In addition to that, the charge memo dated 28.08.2017 was issued to the petitioner and disciplinary proceedings are pending from that date onwards. From the above facts, it is seen that for the alleged offence committed by the petitioner on 07.04.2015, both the criminal case as well as the disciplinary proceedings are pending against the petitioner and the petitioner is deferring promotion, in view of the pendency of these two proceedings. This issue was already considered by the Full Bench of this Court in the judgment reported in **2011 (3) CTC 129 (Deputy Inspector General of Police Vs. P.Rani)**, wherein, it has been held that when criminal proceedings and disciplinary proceedings are pending for long time, an employee can be promoted, after getting an affidavit of undertaking to the effect that in the event of his failure in the criminal case, he can be reverted to the lower post. Again, this issue was considered by this Court, by the order dated 19.08.2016, in W.P.No.28925 of 2016, after considering the judgment of the Full Bench of this Court referred to above and the judgment of the Hon'ble Apex Court reported in **1995 (2) SCC 570 (State of Punjab and others Vs. Chaman Lal Goyal)**.

8.The judgments referred to above are squarely applicable to the facts of the present case. The petitioner cannot be denied promotion, in view of the pendency of the criminal case and disciplinary proceedings.

9.For the above reason, the impugned order of the respondent, dated 03.07.2019, is set aside. The respondent is directed to include the name of the petitioner in the panel for promotion to the post of Block Development Officer for the year 2019-2020, if he is otherwise eligible and on obtaining an affidavit of undertaking from the petitioner that he can be reverted back to the post of Deputy Block Development Officer, if any adverse orders are passed against him in the criminal case as well as in the disciplinary proceedings. The respondent is also directed to pass orders, within a period of four weeks from the date of receipt of a copy of this order.

10.With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)



To

The District Collector,
Dindigul District.

WEB COPY

+1 CC to M/s.D. VENKATESH, Advocate (SR-98013[F] dated 13/11/2019)

W.P. (MD) No.21879 of 2019
11.11.2019

MYR

_KK/SAR/18.11.2019/4P-3C/