

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.40992 of 2015

MP.No.1 of 2015

M/Syed Ibrahim

Petitioner

Vs

1.The State of Tamil Nadu represented by its Secretary
Commercial Taxes and Registration Department, Chennai-9

2.The Principal Secretary/ Commissioner of Commercial Taxes
O/o the Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai-5

Respondents

3.

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Mandamus to direct the Respondents to promote the Petitioner as Commercial Tax Officer in the year 2010 on par with his junior K.Chandrasekaran and consequently, to promote the Petitioner as Assistant Commissioner in the panel for 2015.

For Petitioner : Mr.V.Prakash, SC for
Mr.K.Krishnamoorthy

For Respondent : Mr.M.Hariharan, AGP

ORDER

1.The prayer in this Writ Petition is to direct the Respondents to promote the Petitioner as Commercial Tax Officer, by including his name in the promotion panel for the year 2010 on par with his junior K.Chandrasekaran and consequently, to promote him as Assistant Commissioner in the panel for the year 2015.

2.The facts, leading to filing of this Writ Petition and necessary for disposal of this Writ Petition, are as under:-

a) The Petitioner had joined the services of the 2nd Respondent Department as Junior Assistant on 3.2.1986 and he was promoted as Assistant in the year 1991 and thereafter, he was recruited through transfer to the post of Assistant Commercial Tax Officer since 12.10.2006 and consequently, promoted to the post of Commercial Tax Officer in 2013. During his tenure as Assistant Commercial Tax Officer, between 19.10.2006 and

29.10.2008, he was issued with the a charge memo dated, 9.11.2009 and disciplinary proceedings were initiated against him under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, which was ended with a punishment of censure on 21.03.2012.

- b) In the appeal, the said punishment was confirmed and in the revision filed against the same also, the punishment was confirmed. The Writ Petition in WP.No.13232 of 2015 filed, seeking to quash the punishment of censure is pending on the file of this Court. Contending that there can be a bar for promotion only for a period of one year from the date of punishment of censure, which expired on 20.03.2013 and hence, the Respondents are duty bound to consider the Petitioner for promotion on par with his juniors from the year 2010, this Writ Petition has been filed seeking the reliefs as stated above.
- 3.This court heard the learned counsel on either side and considered their respective submissions and also perused the materials placed on record.
- 4.According to the learned counsel for the Petitioner, since the punishment was one of censure, the proceedings have to be deemed to be initiated one under Rule 17(a) and not 17(b) of the said Rules and the punishment of censure will not be a bar for inclusion of the name of the Petitioner in the approved list and since there can be a bar for promotion only for a period of one year from the date of punishment of censure, which expired on 20.03.2013, there cannot be any denial of promotion before imposition of minor penalty and in such circumstances, the Respondents are duty bound to consider the name of the Petitioner for promotion on par with his juniors from the year 2010 and give consequential benefits.
- 5.The Petitioner had also made a representation dated 20.12.2015 to the 1st Respondent, seeking such relief, but no order has been passed so far and that the 1st Respondent ought to have considered his representation in the light of the decision of the Full Bench of this Court, reported in 2011 3 CTC 129 (DIG of Police, Thanjavur and another Vs. V.Rani) and also the Tamil Nadu Act 14 of 2016.
- 6.On the other hand, the learned Additional Government Pleader for the Respondents has submitted that at the time of considering the promotion panel, disciplinary proceedings were initiated against the Petitioner and the same were pending and therefore, his name was not included in the promotion panel and subsequently he was inflicted with the punishment of censure by the concerned authority, however, the representation of the Petitioner will be disposed of by the 1st Respondent within a time frame to be fixed by this Court.
- 7.Considering the submissions of the learned counsel on either side, though the prayer in this Writ Petition is for a larger relief, without going into the merits of the case,

the 1st Respondent is directed to consider the representation of the Petitioner dated 20.12.2015 and dispose of the same, one way or the other, by giving reasons, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Srcm

To

1. The Secretary, Commercial Taxes and
Registration Department, Chennai-9

2. The Principal Secretary/
Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

+1cc to Mr.K.Krishnamoorthy, Advocate SR.4898

+1cc to the Government Pleader (Taxes) SR.5411

+1cc to the Government Pleader SR.5552

WP.No.40992 of 2015

VBA(CO)
CB(30/01/2020)

सत्यमेव जयते

WEB COPY