

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.2335 of 2019
and
C.M.P.No.15395 of 2019

(Through Video Conferencing)

- 1.The Principal Secretary to Government,
Rural Development & Panchayat Raj
(E1) Department,
Fort Saint George, Chennai - 600 009.
- 2.The Director of Rural Development &
Panchayat Raj,
Panagal Building,
Saidapet, Chennai - 600 015.
- 3.The District Collector,
Villupuram District,
Villupuram - 605 602. ... Appellants/Respondents

Vs.

S.Ram Kumar ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent,
to set aside the order dated 15.03.2019 passed by the learned
Single Judge in W.P.No.7986 of 2017.

Prayer in WP.No.7986 of 2017: Petition filed under Article 226
of the constitution of India praying to issue a writ of
certiorarified Mandamus calling for the records of the first
respondent in connection with the impuged order passed by him
in G.O.(D) No.126, dated 17.03.2017 and quash the same and
further direct the respondents to promote the petitioner as
Assistant Director (RD+PR) on par with his junior.

For Appellants : Mrs.A.Srijayanthi,
Spl. Govt. Pleader.

For Respondent : Mr.S.Sivakumar for CAV

J U D G M E N T
(Judgment of the Court was delivered
by C.SARAVANAN, J.)

The appellants were the respondents in W.P.No.7986 of 2017. They are aggrieved by the impugned order dated 15.03.2019 passed by the learned Single Judge of this Court in W.P.No.7986 of 2017.

2. The said Writ Petition was filed by the respondent herein, to call for the records relating to the impugned order passed by the 1st appellant in G.O.(D).No.126, dated 17.03.2017 and quash the same and further direct the appellants to promote the respondent as Assistant Director (RD & PR) on par with his junior.

3. By the impugned order, the learned Single Judge has allowed the writ petition filed by the respondent and has set aside the impugned G.O.(D).No.126, dated 17.03.2017 passed by the 1st appellant. The operative portion of the impugned order reads as under:-

8.The above facts have been admitted. As rightly contended by the learned Senior counsel for the petitioner, when the Criminal Court has acquitted the petitioner and once the petitioner was denied his due promotion only on the basis of pendency of criminal case, the petitioner, on being acquitted, is entitled to be considered for promotion on par with his immediate Junior. The Rule position as extracted above is very clear on that aspect. Although it may be a fact that the Departmental charge memo dated 18.10.2016 is on the basis of same set of allegations, nevertheless, the said subsequent charge memo issued in 2016 cannot be a bar for considering the promotion of the petitioner as Assistant Director for the panel year 2012-13. The reliance placed by the learned Senior counsel on the decision of the learned Single Judge in W.P.No.3405 of 2014, dated 7.2.2013, is squarely on that point. The learned single Judge, in identical circumstances allowed the claim of the petitioner therein. Even otherwise, the legal principle, which has been laid down by the Courts are very clear that when an employee is either acquitted or exonerated from the criminal or departmental charges, he is entitled to be considered for promotion on par with his immediate Junior from the date on which his immediate Junior was promoted. Any subsequent action either on

the same set of allegations or otherwise, cannot be an embargo to consider the employee for promotion to the next higher grade. The State Government Rule on this aspect, as extracted above, is supportive to the stand taken by the learned Senior counsel for the petitioner. Even otherwise, the law on this aspect is very clear that once the employee is acquitted of the criminal charges and the promotion was withheld only on the basis of such pendency of criminal action, on being acquitted, the employee statutorily is entitled to all benefits which would have been otherwise derived, but for the pendency of the criminal action.

For the aforesaid reasons, the writ petition is allowed. The impugned order passed by the first respondent in G.O.(D) No.126, dated 17.03.2017, is hereby set aside. The respondents are directed to grant promotion to the petitioner as Assistant Director (RD & PR) on par with the his immediate Junior with all consequential and attendant benefits. The respondents are directed to comply with this direction within a period of eight weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petitions are closed.

4. We have heard the learned Special Government Pleader for the appellants and the learned counsel for the respondent. We have also perused the evidence on record.

5. The brief facts of the case are that the respondent was appointed as Junior Assistant (JA) in the Rural Development Department in the year 1982 and thereafter, he was promoted as a Block Development Officer (BDO) in the year 2009. It was submitted that while the respondent was serving as a Block Development Officer (BDO), a criminal case was registered against the respondent under Section 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 in Crime No.02/AC/2009/VPM following a complaint given by one C.S.Sekar. It was alleged that the respondent got a bribe of Rs.5,000/- for releasing an auctioned jeep which was accepted by the respondent. The respondent was therefore placed under suspension on 03.03.2009 in terms of Rule 17(e) (ii) of Tamil Nadu Civil Service (Discipline and Appeal) Rules.

6. Subsequently, the criminal case initiated against the respondent vide Special Case No.01 of 2010 culminated in an

order dated 13.12.2013 of the Special Court/Chief Judicial Magistrate, Villupuram. The respondent was acquitted and the allegation that he was bribed was found untrue. The respondent was therefore reinstated to his service by the appellants. The appellants however pursued with their appellate remedy in Criminal Appeal No.575 of 2014.

7. Meanwhile, juniors of the respondent were promoted as Assistant Directors. Therefore, the respondent filed W.P.No.16910 of 2015 to promote him as Assistant Director on par with his juniors in view of the his acquittal in the criminal case and for grant of all consequential service and monetary benefits.

8. By an order dated 15.06.2015, this Court disposed the said writ petition with the following directions.

3. Though a positive relief is sought for by the petitioner in the writ petition, in view of the limited relief sought for by the learned counsel for the petitioner, the writ petition is disposed of directing the 3rd respondent to send appropriate proposals to the 2nd respondent based on the representation dated 31.7.2014 of the petitioner for promoting the petitioner to the post of Assistant Director on notional basis within a period of six weeks from the date of receipt of copy of the order and the 2nd respondent is directed to forward the same to the 1st respondent within a period of three weeks thereafter and the 1st respondent is directed to pass an order on merits and in accordance with law within a period of eight weeks thereafter.

9. According to the appellants, pursuant to the aforesaid order dated 15.06.2015 of this Court, the proposals were sent to the Government. Meanwhile, a fresh departmental proceeding was initiated and charges were framed against the respondent under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules by the District Collector, Villupuram on 18.10.2016 vide District Collector's Memo No.PA2/2480/2008, while simultaneously proposals were sent to the Government in compliance of the order dated 15.06.2015 of this Court.

10. The respondent therefore filed W.P.No.516 of 2017 to quash the said charge memo and filed W.M.P.542 of 2017 to stay all proceedings initiated in the said order dated 18.10.2016. By an order dated 03.03.2017, an interim order was passed and this court directed the respondent therein to defer departmental enquiry in respect of Charge Nos.1 to 3 pending disposal of Crl.A.No.575 of 2014 and directed the respondent

herein to submit his written statement to the Charge Nos.4 and 5. We were informed that the said criminal appeal filed by the appellants was also subsequently dismissed by this Court.

11. Meanwhile, G.O.(D).No.126, dated 17.03.2017 was issued by the Government of Tamil Nadu. It stated that the representation dated 31.07.2014 of the respondent to include him in the Assistant Director Panel of 2012-2013 could not be considered as the charges were framed against the respondent under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules by the District Collector, Villupuram on 18.10.2016.

12. Following the same, the respondent filed the above writ petition and in which, the learned Single Judge allowed the prayer of the respondent and the same was impugned in this Writ Appeal.

13. We find that the learned Single Judge has come to a just conclusion while passing the impugned order. In the facts of the case, issue of a subsequent Charge Memo or initiation of fresh departmental proceedings cannot be a bar for considering the promotion of the respondent as an Assistant Director for the panel year 2012-13. Promotion which was earlier withheld because of pendency of criminal proceeding can no longer act against the respondent as he was acquitted in the criminal proceedings. The criminal appeal filed by the appellants in Crl.A.No.575 of 2014 was also dismissed by this Court. Thus, the substratum or the basis for denying the promotion to the respondent due to the pendency of the criminal proceeding stood completely erased and obliterated. We therefore find no merits in the present Writ Appeal.

14. Accordingly, this Writ Appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To.

1.The Principal Secretary to Government,
Rural Development & Panchayat Raj (E1) Department,
Fort Saint George, Chennai - 600 009.

2.The Director,
Rural Development & Panchayat Raj,
Panagal Building, Saidapet, Chennai - 600 015.

3.The District Collector,
Villupuram District, Villupuram - 605 602.

+lcc to Mr.S.Sivakumar, Advocate SR.33052

W.A.No.2335 of 2019 and
C.M.P.No.15395 of 2019

CP (CO)
CB(08/12/2020)



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