



WEB COPY

W.A.(MD).No341 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2020

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A. (MD) .No341 of 2020

and

C.M.P. (MD) .No.2325 of 2020

The District Collector,
Dindigul, Dindigul District.

.. Appellant/Respondent

/Vs./

N.Nachimuthu

.. Respondent/Writ Petitioner

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent against the Judgment of this Court in W.P.(MD).No.27051 of 2019, dated 20.12.2019.

Prayer in WP(MD)No.27051 of 2019

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent i.e., the District Collector, Dindigul relating to his Roc.No.18114/2019/A1, dated 29.11.2019 and quash the same and consequently direct the respondent i.e., the District Collector, Dindigul District to include the name of the petitioner in the approved list of the Tahsildar of the year 2019 according to his seniority in the feeder category i.e., Deputy Tahsildar, within a specified time frame.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

J U D G M E N T

(Judgment of this court was delivered by **S.S.SUNDAR, J.**)

This writ appeal is directed against the order of the learned single Judge passed in W.P.(MD).No.27051 of 2019, dated 20.12.2019.

2.The respondent in this appeal filed a writ petition to quash the proceedings of the appellant, dated 29.11.2019, intimating the respondent that his name had not been included in the Tahsildar panel approved in the notification as per the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, Schedule XI, Part A, Class II(1), on the ground that a criminal case had been registered against the respondent by Vigilance and Anti Corruption Department in Crime No.2 of 2019. The learned single Judge has allowed the writ petition mainly on the ground that mere registration of case



without filing charge sheet or issuance of charge memo cannot be a bar for promotion. Challenging the order of the learned Single Judge, the appellant has come forward with this writ appeal.

3.The learned Special Government Pleader admitted the factual position that no charges have been framed against the respondent and no disciplinary proceeding is pending. It is further admitted before this Court that in the criminal case, no charge sheet or final report is filed. However, the learned Special Government Pleader relied upon Class II (1) of Part A of Schedule XI of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follows:

"II. Consideration of members for inclusion in the approved lists:-

(1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of service and no specific charges have been framed, promotion or appointment of such member of service shall be considered on the basis of the merit revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion."

4.After referring to the above Clause, it is submitted by the learned Special Government Pleader that the respondent can still consider the pendency of FIR before granting the respondent any promotion. The Clause relied upon by the appellant is also clear to the effect that unless specific charges have been framed or a Charge sheet have been filed in criminal case against a member of service, promotion of service cannot be deferred. In the present case, when it is admitted that the respondent had not been issued with any charge memo and no charge sheet had been filed in the criminal case, the appellant cannot refuse to consider the promotion of respondent. It is true that promotion to respondent can be considered on the basis of merits revealed through ACRs, Record Sheets and punishments imposed. However, refusal to include the name of respondent in the promotional panel on the ground of mere registration of a criminal complaint is not justified. In such circumstances, the impugned order challenged in the writ petition cannot stand and hence we have no reason to take a different view. Hence, the writ appeal is



liable to be dismissed as devoid of any merits.

5. Accordingly, this writ appeal is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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+1 CC to M/s.SPL.GP (SR-10011[F] dated 04/03/2020)

W.A. (MD) .No341 of 2020
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