BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **17.08.2020**
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.7658 of 2020
(Through Video conferencing)

L.Subramanian ...Petitioner

-Vs-

1.The Principal Secretary to Government,
Commercial Taxes and Registration (A1) Department,
Secretariat, Fort St. Goerge,
Chennai - 600 009.

2.The Principal Secretary/Commissioner of
Commercial Taxes,
O/o.the Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Deputy Commissioner (State Tax),
O/o.the Deputy Commissioner (ST).
Virudhunagar District. ...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the respondent No.2 to consider the petitioner for promotion to the post of Commercial Tax Officer as on 01.03.2014 without reference to the subsequent Charge Memo in CD2/25880/2015, dated 21.07.2016, which ended in the order of punishment of stoppage of increment for one year with cumulative effect dated 26.09.2019 which are much after the crucial date, within the time stipulated by this Court.

For Petitioner : Mr.S.Louis
For Respondents : Mrs.J.Padmavathidevi, Spl.G.P.

ORDER

The prayer sought for herein is for a writ of Mandamus, directing the respondent No.2 to consider the petitioner for promotion to the post of Commercial Tax Officer as on 01.03.2014 without reference to the subsequent Charge Memo in CD2/25880/2015, dated 21.07.2016, which ended in the order of punishment of stoppage of increment for one year with cumulative effect dated 26.09.2019 which are much after the crucial date, within the time stipulated by this Court.

2.Heard Mr.S.Louis, learned counsel appearing for the petitioner and Mrs.J.Padmavathidevi, learned Special Government Pleader appearing for the respondents.

3.The petitioner has been serving as Deputy Commercial Tax Officer and in the year 2016, a charge memo has been issued dated 21.07.2016 against him, which ended in a punishment of stoppage of increment for one year with cumulative effect dated 26.09.2019. However, prior to the issuance of charge memo and disciplinary proceedings, the petitioner's name was included in the panel of Deputy Commercial Tax Officers fit for promotion to the post of Commercial Tax Officers by taking into account the crucial date 01.03.2014. However, subsequently, when the promotion was given in 2015, the petitioner was not considered for promotion and even thereafter, till date he has not been considered. The reason being for non consideration of the petitioner's candidature for promotion is that, charge memo has been issued, disciplinary proceedings was pending and ultimately, punishment has been awarded and imposed him on 26.09.2019, where one year stoppage of increment with cumulative effect since has been given, he has to undergo the said punishment till 25.09.2020. Therefore, as of now, he is in currency of punishment, accordingly, he has not been considered, that seems to be the case of the respondents..

4.In this regard, the learned counsel appearing for the petitioner would submit that, taking into account the crucial date as 01.03.2014, since the name of the petitioner was included, subsequently, when the promotion was given to others similarly to that of the petitioner, the petitioner's name was not considered in the year 2015 and promotion was not given thereafter also, in view of the pendency of the disciplinary proceedings, till date, he has not been considered.

5.The learned counsel would further submit that, the punishment was awarded against the petitioner only on 26.09.2019. Therefore, the currency of punishment is till 26.09.2020. During this period, certainly the petitioner would not be entitled to get any promotion. Like that, if clause 11 of Schedule 11 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is applied, even then also, the petitioner's promotion could not have been stalled for all these years, since the petitioner has not been punished 5 years prior to the crucial date i.e. on 01.03.2014 and assuming that the present punishment dated 26.09.2019 would be the bar, such promotion would not any way connected with the crucial date, which occurred in the year 2014 itself. Therefore, in order to get such promotion, which according to the learned counsel appearing for the petitioner is a due for the petitioner from 2014 or 2015 onwards, he has given a representation to the respondents on 16.09.2019. Since the same has not been considered so far, he has approached this Court with the aforesaid prayer of mandamus.

6.However, the learned Special Government Pleader appearing for the respondents would heavily rely upon clause 11 of Schedule 11 of the Act and would submit that, if the 5 years period is applied to the case of the petitioner, certainly, for 5 years period prior to the crucial date seeking promotion, as of now, the petitioner would not be eligible to get such promotion. Moreover, the learned Special Government Pleader also would submit that, as of now, the petitioner is in currency of punishment which ends only on 25.09.2020. Therefore, during the period of currency of punishment, the petitioner may not be entitled to get promotion. Thereafter, the request of the petitioner would be considered and if at all the petitioner undergone the punishment thereafter, i.e. after 26.09.2020, whatever be the next crucial date for the preparation of panel would come, the petitioner can make a request to be included in such panel. Therefore, the present request made by the petitioner that he should have been given promotion pursuant to 2014 panel cannot be considered.

7.I have heard the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8.According to the learned Special Government Pleader appearing for the respondents, which one is preventing the respondents from considering the candidature of the petitioner for promotion to the post of Commercial Tax Officers, is clause 11 of Schedule 11 of the Act. In order to appreciate the same, the relevant clause is extracted herein:

> "Any punishment(other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.

9.On a careful reading of the aforesaid clause 11 of Schedule 11, it has two limbs. In the first limb, the prohibition is that from the crucial date, if the employee is punished other than Censure within a period of 5 years prior to the crucial date, he would not be considered for inclusion in the panel for promotion. In the same line, if the punishment is Censure, 5 years period will be taken as one year block. However, in the second limb, if any punishment is awarded after the crucial date much before the actual promotion or appointment is made, that can also be taken as a hindrance in considering the promotion of such employee/candidature. In other words, if a punishment is awarded in between the crucial date and the actual promotion, where, even though the awardee of the punishment is included in the panel, he shall not be considered for promotion, this is according to the second limb of clause 11.

10.Here, in the case in hand, it is an admitted fact that, taking into account the crucial date as 01.03.2014, the petitioner's name has been included in the panel fit for promotion to the post of Commercial Tax Officer and thereafter, pursuant to said panel, promotions have been given to others, but, not to the petitioner. In the meanwhile, in view of the occurrence taken place, disciplinary proceedings was initiated against the petitioner and charge memo also was served on him dated 21.07.2016. Thereafter, the disciplinary proceeding was pending, which ended in punishment on 26.09.2019, whereby stoppage of increment for one year with cumulative effect has been imposed and therefore, upto 26.09.2020, the petitioner is in currency of the said punishment. If these dates are taken into account, certainly, the petitioner would not come in any of the disqualification as has been contemplated under Clause 11 of Schedule 11. The reason being that, the crucial date was 01.03.2014, where the petitioner's name was found fit to be included, accordingly, it was included. Therefore, before 01.03.2014 within 5 years if the petitioner has been imposed any punishment, certainly, the petitioner should not have been included.

11.Moreover, it is an admitted fact that, no punishment has been imposed against the petitioner prior to 01.03.2014 and the punishment was given later i.e. on 26.09.2019 only. If the said crucial date 01.03.2014 is taken into account and after the crucial date, where the petitioner's name has been found place in the panel, where no punishment was imposed against him prior to the actual promotion, which was admittedly given in 2015, there also, the petitioner was not punished between the crucial date and the actual promotion. Therefore, this Court is of the considered view that, since the petitioner would not come under any of the disqualification as contemplated in Clause 11 of Schedule 11 of the Act, his request to be considered for promotion to the post of Commercial Tax Officer in the year 2014/2015 can very well be taken into account and accordingly, orders can be passed by the respondents on merits.

12.In that view of the matter, this Court is inclined to dispose of this writ petition with the following direction:

> "The respondents are hereby directed to consider the representation of the petitioner dated 16.09.2019 and pass orders thereon on merits by taking into account the aforesaid discussion made in this order and accordingly, pass necessary orders with regard to the claim of the petitioner for getting promotion to the post of Commercial Tax Officer from the year 2014/2015 and such endeavour shall be made and final order shall be passed within a period of 8 weeks from the date of receipt of a copy of this order.

13.With this direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar (CO)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Secretariat, Fort St. Goerge,
Chennai - 600 009.

2.The Principal Secretary/Commissioner of
Commercial Taxes,
O/o.the Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Deputy Commissioner (State Tax),
O/o.the Deputy Commissioner (ST).
Virudhunagar District.

+1 CC to M/s.S. LOUIS, Advocate(SR-14345[F] dated 18/08/2020)

Order made in
W.P.(MD)No.7658 of 2020
17.08.2020

AC(CO)
KB(01.10.2020) 5P 5C