



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2020

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.12179 of 2015

K.Senthil Vel

... Petitioner

vs.

1)Principal Secretary to Government,
Department of Rural Development and Panchayat Raj,
Fort St.George,
Chennai.

2)The Director,
Directorate of Rural Development and Panchayat Raj,
Chennai-600 015.

3)The District Collector,
Dindigul District,
Dindigul.

... Respondents

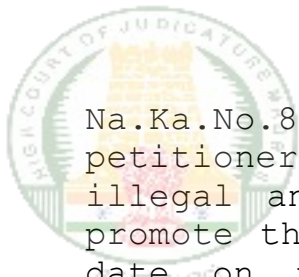
Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order passed by the 1st respondent in his proceedings Letter No.15033/E1/2014 - 3 dated 08.10.2014 confirming the order passed by the 2nd respondent in his proceedings Na.Ka.No.86174/2012/G.E.2.1 dated 11.04.2014 rejecting the petitioner's request for notional promotion and quash the same as illegal and consequently direct the 2nd respondent to notionally promote the petitioner as Assistant Director with effect from the date on which his immediate junior was promoted along with monetary and retirement benefits by including his name in the list of Assistant Directors (Divisional Development Officers) for the year 1999-2000.

For Petitioner : Mr.M.E.Ilango

For Respondents : Mr.S.Dhayalan, Government Advocate

ORDER

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order passed by the 1st respondent in his proceedings Letter No.15033/E1/2014 - 3 dated 08.10.2014 confirming the order passed by the 2nd respondent in his proceedings

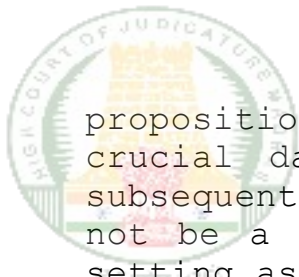


Na.Ka.No.86174/2012/G.E.2.1 dated 11.04.2014 rejecting the petitioner's request for notional promotion and quash the same as illegal and consequently direct the 2nd respondent to notionally promote the petitioner as Assistant Director with effect from the date on which his immediate junior was promoted along with monetary and retirement benefits by including his name in the list of Assistant Directors (Divisional Development Officers) for the year 1999-2000.

2.Learned counsel for the petitioner would submit that the petitioner was appointed as Rural Welfare Officer Grade-II with effect from 18.11.68 and he was advanced to special temporary post as Rural Welfare Officer on 01.07.1978. The petitioner was issued with a charge memo dated 11.12.1997 which ended in imposition of punishment of three years increment cut with cumulative effect, against which, the petitioner filed appeal wherein, by order dated 25.01.2000, the above punishment was modified as stoppage of increment cut without cumulative effect for a period of six months. Accordingly, the petitioner had undergone the said punishment between 25.01.2000 and 30.06.2000. The crucial date for preparing the panel is 1st March of every year. According to the petitioner, no other charge memo or punishment was pending against him during the crucial date for promotion namely, 01.03.2001, but he was not considered for promotion during 2001.

3.He would further submit that the petitioner was issued with another charge memo on 21.03.2002 under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules which ended in punishment of stoppage of increment cut with cumulative effect for six months by order dated 27.07.2002 and the petitioner had undergone the said punishment from 01.10.2003 to 31.03.2004. Thus, he would state that there was no currency of punishment during 2001, 2002 and 2003 for promotion and it is a settled law that charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is not a bar for promotion and therefore, the charge memo issued on 21.03.2002 cannot be cited as a bar for promotion.

4.It is further submitted that the seniority of the petitioner as Block Development Officer was fixed at Seniority No.1440A as per the proceedings of the 2nd respondent dated 20.06.2013. While so, one Muthulingam, junior to the petitioner with seniority No.1718 was promoted as Deputy Director, Rural Development and Panchayat Raj for the year 2001 with effect from 10.07.2001 and therefore, the petitioner made a representation to notionally promote him to the said post which was rejected by the impugned orders stating that the petitioner was under currency of punishment. He would rely on the decisions in W.P(MD)No.3887/2013 dated 19.12.2016 and W.P(MD)No.924 of 2012 dated 06.01.2017 for a



proposition that if there is no charge or punishment on the crucial date for preparation of the panel for promotion, then subsequent punishment and even the currency of punishment would not be a bar for granting the relief. Thus, he would pray for setting aside the impugned orders.

WEB COPY

5.The respondents have filed counter affidavit. Learned Government Advocate appearing for the respondents would state that as per the amendment to Rule 4(a) of the Tamil Nadu State and Subordinate Service Rules, Schedule VII Part A, Part II 3(c) issued in G.O(Ms)No.22, Personal and Administrative Reforms(S) Department, dated 24.02.2014, no member of service who is undergoing any punishment imposed under rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules either on the crucial date or on the date of consideration for actual promotion, shall be promoted. In view of the above rule, as the punishment of stoppage of increment was in currency from 27.07.2002 to 31.03.2004, the petitioner was not considered for promotion during 1999-2000, 2000-01, 2001-02, 2003-04 and 2004-05. Thus, he would pray for dismissal of the writ petition.

6.Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

7.The details of punishment imposed on the petitioner as per the tabular column provided by the petitioner, are as follows:-

<i>Sl. No</i>	<i>Date of punishment</i>	<i>Under rule</i>	<i>Punishment imposed</i>	<i>Currency of punishment</i>
1	25.01.00	17(b)	Stoppage of increment for a period of 6 months without cumulative effect.	01.01.00 to 30.06.00
2	27.07.02	17(a)	Stoppage of increment for a period of 6 months with cumulative effect.	01.10.03 to 31.03.04

8.From the tabular column, it is seen that on the date of preparing the panel i.e., 01.03.2001, there was no charge memo as against the petitioner to which, no materials have been placed before this Court nor the Government Advocate could cite contra evidence against him. Further, the petitioner underwent the punishment as against the charges tabulated above. When that being the position, it is the grievance of the petitioner that his junior one Muthuramalingam had been promoted as Deputy Director for the year 2001-02 with effect from 10.07.2001. The petitioner also retired from service as Block Development Officer on 31.07.2004. However, he was not given any benefits as that of his



junior. Needless to mention that it is a settled law that pendency of charge memo under rule 17(a) is not a bar for promotion. Thus, on the crucial dates namely, 01.03.2001, 01.03.2002 and 01.03.2003, there was no bar for promotion of the petitioner and therefore, the impugned orders declining his promotion on the ground that there was currency of punishment from 27.07.2002 to 31.03.2004 has no legs to stand. In my considered opinion, the impugned orders are passed without application of mind and therefore, the same are liable to be set aside. Further, the decisions cited by the learned counsel for the petitioner are also squarely applicable to the facts of the present case. Therefore, I have no hesitation to hold that the petitioner is entitled for the relief sought for in this writ petition.

9. Accordingly, the impugned order passed by the 1st respondent in his proceedings Letter No.15033/E1/2014 - 3 dated 08.10.2014 confirming the order passed by the 2nd respondent in his proceedings Na.Ka.No.86174/2012/G.E.2.1 dated 11.04.2014, are set aside and since the petitioner retired from service as Block Development Officer on 31.07.2004, the 2nd respondent is directed to notionally promote the petitioner as Assistant Director with effect from the date on which his immediate junior was promoted and the pay be fixed in the promoted post and the retirement benefits be given in the cadre of the promoted post. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

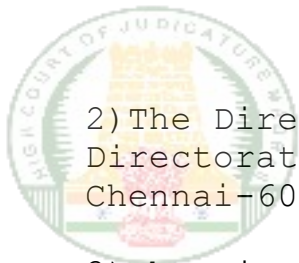
Sub Assistant Registrar (CS)

bala

To

1) Principal Secretary to Government,
Department of Rural Development and Panchayat Raj,
Fort St. George, Chennai.

<https://hcservices.ecourts.gov.in/hcservices/>



2)The Director,
Directorate of Rural Development and Panchayat Raj,
Chennai-600 015.

3)The District Collector,
Dindigul District,
Dindigul.

+1 CC to SPL.GP (SR-286[F] dated 06/01/2020)

+1 CC to MR.M.E.ILANGO, Advocate (SR-193[F] dated 03/01/2020)

W.P (MD) No.12179 of 2015
03.01.2020

KM/ (23.01.2020) 5P 6C