



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.6178 of 2015

and

M.P (MD)No.2 of 2015

WEB COPY

D.Ravindran

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by it's Chief Secretary,
Public Department,
Secretariat, Chennai - 9.

2.The Additional Chief Secretary / Commissioner,
Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 5.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in G.O.Rt.No.199 Public (Special.A) Department, dated 20.01.2015 and quash the same as illegal and consequentially direct the respondents to promote the petitioner to the post of District Revenue Officer w.e.f. the date on which his immediate junior was promoted with all consequential benefits within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel
for Ajmal Associates

For Respondents : Mr.D.Muruganandham
Addl.Govt.Pleader

O R D E R

The order of the 1st respondent issued in G.O.Rt.No.199 Public (Special.A) Department, dated 20.01.2015 is sought to be quashed and a direction is sought for to promote the petitioner to the post of District Revenue Officer with effect from the date on which his immediate junior was promoted with all consequential benefits.

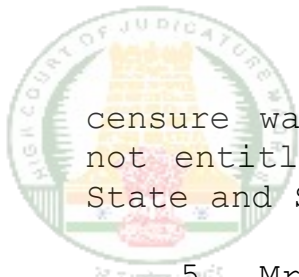


2. The petitioner joined as Junior Assistant in the year 1981 and promoted as Tahsildar in the year 1999 and to the post of Deputy Collector in the year 2007. The petitioner attained the age of superannuation and retired from service on 31.08.2014. The grievance of the writ petitioner is that he is entitled to be included in the panel of Assistant Commissioner fit for promotion to the post of District Revenue Officer drawn with effect from the year 2011 and despite the fact that he is eligible, his name was not included on account of the pendency of two sets of charge memorandum dated 07.07.2018 and 31.05.2010. The crucial date for consideration of promotion was 01.04.2011.

3. The name of the writ petitioner was deferred on account of the pendency of the charge memorandum. The petitioner filed W.P. (MD)No.17499 of 2010 and the writ petition was allowed by this Court on 13.06.2011, quashing the charge memo dated 31.05.2010. In respect of the other charge-memo, dated 07.07.2008, W.P.(MD) No.10060 of 2010 was filed to conclude the departmental disciplinary proceedings. This Court passed an order on 30.03.2011 and it was not concluded within the stipulated period, again W.P.(MD)No.6203 of 2012 was filed and the Writ Petition was dismissed on 27.04.2012. The petitioner preferred a Writ Appeal and the Division Bench of this Court disposed of the Writ Appeal by directing the authorities to conclude the departmental enquiry and pass final orders within a period of two months from the date of receipt of a copy of that order. The Writ Appeal order dated 30.05.2012 was clear that in the event of not passing orders, the entire proceedings shall stand quashed. As the departmental proceedings was not concluded within a stipulated period, the petitioner filed W.P(MD)No.4176 of 2013 to promote him as District Revenue Officer, treating the charge-memo dated 07.07.2008 as quashed.

4. However, the respondents during the pendency of the writ petition passed a formal order dropping both the two charges. In this regard, the Government issued G.O.(2D)No.795, Revenue [Ser-2 (1)]Department, dated 24.12.2013 and G.O.(2D)No.137, Revenue [Ser-2 (1)] Department, dated 17.02.2014.. Thus, there is no impediment to consider and include the name of the writ petitioner for promotion to the post of Deputy Revenue Officer.

5. Again the writ petitioner filed W.P.(MD)No.7660 of 2014 and this Court directed the respondents to consider the representation, dated 23.04.2014 within a stipulated period. Thereafter, the present impugned order was issued by the 1st respondent in G.O.RT.No.199, Public (Special.A) Department, dated 20.01.2015, rejecting the claim of the writ petitioner for promotion to the post of District Revenue Officer, on the ground that a punishment of



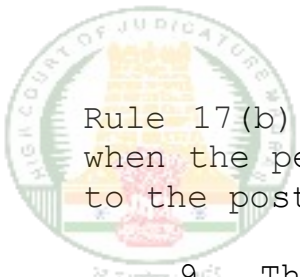
censure was issued on 18.11.2013 and therefore, the petitioner is not entitled for promotion as per the Rule 4(a) of the Tamil Nadu State and Subordinate Services Rules.

5. Mr.M.Ajmalkhan, the learned Senior Counsel appearing on behalf of the writ petitioner strenuously contended that the reasons furnished in the order impugned is untenable on the ground that two sets of charge-memo framed against the writ petitioner were dropped. The Government also issued orders to that effect. Thus, the writ petitioner's name ought to have been included in the panel of the year 2011 itself. The punishment of censure was issued on 18.11.2013 and as far as the punishment of censure is concerned, the same cannot be construed as currency of punishment, however, the censure will have the effect of one year from the date of the order of punishment.

6. The learned Senior Counsel is of the opinion that any subsequent development of imposing the punishment of censure would not have any implications with reference to the panel of the year 2011 as the charge memorandums were dropped and as on the crucial date for the panel of the year 2011, the petitioner was fully eligible and therefore, he is entitled to be promoted retrospectively with effect from the date on which the immediate junior was promoted in the panel of the year 2011 for promotion to the post of District Revenue Officer.

7. The learned Senior Counsel reiterated by soliciting the attention of this Court with reference to the provision of the Tamil Nadu Government Servants (Conditions of Service) Act, 2015, Schedule-XI, Part-A, II, Clause(11) stipulates that "Any punishment, including 'Censure' imposed on a number of service after the crucial date, but before the actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment".

8. The learned Senior Counsel contended that the words, 'before actual promotion' is to be construed as if the promotions granted to the immediate junior to the writ petitioner. The said term cannot be construed as the actual promotion to be granted to the writ petitioner. In the present case, the actual promotion was granted to the junior in the year 2011 itself. The two sets of memorandum of charges framed against the writ petitioner were dropped. The punishment of censure was imposed in the year 2013. Thus, there is no impediment for the respondents to consider the name of the writ petitioner in the panel of the year 2011 for promotion to the post of District Revenue Officer on par with his junior. The case of the writ petitioner in any angle is to be considered in view of the fact that the major charges framed against the writ petitioner under



Rule 17(b) charges were dropped during the relevant point of time, when the petitioner was due for inclusion in the panel for promotion to the post of District Revenue Officer.

9. The learned Additional Government Pleader appearing on behalf of the respondents opposed the contentions of the petitioner by stating that the impugned order is self-speaking. The charges against the writ petitioner were dropped. However, the said charges were dropped on 24.12.2013 in G.O.(2D)No.795, Revenue [Ser-2(1)] Department and G.O.(2D)No.137, Revenue [Ser-2(1)] Department, dated 17.02.2014.. The punishment of censure was issued on the writ petitioner in proceedings dated 18.11.2013. Thus, as on the date of dropping of the charges, the punishment of censure was in force. The punishment of censure is also a bar for promotion for a period of one year. In otherwards, the punishment of censure is effective for one year and therefore, the respondents have clearly passed an order stating that the order of dropping of charges were passed in the year 2013 and 2014 and the punishment of censure was imposed on 18.11.2013 and even on that date, the 17(b) charges were pending. Thus, the authorities competent rejected the claim of the writ petitioner for inclusion of his name in the panel. This apart, as per Rule 4(a) of the Tamil Nadu State and Subordinate Services, any punishment including the censure imposed on a member of the service after the crucial date, but before actual promotion shall be held against the member of service and he shall not be given promotion or appointment. Thus, the case of the petitioner was not considered for promotion to the post of District Revenue Officer.

10. This Court is of the considered opinion that Schedule-XI, (II) Clause 11 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, unambiguously stipulates that, "any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and the 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 approval list". Importantly, the provision further states that "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".

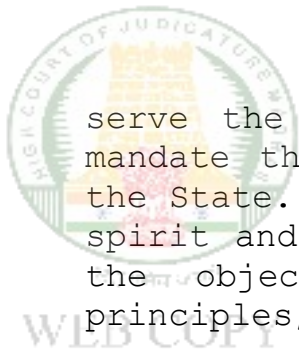
11. Constructive interpretation of the provisions are paramount importance. The intention of the rule makers and the practicality with pragmatism must be adopted for the purpose of application. Thus, different interpretations which will sideline the objects and intention of the rule makers can never be accepted by the Courts.

<https://hcservices.courts.gov.in/hcservices/> The interpretation of the provisions cited supra is with reference



to the punishment of censure and for inclusion of an individual in the panel for promotion. If the punishment of censure is imposed on a member of a service after the crucial date for preparation of panel, but before the actual promotion or appointment is granted to the individuals whose name is included in the panel, shall be held against such member of service or members of service. Any other interpretation that the actual promotion granted is to be construed as a promotion granted to the juniors is irrelevant and unconnected with the very intention and object of the Clause 11 of the statute.

12. The punishment of "censure" will have the effect for the period of one year. Thus, within the one year from the date of imposition of the punishment of censure, the officer is not entitled for promotion to the higher post. In this pretext, if the punishment of "censure" is imposed, after the crucial date, but before actual promotion then it should be held against the officer in view of the fact that the punishment of censure is in force. Different interpretation is not possible in view of the fact that Clause 11 of Schedule X1 of the Act is unambiguous. Normally, the panel of persons fit for promotion to the higher post is prepared taking into consideration the crucial date. It is possible that actual promotions may be given within a short span or after few months. Promotion is an administrative prerogative. Employees have no right for promotion. Consideration for promotion is a Fundamental Right. Thus, promotion *per se* cannot be claimed as a matter of right. In those circumstances, where there is a delay in granting actual promotion and in between, the punishment of censure is imposed on a member of the services, whose names are either included in the panel or not included in the panel then, such punishment of censure would have an adverse application till the expiry of one year from the date of imposing of the punishment of censure by the competent authority. Thus, the clause would have applicability and relevancy in respect of the officials, whose name were considered in a particular panel for promotion to the higher post. However, in the present case, the petitioner was not considered on account of the fact that 17(b) charges were pending. The charges were dropped during the year 2014. Meanwhile, in the year 2013, the punishment of censure was imposed. As far as 2011 panel is concerned, charge memo was pending and by that time, it was dropped, the punishment of censure was in force. Thus, retrospective consideration regarding the inclusion must be cautiously entertained as the gap cannot be taken undue advantage by an official, who is otherwise facing the departmental disciplinary proceedings or have no meritorious service records. The very concept of considering the adverse service records of an official for grant of promotion is to maintain efficiency in public administration. The men of integrity and honesty are to be promoted to the higher post in order to ensure effective functioning of the public department so as to



serve the citizen of our great Nation. It is a constitutional mandate that efficient public administration is to be provided by the State. Thus, these provisions are to be interpreted in its real spirit and the application of these rules must have some nexus and the objects sought to be achieved under the constitutional principles, philosophy and ethos.

13. In the lis on hand, the petitioner's name was considered in the panel of the year 2011, however, his name was deferred due to pendency of 17(b) charges. No doubt, the charges were dropped subsequently on account of the litigious processes undertaken by the petitioner. However, punishment of censure was imposed during the year 2013. Considering the facts and circumstances, first of all, the petitioner is not entitled to be retrospectively considered for promotion to the post of District Revenue Officer on par with his junior. But his services are not meritorious so as to consider his name for the State services and under these circumstances, the petitioner has not established any acceptable ground for the purpose of grant of retrospective promotion.

14. The Telangana High Court in the case of **K.Balu Vs. State of Telangana** made in **Writ Petition Nos.8639, 9958 and 9974 of 2020** passed an order on 4th September, 2020, which is relevant regarding the principles adjudicated in the present writ petition. The relevant portion of the order is extracted hereunder:

" 26. The next aspect is whether 'debarring' the petitioners from being included in the eligibility list for promotion in the panel year 2019-20, PNR,J WP No.8639 of 2020 and batch promoting their juniors by treating that the petitioners are under currency of punishment would offend their right for promotion. An employee has a right for consideration for promotion and that cannot be deprived, but has no right to be promoted as a matter of course. Conduct of the employee prior to coming within the zone of consideration and becoming eligible for promotion is crucial for granting elevation of status. Employee has to earn promotion by dint of hard work, good conduct and obedience. Good conduct is an essential concomitant to bestow promotion and if conduct in the present post is not up to the mark and resulted in imposing punishment he can be ignored/ superseded. This is also necessary for purity of administration and is in larger public interest. It is all the more necessary in the present context of falling standards and accountability of bureaucracy.



Such course does not amount to double punishment and the doctrine of 'double jeopardy' is not attracted. On a cumulative reading of the Rules and the policy documents of the Government noted above, it is evident that if the employee is under currency of punishment as on the date of commencement of the panel year, he can be ignored even to non-selection post and his junior can be promoted."

15. Beyond the principles, it is relevant to state that the petitioner seeks promotion to the post of District Revenue Officer, which is a state services. It is not as if such higher posts can be granted in a routine manner. Beyond the pendency of the charges and other aspects, the Government has to assess the merits, ability and suitability of the candidates before granting such promotion. Efficiency in public administration is the constitutional mandate. If the decision making authorities are incapable of performing their duties efficiently and effectively then the ultimate sufferer would be the public at large. Therefore, the merits, if not stated in the Rules clearly, the authorities competent are bound to consider those aspects also.

16. The manner in which the petitioner was exonerated from the charges reveals that it is a litigious exoneration and, he was not exonerated by defending the charges by way of participating in the process of enquiry. He filed writ petition after writ petition and finally the charges were dropped. The trend created in this regard is that a writ petition would be filed challenging the charge memo and by getting a direction to conclude the disciplinary proceedings within a stipulated period and by way of non co-operation or other means, the disciplinary proceedings would not have been concluded. Thereafter, another writ petition will be filed to quash the charge memo on the ground that earlier directions of the Courts had not been complied with. In such a manner, if the charge memo containing serious allegations are quashed, it would be difficult for the public administration to deal with the discipline and decorum of the Government employees. Courts are expected to be cautious while issuing such directions. The nature of the allegation and the manner in which the petitioner is approaching the Courts are to be considered, while granting the relief under Article 226 of the Constitution of India. Routine directions, if issued, would cause damage and result in other complications. The courts are also expected to be cautious while issuing such direction. Therefore, the directions are to be issued on merits and considering the legal grounds raised, contrarily, granting an order to consider the representation or to dispose of the disciplinary proceedings and



quash the charge memo and thereafter, a third writ petition to settle the pensionary benefits all these litigative processes are taken undue advantage by the litigants in order to escape from the clutches of the disciplinary proceedings.

17. Any employee facing the allegations are expected to participate in the enquiry and prove his innocence or otherwise by producing documents and adducing evidences. Contrarily, the charge memo itself cannot be quashed in a routine manner. No doubt, the charge memo can be quashed on certain exceptional grounds. The Supreme Court of India also categorized on what circumstances the charge memo can be quashed. Therefore, those aspects are to be considered even at the time of issuing a direction to conclude the enquiry proceedings.

18. This Court is of the considered opinion that as on 2011, the Government has not passed orders dropping the charges. The charges were dropped in order dated 24.12.2013 and on 17.02.2014. The name of the writ petitioner was not included in the panel of the year 2011. Thus, the question of grant of promotion based on the panel of the year 2011 does not arise. This apart, even before dropping of 17(b) charges on 17.02.2014, the punishment of censure was issued in order dated 18.11.2013. At that point of time, the charge memo under Rule 17(b) was pending. Thus, the petitioner in any angle is not entitled to be considered for promotion to the post of District Revenue Officer, as he was not having clear records of service. The petitioner retired from services on 31.08.2014. This being the factum, this Court is of the considered opinion that the contentions raised by the petitioner deserves no merits consideration and consequently, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AS)

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/ /2020

Sub Assistant Registrar(CS)

MPK

To

1.The Chief Secretary,
The State of Tamil Nadu,
Public Department,
Secretariat, Chennai - 9.



2.The Additional Chief Secretary / Commissioner,
Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 5.

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