IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1712/2012

A.Veerasamy ..Appellant/Petitioner

-vs-

1. The State of Tamil Nadu
rep. by Director of Co-operative
Audit, Kamaraj Salai,
Chepauk, Chennai-600 005.

2. S.Jagadeesan ..Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 17.04.2012 passed in W.P.No.14635/2011 by a learned Single Judge of this Court. Writ petition filed Article 226 of the consittution of India to issue a writ certiorarifed Mandamus calling for the records relating to the order in Na.Ka.No. 32030/2008/Po.Ni.3 dated 28.03.2011 issued by the first respondent and to quash the same and consequently direct the first respondent to re-consider the petitioner representation in his reply letter dated 10.02.2011 as well as in reply Legal notice dated 10.02.2011 issued by the petitioner Advocate.

For Appellant : Mr.S.Arivazhagan

For 1st Respondent : Mr.L.P.Shanmugasundaram,
Spl.G.P. (Co-operative)

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

The Writ Appeal has been preferred against the order dated 17.04.2012 passed in W.P.No.14635/2011 by a learned Single Judge of this Court.

2. The case of the appellant is that he joined duty as Junior Inspector on 05.02.1968 in the Department of Registrar of Co-operative Societies. On 16.06.1981, there was bifurcation and he was allotted to the Department of Director of Co-operative Audit. While so, he was not given promotion in respect of the period from 1985 to 1998. Therefore, he has sent

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a representation dated 30.08.2010 to the Deputy Chief Minister Grievance Cell seeking the said benefits. Pursuant to the said representation, the 1st respondent herein, namely, the Director of Co-operative Audit issued an order dated 04.01.2011, rejecting the grievance of the appellant herein on the ground that the said promotional benefits were not given to the appellant as disciplinary proceedings having been initiated against him in the year 1997 for which the appellant also submitted a reply letter dated 10.02.2011 to the 1st respondent. Following the same, the appellant has also issued a legal notice dated 10.02.2011 for which the 1st respondent sent a reply dated 28.03.2011, once again rejecting the prayer of the appellant. Aggrieved over the same, the appellant filed W.P.No.14635/2011 before this Court and by an order dated 17.04.2012, learned Single Judge of this Court has dismissed the same. Therefore, the appellant is before this Court with this present Writ Appeal.

3. It was the specific argument of the learned Counsel for the appellant before the learned Single Judge as well as before this Court that when the appellant was eligible to get promotion from the year 1985-1986, he had given a representation on 30.08.2010 to the Deputy Chief Minister Grievance Cell. But neither the said representation dated 30.08.2010 nor his legal notice dated 10.02.2011 addressed to the 1st respondent herein was considered favourably. However, when rejection order was passed, the same was also put to challenge. It was the further argument of the learned Counsel for the appellant that the name of the appellant was also included in the promotion panel dated 01.10.1996 since on the said date, the appellant neither even faced any disciplinary proceedings nor was served with any charges. Therefore, the respondents having included the name of the appellant in the promotion panel dated 01.10.1996, ought to have promoted him by approving the same as the said panel was said to have been approved on 25.09.1997, it is pleaded.

4. Opposing the above prayer, learned Special Government Pleader appearing for the respondent Co-operative Audit submitted that on the date of the approval of the promotion panel, the appellant was facing disciplinary proceedings initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for violating Rule 19(1) of the Tamil Nadu Government Servant Conduct Rules, 1973, by issuing a Charge Memo dated 21.08.1997. Since the said departmental proceedings further proceeded and ultimately ended in the punishment of compulsory retirement from service imposed on 27.06.2001, it was heavily contended before the learned Single Judge that the appellant was neither eligible to get any promotion although his name was included in the promotion panel as on 01.10.1996 in view of the fact that he suffered charge memo initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 21.08.1997 nor kept his Annual Confidential Report clean on the date of final consideration for

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promotion. Considering this issue, learned Single Judge in his conclusion held against the appellant giving clear reasons that when the name of the appellant was included in the promotion panel on 01.10.1996, no doubt he was not facing departmental enquiry and no charge memo was served on him, however on the date of approval of the promotion panel in the year 1997, the appellant was facing disciplinary proceedings, therefore, he was not considered for promotion, moreover, the departmental proceedings also ultimately ended against the appellant with the punishment of compulsory retirement from service imposed on 27.06.2001. Hence, the learned Single Judge has rightly rejected the claim of the appellant, hence, the present appeal has to be dismissed, it is pleaded.

5. We are also unable to find any infirmity or error in the impugned order passed by the learned Single Judge which is under challenge in this Writ Appeal. The reason being that when the name of the appellant was included in the promotion panel on 01.10.1996, there was no enquiry or charge memo pending against him. Subsequently, when the promotion panel was approved in the year 1997 i.e. on 25.09.1997, admittedly, the appellant was facing disciplinary proceedings in respect of the charge framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 21.08.1997, therefore, his name was excluded from consideration for promotion. More over, the departmental proceedings also ultimately ended in major punishment of compulsory retirement from service on 27.06.2001, therefore, the appellant was denied promotion. Questioning the same, when the appellant has given a representation dated 30.08.2010 to the Deputy Chief Minister Grievance Cell seeking the said benefits, pursuant to the said representation, the 1st respondent herein, namely, the Director of Co-operative Audit issued an order dated 04.01.2011 rejecting the grievance of the appellant herein on the ground that the said promotional benefits were not given to the appellant as disciplinary proceedings having been initiated against him in the year 1997 for which the appellant also submitted a reply letter dated 10.02.2011 to the 1st respondent and has also issued a legal notice dated 10.02.2011 for which the 1st respondent sent a reply dated 28.03.2011, once again rejecting the prayer of the appellant on the ground that on the date of approval of the promotion panel, disciplinary proceedings initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 21.08.1997 were pending against him which ultimately ended in his compulsory retirement. It is well settled legal position that when departmental proceedings are pending against any delinquent employee, his name will not be considered for any promotion till the departmental proceedings are concluded. Reiterating the said legal position, the Apex Court also in the case of C.O.Arumugam and Others vs. State of Tamil Nadu and Others reported in 1991 Supp (2) Supreme Court Cases 199 has held thus:

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''5. As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Article 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion, if they are exonerated or acquitted from the charges. If found suitable they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.''

The learned Single Judge of this Court having rightly appreciated the said legal position rejected his claim for promotion benefits, therefore, we are unable to find any justifiable reason to interfere with the impugned order of the learned Single Judge.

6. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

The Director of Co-operative Audit,
State of Tamil Nadu,
Kamaraj Salai,
Chepauk, Chennai-600 005.

W.A.No.1712 of 2012

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