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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.4925 of 2009

M.Ramasamy

... Petitioner

Vs

1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.

2.The Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai - 600 015.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd Respondent in Roc.No.10965/08/DPC1-2 dated 12.12.2008 and the consequential order of the 1st Respondent issued in G.O.(D)No.13, R.D. And P.R. Department dated 09.01.2009 and quash the same and to direct the Respondents to consider the name of the petitioner for promotion as Joint Director as on 1.3.2008 the crucial date for preparation of panel for the post of Joint Director for the year 2008-2009 with all monetary benefits.

(Prayer amended vide order dated 22.12.2020 made in WMP.No.21862/2020 in WP.No.4925/2009 by this Court)

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.S.John J.Raja Singh
Government Advocate

O R D E R

The petitioner challenges proceedings dated 12.12.2008 of the Commissioner of Rural Development and Panchayat Raj, Chennai. The petitioner was appointed as Grama Sevak on 18.04.1975 and promoted thereafter as Assistant Director of Rural Development on 25.01.2006. The next avenue of promotion was to the post of Joint Director and according to the petitioner, he was qualified and eligible for selection as on the crucial date i.e. 01.03.2008.



2. However, on 13.02.2008, R2 issued a charge memo alleging three lapses in duties i.e. that the petitioner had failed to ascertain and ensure that the accounts in the Panchayats were maintained properly, that he had failed to monitor and take action to rectify the defects in regard to the certification of arrears in TNEB in the meter cards and also that a flat minimum of Rs.100/- was still being charged in certain Panchayats, which was incorrect and that he violated the instructions issued by the Director of Rural Development, dated 06.08.2007, 28.09.2007 and 03.01.2008.

3. Admittedly, these charges fall under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules ('Rules'). In spite of the objections and explanations furnished by the petitioner, the proceedings culminated in an order passed by R2, confirming the punishment of withholding of increment of three months by order of R2, dated 09.01.2009.

4. Though the challenge was originally to the charge memo, the prayer has subsequently been amended to challenge the order of punishment as well and the M.P. filed for this purpose has been allowed by this Court on 22.12.2020. The prayer of the petitioner is that though the punishment has been confirmed thereafter, the critical date to be reckoned as far as the constitution of panel is concerned would be 01.03.2008, on which date there was only a charge memo pending, which cannot stand in the way of his consideration for promotion.

5. This argument has to be accepted in view of the long line decisions of this Court both at the Principal as well as Madurai Benches to the effect that mere pendency of a charge memo as on the critical date would not stand in the way of promotional opportunities for candidates.

6. This position had been made clear even in Letter No.18024/S/2005-2, Personnel and Administrative Reforms (S) Department, dated 07.10.2005, wherein, it was stipulated that minor charges framed under Section 17(a) of the Rules should not be held as against the Officer for the purposes of promotion. This has received statutory sanction as per the Tamil Nadu Government Servants Conditions of Service Act, 2016 wherein at Schedule XI, Part-A under the head Consideration of members for inclusion in the approved list, clause-IV states thus:

'(4) Issuance of a show cause notice or charges framed under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of service shall not be a bar for inclusion of his name in the approved list.'

7. Petitioner relies on the following cases:-



G.Usharani vs. State of Tamil Nadu rep. by its Secretary to Government, Revenue Department, Chennai-5 and others (WP.No.4473 of 2005, dated 03.04.2006)

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Respondents relies on the following cases:-

(1). M.Sampoornam vs. The State of Tamil Nadu, Rep. by its Secretary to Government, Revenue Department, Secretariat, Chennai-9 and another (WP(MD)No.12725 of 2011, dated 22.03.2013);

(2). S.Kannan vs. The State of Tamil Nadu, rep. by its Secretary to the Government, Home Transport-II Department, Fort St. George, Chennai-600 009 and others (WP.No.17652 of 2006, dated 07.09.2009)

(3). Xavier Dhanaraj vs. The Secretary to Government, Public Works Department, Government of Tamil Nadu, Fort St. George, Chennai-9 and others (WP.Nos.27590 of 2003 and batch, dated 03.01.2008)

(4). G.Anbarasu vs. The Principal Secretary to Government, Revenue Department, Secretariat, Chennai-9 and others (WP.No.14289 of 2012, dated 07.01.2014).

8. A distinction is sought to be made in this case referring to the fact that the punishment, has infact, been imposed on 12.12.2008. This would, in my view, have no bearing in the matter as what is relevant in the critical date, 01.03.2008, when admittedly only a charge memo was pending and no punishment had been imposed. In fact, this issue has come up for consideration in WP.No.4473 of 2005 and by order dated 03.04.2006, the very same view as expressed above has been taken at paragraph-20, as follows:

'20. As I stated above, when once on a crucial date the petitioner was entitled for promotion, even any subsequent punishment cannot take away such right of promotion, eventhough, it is true that any order could be passed subsequently even by demoting the person on completion of disciplinary proceedings. That does not mean that the petitioner is not entitled for promotion.'

9. In light of the aforesaid discussion, this writ petition is allowed and the respondents are directed to eschew the pendency of charge memo on the critical date for the purpose of promotion. All consequential relief will enure to the petitioner herein in terms of the direction for empanelment as aforesaid. The respondents however, are entitled to demote the



petitioner subsequent to the order of imposition of punishment, if it is so warranted, and in accordance with law.

10. This writ petition is allowed as above. No costs.

Sd/-

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Assistant Registrar (CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

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Secretariat, Chennai - 600 009.

2. The Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai - 600 015.

+1 cc to Mr. S. N. Ravichandran, Advocate Sr. NO. 49712

+1 cc to Government Pleader Sr. NO. 50102

W.P. No. 4925 of 2009

nk (CO)

A. SK (10.12.2021)