



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 18.06.2021

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.25221 of 2011
and
M.P.No.2 of 2011

P.Selvaraju

... Petitioner

Vs

The Principal Secretary / Director of Social Defence,
No.300, Purasaiwalkam High Road,
Kellys,
Chennai 600 010.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the Respondent in his Proceeding No.5890/A1/2010 dated 31.05.2010 cancelling the promotion of the Petitioner as Superintendent of Government Observation Home and quash the same and consequently direct the Respondent herein to retain the Petitioner as Superintendent of Government Observation Home as per the promotion order dated 04.03.2010 passed by he Respondent in his proceeding No.6214/A1/09-1 with all monetary and other attendant benefits with effect from 04.03.2010.

For Petitioner : Mr.K.Raja

For Respondent : Mr.C.Harsharaj
Counsel for State

O R D E R

The Petitioner challenges an order dated 31.05.2010 whereby his promotion as Superintendent of the Government Observation Home was cancelled by the Respondent.

2. The Petitioner asserts that he was appointed initially as a cook on daily wage basis in the home run by the Discharged Prisoners' Aid Society in the year 1979. Subsequently, he was promoted periodically as watchman, typist, assistant and

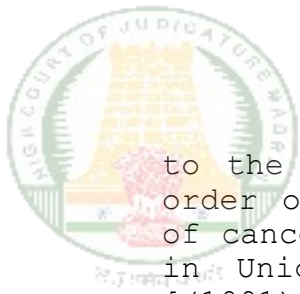


manager. As of 15.02.2009, he was eligible for promotion as Superintendent of the Government Observation Home and, accordingly, his name was included in the promotion panel. Thereafter he was issued the promotion order on 04.03.2010. Subsequent thereto, he was transferred by order dated 21.05.2010 as Superintendent of the Government Observation Home at Kilpauk, Chennai-10. In these circumstances, it is stated that the impugned order dated 31.05.2010 was issued whereby his promotion as Superintendent was cancelled without providing even an opportunity of hearing prior to such cancellation. The writ petition is filed in the said facts and circumstances.

3. The learned counsel for the Petitioner invited the attention of the Court to the aforesaid communications, including in particular, the promotion order dated 04.03.2010 and the impugned order dated 31.05.2010. Learned counsel also adverted to the counter affidavit of the Respondent and pointed out that the admitted position is that the charge memo was issued to the Petitioner only on 05.07.2011, which is more than one year after the promotion order had been issued to the Petitioner. Learned counsel further pointed out that the counter affidavit discloses that the Petitioner's promotion was cancelled merely because the Respondent had contemplated the framing of charges. Learned counsel contended that the settled legal position, in this regard, is that a promotion cannot be denied and, most certainly, cannot be cancelled because the employer concerned contemplated the framing of charges against the employee in question. He further submitted that, by order dated 21.04.2017, the charges that were framed on 05.07.2011 against the Petitioner were held as not proved, and that this fortifies the Petitioner's case. For all these reasons, learned counsel submitted that the impugned order is liable to be set aside.

4. In response, learned counsel for the State submits that the inquiry against the Petitioner pertains to the validity of the appointment of the Petitioner. On the basis of a preliminary inquiry, the decision was taken to cancel the promotion granted to the Petitioner because the charges against the Petitioner were serious.

5. Upon considering the rival contentions, it is clear that the issue to be determined lies within a very narrow compass. The facts on record disclose that the promotion order was issued to the Petitioner on 04.03.2010. From paragraph 1 of the counter affidavit of the Respondent, it is evident that the charge memo was issued to the Petitioner only on 05.07.2011. Consequently, it is clear that a charge memo had not been issued



to the Petitioner as on the date of issuance of the promotion order or even as on the date of issuance of the impugned order of cancellation. The law laid down by the Hon'ble Supreme Court in Union of India and others v. K.V.Jankiraman and others [(1991) 4 SCC 109] is to the effect that a promotion can be deferred only if a charge memo had been issued to the employee in question prior to such promotion. Although there are cases such as Union of India v. R.S.Sharma [(2000) 4 SCC 394] and Delhi Development Authority v. H.C.Khurana [(1993) 3 SCC 196], wherein deferral of promotion was upheld on the ground that it was preceded by a decision to initiate disciplinary proceedings, in all those cases the relevant rules/memorandum of procedure expressly empowered the employer to defer promotion if a decision had been taken to initiate disciplinary proceedings, and such decision can be inferred from the documents on record. By contrast, in the case at hand, the Respondent has been unable to point out any rule that enables the employer to deny or cancel the promotion because the framing of charges against the Petitioner was being considered or that a decision had been taken to frame charges.

6. In addition, the record discloses that the impugned order of cancellation was issued without complying with the principles of natural justice inasmuch as the Petitioner was clearly not provided with a show cause notice before issuing such order. In the facts and circumstances, the impugned order dated 31.05.2010 is clearly unsustainable. Accordingly, the said impugned order is hereby quashed and, consequently, the Respondent herein is directed to retain the Petitioner as Superintendent of the Government Observation Home as per the promotion order dated 04.03.2010 with all attendant benefits extended on a notional basis. The above direction shall be complied with within a period of two months from the date of receipt of a copy of this order.

7. W.P.No.25221 of 2011 is allowed as indicated above. Consequently, connected M.P. is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar



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To

WEB COPY

The Principal Secretary / Director of Social Defence,
No.300, Purasaiwalkam High Road,
Kellys, Chennai - 600 010.

+lcc to Mr.K.Raja, Advocate Sr.28464

+lcc to the Government Pleader Sr.28647

W.P.No.25221 of 2011

ss[co]
srg 16/07/2021