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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.23642 of 2021

and

W.M.P.Nos.24889, 24890 & 24892 of 2021

(Through Video Conferencing)

K.Chinnappan

... Petitioner

Vs.

1.The Chief Engineer
(Agricultural Engineering),
Chief Engineer Office,
Nandanam, Chennai - 600035.

2.The Executive Engineer
(Agricultural Engineering),
Villupuram.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned Charge Memo in No.O.Na.2/771/2021 dated 22.09.2021 issued by the first respondent and quash the same and consequently, to include the petitioner's name in the panel fit for promotion to the post of Executive Engineer (Agricultural Engineering).

For Petitioner : Mr.M.Rajendiran

For Respondents: Mr.L.S.M.Hasan Fizal,
Govt. Adv.

O R D E R

In this Writ Petition, the petitioner has challenged the impugned Charge Memo dated 22.09.2021 bearing reference No.O.Na.2/771/2021 and also prays for inclusion of the petitioner's name in the panel fit for promotion to the post of Executive Engineer (Agricultural Engineering).



2. The facts of the case are that while the petitioner was serving as an Assistant Engineer with the Agriculture Department, a complaint was made against the petitioner and his senior by one Ramakrishnan, the de-facto complainant, pursuant to which, a case was registered in Crime No.42/2011 under Sections 420, 464, 471 & 468 by the District Crime Branch, Salem.

3. It is submitted that the de-facto complainant has given an application for purchasing a combine harvester for paddy before Assistant Executive Engineer as the Government had announced a subsidy for the farmers to purchase such harvester and that his application was accepted and supply order was issued on 07.01.2011. It is also submitted that the de-facto complainant paid a sum of Rs.15,39,600/- to the Distributor and balance amount of Rs.4,00,000/- was paid subsidy, but, the de-facto complainant had given a false complainant stating that the harvester was not delivered to him and officials in the Agricultural Engineering Department had misused the earlier vehicle purchased by him for misappropriating the subsidy amount.

4. It is further submitted that the complaint was later closed based on the final enquiry report dated 10.05.2012 of the District Crime Branch (DCB), Salem District, wherein, it has been stated that the de-facto complainant has filed the complaint for the purpose of not making payments to the supplier and the case was liable to be closed as a Mistake of Fact.

5. It is also submitted that aggrieved by the aforesaid closure, the de-facto complainant had preferred Crl.R.C.No.688 of 2012 before this Court. The Court has given certain direction to the Central Bureau of Investigation to investigate the case, pursuant to which, a fresh FIR was registered by the Inspector of Police.

6. It is submitted that the respondents have now issued the impugned Charge Memo which has the propensity of clogging the legitimate right of the petitioner to be promoted to the post of Executive Engineer. It is submitted that the respondents have unnecessarily issued the Charge Memo at the time when the petitioner was became eligible for promotion to the post of Executive Engineer. It is further submitted that here is no justification in the impugned Charge Memo at this belated point of time based on the frivolous complaint filed by the de-facto complainant Ramakrishnan in respect of the alleged delinquency of the 2011 and it is therefore liable to be quashed.



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7. The petitioner therefore prays for quashing the impugned Charge Memo and for a direction to the respondents to include the petitioner's name in the panel fit for promotion to the post of Executive Engineer.

8. Opposing the prayer of the petitioner, the learned Government Advocate appearing for the respondents submits that criminal proceedings and departmental proceedings proceed on parallel track and therefore, the impugned Charge Memo cannot be quashed at the insistence of the petitioner merely because the petitioner may lose his right to promotion pending disciplinary proceeding. He further submits that instead, the petitioner should be directed to participate in the disciplinary proceedings. He therefore submits that this Writ Petition is without merits and is liable to be dismissed.

9. The learned Government Advocate further submits that in case the charges are not proved against the petitioner and no case is made out against the petitioner, the respondents are bound to grant promotion subject to the eligibility and other requirements of the service conditions and therefore prays that this Writ Petition may be dismissed.

10. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the impugned Charge Memo, orders passed in CrI.R.C.No.688 of 2012 and the final enquiry report of the District Crime Branch.

11. Staying of the impugned Charge Memo at this stage will not further the cause of the petitioner in the light of the Clause I of Part A, Schedule XI to the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Clause I of Part A, Schedule XI to the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 reads as under :-

I. Procedure for preparation of approved list:-

(1) Based on the estimate of vacancies arrived, promotion or appointment to a post shall be made from a list of approved candidates prepared on the basis of merit, ability and other qualifications as prescribed in the Special Rule for the post. The seniority of a member of service shall be determined by the rank obtained by him in the list of approved candidates drawn up by the



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Tamil Nadu Public Service Commission or the Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The merit, ability and other aspects shall be assessed over a period of five years as per Annual Confidential Reports and punishments, if any, imposed.

(2) If the disciplinary proceedings under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules pending against a member of service are merely stayed by a Court, his case shall be deferred till the judicial proceedings are concluded, unless a contrary order is passed by the Court and it is decided not to challenge the same. If the Court quashed the charge memo, then the name of the member of service concerned shall be considered for inclusion in the approved list for promotion or for appointment, if he is otherwise qualified.

(3) Particulars about members of service to be considered for inclusion in the approved lists shall be examined in seriatim in the proforma, as prescribed in Part-D of this Schedule.

12. From a reading of the above Clause, it is clear that if the disciplinary proceeding initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is pending against a member and is stayed by a Court, the case shall be deferred till the judicial proceedings conclude, unless a contrary order is passed by the Court and it is decided not to challenge the same and if the Court quashed the Charge Memo, only then the name of the concerned member can be considered for inclusion in the approved list for promotion and for appointment.

13. This Writ Petition cannot be allowed based on the averments made in the affidavit. It would be premature to delve into the merits of the case at this stage. To meet the ends of justice and considering the fact that staying the disciplinary proceedings will not further the cause of the petitioner, this Writ Petition can be disposed by directing the respondents to complete the Disciplinary Proceedings initiated against the petitioner pursuant to the impugned Charge Memo dated 22.09.2021, within a period of six months from the date of receipt of a copy of this order.



14. While passing the appropriate orders, the respondents shall keep in mind the final enquiry report dated 10.05.2012 of the District Crime Branch (DCB), Salem District. The respondents are also directed to consider the fact that the petitioner was not a senior person at the time when the loan was disbursed.

15. The respondents are directed to consider the case of the petitioner for promotion thereafter subject to the final outcome of the aforesaid Disciplinary Proceedings.

16. This Writ Petition is disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Chief Engineer,
(Agricultural Engineering),
Chief Engineer Office,
Nandanam, Chennai - 600035.

2.The Executive Engineer,
(Agricultural Engineering),
Villupuram.

+1cc to Mr.M.Rajendiran, Advocate Sr.57458
+1cc to the Government Pleader Sr.57704

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