



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.7813 of 2021

and

W.M.P (MD)Nos.5954 & 5956 of 2021

A.Sundarambal

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department and Municipal Administration
and Water Supply, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Municipal Administration,
Ezhilagam Annex, Chepauk,
Chennai - 600 005.

3.The Commissioner,
Pollachi Municipality,
Palaghat Road,
Pollachi - 642 001.

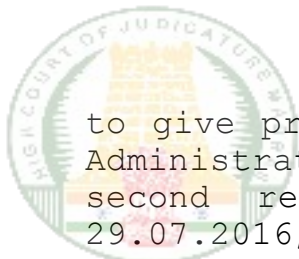
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in ROC.No.5382/2015/C1, dated 08.09.2016 and the consequential denial of promotion thereof and quash the same and further direct the first and second respondents to give promotion to the petitioner as Joint Director of Municipal Administration as per the recommendation made in her favour by the second respondent vide proceedings Roc.No.5382/2015/C1, dated 29.07.2016, with all attendant benefits including service seniority, salary and allowances.

For Petitioner	: Mr.Isaac Mohanlal Senior Counsel for M/s.Isaac Chambers
For RR 1 & 2	: Mr.P.Subbaraj Government Advocate
For R - 3	: Mr.P.Athimoola Pandian

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned proceedings issued by the second respondent in ROC.No.5382/2015/C1, dated 08.09.2016 and the consequential denial of promotion thereof and to direct the first and second respondents



to give promotion to the petitioner as Joint Director of Municipal Administration, as per the recommendation made in her favour by the second respondent, vide proceedings Roc.No.5382/2015/C1, dated 29.07.2016, with all attendant benefits including service seniority, salary and allowances.

WEB COPY

2. According to the petitioner, she was appointed as a Municipal Commissioner (Grade-II) on 16.02.2004, through the Tamil Nadu Public Service Commission. After several promotions, the petitioner was promoted as Municipal Commissioner (Special Grade) on 04.01.2012. The next promotional post is Joint Director of Municipal Administration. The post of Joint Director in Municipal Administration is Category-I post under the Tamil Nadu Municipal Commissioners' Service. The crucial date for preparation for approved candidate for the appointment to any category in Municipal Service is 15th March every year. Accordingly, in the year 2016, the second respondent-Commissioner of Municipal Administration considered the list of eligible approved Municipal Commissioners in the State of Tamil Nadu for promoting them as Joint Director of Municipal Administration for filling up two vacancies. On overall consideration of all the eligible candidates, the Commissioner of Municipal Administration found that the petitioner and one of her senior Tmt.P.Vijayalakshmi, the then Municipal Commissioner, Karaikudi, as eligible candidates for promotion to the post of Joint Director of Municipal Administration and recommended for their promotion to the first respondent, vide letter, dated 29.07.2016, while the petitioner was working as Municipal Commissioner at Tiruvannamalai. The petitioner has put in 17 years of unblemished service and she has discharged her duties sincerely.

3. While so, after the crucial date for preparation of panel for promotion and after recommending the petitioner for promotion to the first respondent, the second respondent issued a charge-memo, dated 07.09.2016, containing five vague charges. The second respondent, by the impugned proceedings, dated 08.09.2016, sent a letter to the first respondent to withdraw the name of the petitioner for promotion to the post of Joint Director of Municipal Administration. The said letter was written to the first respondent without notice and without giving any opportunity to the petitioner to put forth her case. The disciplinary proceedings commences only when charge-memo was served on the delinquent employee. On the crucial date of 15.03.2016 and 29.07.2016, when the petitioner's name was included in the panel for promotion, there was no disciplinary proceedings pending against the petitioner. The second respondent has delayed the conclusion of disciplinary proceedings without any valid reason. Originally, one Thiru.Sandeep Nandhuri, IAS, Commissioner of Madurai Corporation was appointed as an enquiry officer. On his promotion, Tmt.P.Vijayalakshmi, Joint Director (Corporation) was appointed as an enquiry officer by the proceedings, dated 06.02.2018. While so, the second respondent, by the proceedings, dated 24.04.2019, has



issued modified charge-memo with certain corrections.

4.The second respondent directed the petitioner to submit her fresh defence statement within a period of 15 days. Thereafter, the second respondent by proceedings, dated 15.05.2019, appointed one Thiru.S.Thirumavalan, Superintending Engineer, Office of the Commissioner of Municipal Administration, Chennai, to conduct enquiry against the petitioner and four other officials. The petitioner submitted her explanation to the charge-memo on 01.07.2019. The enquiry officer conducted enquiries on 15.07.2019, 16.07.2019 and concluded the enquiry on 31.08.2019 and filed enquiry report on 01.11.2019, holding that charges levelled against the petitioner were not proved. The respondents have not concluded the disciplinary proceedings. The petitioner sent representations, dated 07.01.2021 and 25.01.2021, to the respondents 1 and 2 requesting them to conclude the disciplinary proceedings. While so, the first respondent, by letter, dated 27.01.2021, communicated the enquiry report, differing with the finding of the enquiry officer and issued notice to give explanation as to why the finding of the enquiry officer shall not be differed. According to the petitioner, the first respondent with an intention to impose some punishment on the petitioner and not to promote her, delayed the conclusion of the disciplinary proceedings. Only after receiving the representations of the petitioner, dated 07.01.2021 and 25.01.2021, the first respondent issued show-cause notice differing the views of the enquiry officer on new grounds.

5.The learned Senior Counsel appearing for the petitioner submitted that when there was no disciplinary proceeding pending against the petitioner on 15.03.2016 and 29.07.2016 and the name of the petitioner was included and recommended in the panel for promotion to the post of Joint Director of Municipal Administration, the impugned letter of the second respondent has been issued requesting the first respondent to withdraw the name of the petitioner, which is invalid and illegal.

6.The learned Senior Counsel appearing for the petitioner relied on the Judgment of the Hon'ble Apex Court reported in **2013 (4) SCC 161 [Union of India and others Vs. Anil Kumar Sarkar]** and the Judgment of the Division Bench of this Court made in **W.A(MD) No.591 of 2020, dated 19.08.2020 [The Principal Secretary, Department of Municipal Administration and Water Supply and another Vs. S.Parthasarathy and another]**.

7.The learned Senior Counsel also relied on the Judgment of the First Bench of this Court reported in **2021 (1) WLR 26 [The Director General of Police and others Vs. K.Pitchai]** and the relevant portions of the said Judgment read as follows:-

"11.The principal question that arises for consideration is whether the Appellants were entitled to



refuse to relieve the Respondent/Petitioner from the post of DSP Ramanathapuram and permit him to join in the promoted post of ADCP Tirunelveli. The main ground on which the Respondent/Petitioner was not relieved from the post was the issuance of the charge memo dated 22.06.2017. The factual position is largely undisputed. The crucial date was 01.04.2017 and the contesting parties agree that the charge memo dated 22.06.2017 was received in the office of the Deputy Inspector General of Police, Ramanathapuram Range, on 30.06.2017 but was served on the Respondent/Petitioner only on 07.07.2017. Therefore, the question arises as to whether the Respondent/Petitioner could be denied the promotion on account of the aforesaid charge memo. In order to answer this question, it is necessary to refer to the relevant provisions of the Conditions of Service Act. In particular, it is necessary to refer to paragraph - II, Sub-paragraph (1) & (8) of the said Act, which read as under:

"Consideration of members for Inclusion in the approved lists: (1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of service and no specific charges have been framed, promotion or appointment of such member of service shall be considered on the basis of the merit (emphasis added) revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. (emphasis added) On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion.

(8) Pendency of charges framed under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list." (emphasis added).

12. Upon perusal of the aforesaid, it is clear that a pending enquiry at a pre-charge memo/charge sheet stage is not a bar for the consideration of an employee for promotion. However, once charges are framed or a charge sheet is filed in a criminal case, the promotion of such persons is required to be deferred till such proceedings



are concluded. Thus, the critical activity for triggering the disability to be considered for promotion is the framing of charges or filing of the charge sheet in a criminal case. Therefore, the next aspect to be considered is whether it is sufficient that charges are framed or is it necessary that the charge memo/ charge sheet should be served on the delinquent employee. Towards this end, the law on this issue should be examined.

15. The law laid down by the Hon'ble Supreme Court in the above cases should be applied to the case at hand. The applicable statute is the Conditions of Service Act and, in particular, the relevant paragraphs of 20 of 27 <http://www.judis.nic.in> W.A. (MD) No. 64 of 2019 Schedule XI thereto. As stated in paragraph 11 supra, as per sub-para (1) of paragraph II of Schedule XI thereof, the promotion of an employee against whom there is a pre-charge memo/pre-charge sheet enquiry would be considered on merit but if charges have been framed or a charge sheet filed, the promotion would be deferred. Indeed, it is expressly stipulated therein that "in cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded." From the above extract, it is evident that the critical event is the framing of charges or the filing of a charge sheet, as the case may be, and not the commencement of disciplinary proceedings."

8. The learned Senior Counsel appearing for the petitioner prayed for setting the impugned order and to direct the respondents 1 and 2 to give promotion to the petitioner as Joint Director of Municipal Administration, as per the recommendation made by the second respondent, by proceedings, dated 29.07.2016.

9. Mr. P. Subbaraj, learned Government Advocate appearing for the respondents 1 and 2 submitted that even though the petitioner's name was included and recommended in the panel for promotion, before the promotion to be given, the charge-memo, dated 07.09.2016, was issued to the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and disciplinary proceedings were initiated. The petitioner participated in the domestic enquiry and disciplinary proceeding is in final stage. The learned Government Advocate further submitted that when the disciplinary proceeding is initiated and pending, the delinquent employee, like the petitioner, is not entitled to promotion. Only after conclusion of the disciplinary proceedings and subject to the result of the disciplinary proceedings, her name will be considered for promotion. Hence, there is no error in the impugned communication issued by the



dismissal of the Writ Petition.

10. Heard the learned Senior Counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the entire materials available on record.

11. The issue to be decided in the present Writ Petition is whether the petitioner is entitled to promotion in the year 2016, as per the panel and recommendation, dated 29.07.2016 or the impugned letter of the second respondent, dated 08.09.2016, requesting the first respondent to withdraw the name of the petitioner is valid.

12. From the rival submissions made on either side and the materials available on record and documents filed in the typed set of papers, it is seen that it is not in dispute that the crucial date for preparation of panel is 15th March every year. A panel for promotion to the post of Joint Director of Municipal Administration was prepared and it was found that two persons, including the petitioner were eligible to be promoted as against three other persons, disciplinary proceedings were pending. The second respondent, by the proceedings, dated 29.07.2016, recommended the name of the petitioner and one Tmt.P.Vijayalakshmi for promotion to the post of Joint Director of Municipal Administration. It is an admitted case of both the learned Senior Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2, that as on 15.03.2016, the crucial date for preparation of panel and on 29.07.2016, the recommendation made by the second respondent to the first respondent to promote the petitioner as Joint Director of Municipal Administration, no disciplinary proceeding was initiated and pending against the petitioner. A charge-memo, dated 07.09.2016 was issued to the petitioner. In view of the charge-memo issued subsequent to the crucial date and date of recommendation, the second respondent by impugned letter, dated 08.09.2016, requested the first respondent to withdraw the name of the petitioner for promotion. The issue, when disciplinary proceeding commenced, the right of an employee for promotion before commencement of disciplinary proceeding, was considered by the First Bench of this Court in the Judgment reported in **2021 (1) WLR 26 [The Director General of Police and others Vs. K.Pitchai]**, which was relied on by the learned Senior Counsel appearing for the petitioner. In paragraph No.11 of the said Judgment referred to above, the first Bench has extracted paragraph II, Sub-paragraph (1) and (8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follows:-

"Consideration of members for Inclusion in the approved lists: (1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of



service and no specific charges have been framed, promotion or appointment of such member of service shall be considered on the basis of the merit (emphasis added) revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. (emphasis added) On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion.

(8) Pendency of charges framed under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list."

(emphasis added)

13. After extracting the said provision, the First Bench of this Court in the said Judgment held that "pending enquiry at a pre-charge memo/charge sheet stage is not a bar for the consideration of an employee for promotion. However, once charges are framed or a charge sheet is filed in a criminal case, the promotion of such persons is required to be deferred till such proceedings are concluded". The first Bench has referred to the Judgment of the Hon'ble Supreme Court reported in **1991 (4) SCC 109 [Union of India and others Vs. K.V.Jankiraman and others]**, which reads as follows:-

"8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are: (1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions.

16. On the first question, viz., as to when for



the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. (emphasis added). The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. . As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. (emphasis added). What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) ***

(3) ***

(4) the sealed cover procedure can be resorted to



only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;"

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

After referring to various Judgments, the first Bench held that "the critical event is the framing of charges or the filing of a charge sheet, as the case may be, and not the commencement of disciplinary proceedings".

14. In the present case, there was no enquiry at a pre-charge memo/charge sheet stage. Further, charge-memo against the petitioner is dated 07.09.2016, much later than the crucial date, dated 15.03.2016 and recommendation dated 29.07.2016. Further, the issue was earlier came up for consideration before the another Division Bench of this Court, which was relied on by the learned Senior Counsel appearing for the petitioner, in **W.A(MD)No.591 of 2020, dated 19.08.2020 [The Principal Secretary, Department of Municipal Administration and Water Supply and another Vs. S.Parthasarathy and another]**. The Division Bench, after considering the Judgment of the Hon'ble Apex Court reported in **2013 (4) SCC 161 [Union of India and others Vs. Anil Kumar Sarkar]**, which was relied on by the learned Senior Counsel appearing for the petitioner and **1991 (4) SCC 109 [Union of India and others Vs. K.V.Jankiraman and others]**, in paragraph No.13 of the Judgment held that only when charge-memo is served on the delinquent employee, the disciplinary proceeding commence. The relevant portion of the said Judgment of the Division Bench reads as follows:-

"13. In the light of the ratio laid down in the said decision, mere preparation of charge memo is not sufficient and unless the charge memo is issued to the concerned employee, the disciplinary proceedings cannot be said to have commenced or pending.

14. In the case on hand, though the charge memo is dated 30.05.2019, the first respondent/writ petitioner had received the same only on 25.09.2019, if really the



charge memo dated 30.05.2019 have been prepared and served on the first respondent/writ petitioner, then a reference would have been definitely found in paragraph No.4 of the communication of the second appellant dated 26.06.2019 to the first appellant, in which he merely recommends for initiation of disciplinary action by the Commissioner of disciplinary proceedings against the first respondent/writ petitioner.

15.....

16. In the result, the Writ Appeal is dismissed confirming the order dated 28.11.2019 in W.P.(MD) No.19281 of 2019 and it is open to the respondents 1 and 2 to grant temporary promotion to the first respondent/writ petitioner as Selection Grade Municipal Commissioner, subject to the outcome of the disciplinary proceedings/W.P.(MD).No.826 of 2020. The said exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order. The Registry is also directed to accord priority and expedite the disposal of W.P.(MD).No.826 of 2020. No costs. Consequently, the connected Civil Miscellaneous Petition is closed."

In conclusion, the Division Bench by Judgment, dated 19.08.2020 in W.A(MD)No.591 of 2020, directed the appellants therein to promote the writ petitioner therein temporarily, subject to the result of the disciplinary proceedings. The ratio in both the Judgments, viz. **1991 (4) SCC 109 [Union of India and others Vs. K.V.Jankiraman and others]** and **2013 (4) SCC 161 [Union of India and others Vs. Anil Kumar Sarkar]**, are squarely applicable to the facts of the present case. There was no disciplinary proceedings pending against the petitioner on 15.03.2016 as well as on 29.07.2016, when the second respondent recommended the name of the petitioner for promotion.

15.For the above reasons, the impugned order, dated 08.09.2016 passed by the second respondent and impugned communication are set aside as invalid. As held by the Division Bench of this Court in **W.A (MD)No.591 of 2020, dated 19.08.2020 [The Principal Secretary, Department of Municipal Administration and Water Supply and another Vs. S.Parthasarathy and another]**, the respondents are directed to promote the petitioner to the post of Joint Director of Municipal Administration, when Tmt.P.Vijayalakshmi, who was also recommended by the second respondent on 29.07.2016 along with the petitioner, within a period of four weeks from the date of receipt of a copy of this order.



16. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

WEB COPY

/ /2021

Sub Assistant Registrar(CS)

ps

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Secretary,
Department and Municipal Administration
and Water Supply, Fort St. George,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Ezhilagam Annex, Chepauk,
Chennai - 600 005.
3. The Commissioner,
Pollachi Municipality,
Palaghat Road,
Pollachi - 642 001.

+1 CC to M/s. ISAAC CHAMBERS, Advocate (SR-20957[F] dated 02/07/2021)

+1 CC to M/s. SPL GP (SR-21030[F] dated 02/07/2021)

W.P (MD) No. 7813 of 2021
01.07.2021

LS (CO)

KB(14.07.2021) 11P 6C