



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.04.2022

CORAM

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18910 of 2013
and M.P.Nos.1 & 2 of 2013

K.Senthil Kumar
Assistant Engineer,
Salem City Municipal Corporation,
Salem.

... Petitioner

Vs.

1.The Commissioner,
Salem City Municipal Corporation,
Salem - 636001.

2.The Commissioner of Municipal Administration,
Chepauk, Chennai - 600005.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent issued in Na.Ka.No. in C3/34663/2012 dated 05.04.2013 and quash the same and to direct the first respondent to consider the name of the petitioner for promotion as Assistant Executive Engineer in the Panel prepared in the year 2012-2013.

For Petitioner : Mr.T.Ranganathan

For Respondents: M/s.K.Bhuvaneswari [R1]
Mr.P.Ganesan,
Government Advocate [R2]

ORDER

On the basis of certain proven charges, the petitioner was 'Censured' through an order in G.O.(D)No.232 Municipal Administration and Water Supply (ME.4) Department dated 21.09.2012. Since the condemnation of 'Censure' was prior to one year before the crucial date for promotion of the panel for the year 2012-2013 to the post of Assistant Executive Engineer as on 01.04.2013, the petitioner's name was omitted from the promotional panel. However, his immediate junior came to be promoted on 31.05.2013. The impugned order dated 05.04.2013, rejecting the petitioner's request for inclusion of his name in the promotional panel, is under challenge in the present Writ Petition.



2. The learned counsel for the respondents/Corporation places reliance on a letter of the Government dated 27.08.2003, which states that a punishment of 'Censure' within a period of one year prior to the crucial date should be held against the Officer and his name should be passed over, for the purpose of justifying that the petitioner's name need not be included in the panel for the year 2012-13. Such a justification cannot be sustained.

3. Among the various decisions of this Court which holds that the condemnation of 'Censure' cannot be held against the Officer for the purpose of consideration for promotions, the Hon'ble Full Bench of this Court in the case of 'The Deputy Inspector General of Police & another Vs. V.Rani, reported in '2011 SCC Online Mad 632, has held that the embargo put on for a further period, after the period of minor punishment is over and in the name of check period, is illegal and impermissible.

4. If that be the legal position, the petitioner's request for promotion to the post of Assistant Executive Engineer in the panel prepared in the year 2012-2013, stands substantiated and consequently, the impugned order of rejection cannot be sustained.

5. It is now stated by the learned counsel for the respondents/Corporation that the petitioner was subsequently promoted to the post of Assistant Executive Engineer.

6. In the light of the above findings, the petitioner would be entitled for notional promotion from the date on which his immediate junior was promoted i.e. from 31.05.2013 onwards.

7. Accordingly, the impugned order dated 05.04.2013 passed by the first respondent in Na.Ka.No.C3/34663/2012, is quashed. Consequently, there shall be a direction to the first respondent herein, to pass an order granting notional promotion to the petitioner to the post of Assistant Executive Engineer from 31.05.2013 onwards, together with all service and monetary benefits, within a period of six (6) weeks from the date of receipt of a copy of this order.

8. With the above directions, this Writ Petition stands allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar



To

1. The Commissioner,
Salem City Municipal Corporation,
Salem - 636001.

WEB COPY

2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600005.

+1 cc to Government Pleader Sr.NO. 26357

+1 cc to Mr.T.Ranganath, Advocate Sr.NO.26120

+1 cc to Mr.K.Bhuvaneswari, Advocate Sr.NO. 25968

W.P.No.18910 of 2013

GSM(CO)

A.SK(29/04/2022)