



W.P.No.13906 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 13906 of 2021
and WMP.Nos. 14783 and 14784 of 2021

M.Baskaran

..Petitioner

Vs.

1.Agricultural Production Commissioner and
Principal Secretary to Government,
Agricultural Department,
Government of Tamil Nadu
For St.George,
Chennai-600009.

2.The Chief Engineer,
Agricultural Engineering Department,
No.487, Anna Salai,
Nandanam, Chennai-600035.

Respondents

..

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records which culminated in issuing the order in Letter No.P.A.3 /21123 / 2020 (2) dated 18/02/2021 on the file of the 2nd respondent quash the same and consequently direct the respondents to include the name of the petitioner in the panel drawn for the panel year 2020 -2021 for promotion to the post of Superintending Engineer (Agricultural Engineering) and to promote the petitioner to the post of Superintending Engineer (Agricultural Engineering).



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For Petitioner : Mr.K.Venkataramani, Senior Counsel
For Respondents : Mr.T.Arunkumar, AGP

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ORDER

The prayer sought for in the writ petition is to call for the entire records which culminated in issuing the order in Letter No.P.A.3 /21123 / 2020 (2) dated 18/02/2021 on the file of the 2nd respondent quash the same and consequently direct the respondents to include the name of the petitioner in the panel drawn for the panel year 2020 -2021 for promotion to the post of Superintending Engineer (Agricultural Engineering) and to promote the petitioner to the post of Superintending Engineer (Agricultural Engineering).

2. The learned senior counsel for the petitioner has submitted that the petitioner was appointed as Assistant Engineer (Agricultural Engineering) in the year 1985. Based on a complaint, a criminal case in Crime No. 7 of 2012 was registered for the offences punishable under Sections 120B, 467, 468, 471, 420 of IPC and Section 13 (1) (3) of Prevention of Corruption Act. Thereafter, the petitioner was promoted to the post of Assistant Executive Engineer on 07.09.2016 and as Executive Engineer on 30.10.2017. The respondent has drawn panel for promotion to the post of Superintending



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Engineer, but the petitioner's name was not considered stating reason that a charge memo was issued to the petitioner under Rule 17(b) of the Tamil Nadu Engineering Subordinate Service (Disciplinary and Appeal) Rules.

3. According to the learned senior counsel for the petitioner, the crucial date for preparation of panel for the post of Superintending Engineer is on 01.04.2021. On the crucial date neither charge sheet nor charge memo was issued against the petitioner. The learned counsel for the petitioner has relied upon the provisions of Schedule XI, Part -A (11) (5) of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 , wherein it is stated that mere filing of cases in Courts by the appropriate investigation authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date, his name shall not be considered for inclusion in the approved list. In this case, no charge sheet or charge memo was issued/pending as on the crucial date, therefore denial of promotion to the petitioner to the post of Superintending Engineer to the petitioner by the respondent is illegal.



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4. Per contra, the learned Additional Government Pleader has contended that the Director of Vigilance and Anti Corruption, Chennai has registered a case in Crime No. 7 of 2012 against the petitioner and others. Prosecution sanction was accorded by the 1st respondent in G.O. (3D) No. 53, Agriculture (AA8) Department, dated 16.04.2019 and G.O.3(D) No. 54, (AA8) Department, dated 16.04.2019 respectively to the Vigilance department for prosecuting the petitioner before the Court. Subsequently, a criminal case in Spl.C.C.No. 5 of 2021 and Spl.C.C No. 6 of 2021 were filed before the Chief Judicial Magistrate Court, Vellore and the said case was taken on file under Sections 20-B, 409, 467, 467 r/w 471, 468, 468 r/w 471, 477-A, 167 IPC and 13(1)(c) & (d) of Prevention of Corruption Act, 1988.

5. The learned Additional Government Pleader further relying upon Section 7(1) of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, has submitted that the petitioner and others were informed by the Directorate of Vigilance and Anti Corruption, Chennai vide letter No. RC.50/2012/AGRI/VL, dated 23.07.2021 that charge sheets were filed before the Special Judge, Vellore in the said criminal cases



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against the petitioner and others and the same are pending adjudication.

Therefore, the petitioner is not entitled for promotion to the post of Superintending Engineer.

6. Heard both sides and perused the materials available on record.

7. The main contention raised by the learned senior counsel for the petitioner is that no specific charges are framed or charge sheet was filed in the criminal case against the petitioner on the crucial date of preparation panel for promotion to the post of Superintending Engineer, therefore as per Section 7(1) Schedule XI – Rule 5 & 6 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, non inclusion of petitioner's name in the promotion panel prepared for the year 2020-21 by the respondent is contrary to the Rules. In view of the said contention raised by the learned counsel for the petitioner, it is useful to rely upon Section 7(1) Schedule XI – Rule 5 & 6 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The relevant portion is extracted hereunder;



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WEB COPY“ (5) *Mere filing of cases in Courts by the appropriate Investigating Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list.*

(6) The name of a member of service shall not be considered for inclusion in the approved list if he is arrested for an offence under the Prevention of Corruption Act, 1988.”

8. A reading of the aforesaid Rule clearly states that mere filing of cases in Courts by the appropriate investigation authority against a member of service, shall not be a bar for inclusion of his name in the approved list. Further, it is specifically stated in the counter affidavit filed by the respondent that on the crucial date i.e on 01.04.2021, no charge sheet was framed against the petitioner, therefore it is clear that no charges were pending against the petitioner as on the crucial date 01.04.2021. Only after the crucial date, the charge sheet was filed before the concerned Court, therefore in view of the aforesaid Rule, the contentions raised by the learned counsel for the



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respondent cannot be countenanced.

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9. Considering the facts and circumstances of the case and the submissions made by the learned senior counsel appearing for the petitioner that the petitioner was not arrested by the Vigilance and Anti Corruption Department and taking note of the fact that the respondents have not answered in the counter affidavit with regard to the arrest of the petitioner, it is for the respondents to verify whether the petitioner was arrested pursuant to the registration of the said criminal case in Crime No. 7 of 2012.

10. Therefore, in the light of the aforesaid discussions and in view of the Section 7(1) Schedule XI – Rule 5 & 6 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the following order is passed;

- i. Impugned order passed by the 2nd respondent dated 18.02.2021 is quashed
- ii. Respondents are directed to consider the matter afresh and pass appropriate orders in accordance with law, by taking note of Section 7(1) Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, as expeditiously as possible within a period of twelve (12) weeks from the date of receipt of a copy of this order by including the name of the petitioner in the panel for the year 2020-21,



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if he is otherwise eligible.

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11. In the result, the writ petition is allowed to the above extent. No costs. Consequently, connected Miscellaneous are closed.

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Index : Yes / No
Internet : Yes
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To

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