



W.P.No.14642 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.14642 of 2020

and

W.M.P.Nos.18179 of 2020 and 19246, 19252 and 19261 of 2022

G.Nagarajan

... Petitioner

Vs.

1.The Principal Secretary to Government,
Housing and Urban Development (UD2 (1))
Department, Secretariat,
Chennai - 600 009.

2.The Director of Town and Country Planning,
807, Anna Salai,
Chennai - 600 002.

3.C.Mathivanan,
Joint Director of Town and Country Planning,
District Town and Planning Office,
Tirunelveli - 627 005.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to G.O.(2D) No.58 and 59 Housing and Urban



Development (UD2 (1)) Department dated 28.02.2020, quash the action of the Principal Secretary to the Government, Housing and Urban Development Department, the first respondent herein in so far as the non inclusion and non promotion of the petitioner to the post of Joint Director of Town and Country Planning and consequently order the respondent Nos.1 and 2 that the petitioner is deemed to have been promoted to the post of Joint Director of Town and Country Planning in the Town and Country Planning Department in the Tamil Nadu General Service with effect from the date of promotion of the third respondent herein namely 28.02.2020 with all consequential service, monetary and attendant benefits with continuity of service and seniority in the post of Joint Director of Town and Country Planning by placing him above the third respondent herein in its appropriate place and disburse all the monetary arrears accrued thereon within a short date that may be fixed by this Court.

For Petitioner : Mr.Karthik
Senior Counsel
for Mr.K.Rajkumar

For Respondents : Mr.D.Ravichander
Special Government Pleader

ORDER

The issue involved in this Writ Petition is whether the respondents were right in not granting promotion to the petitioner. The petitioner has



challenged the impugned promotion panel dated 28.02.2020 where his name has not been included for promotion to the post of Joint Director of Town and Country Planning in the Town and Country Planning Department.

2. According to the petitioner, as on the crucial date i.e., on 28.02.2020 when the promotion panel was drawn, no charge sheet was pending against the petitioner and hence, his name is entitled to be included in the promotion panel dated 28.02.2020 drawn for the post of Joint Director of Town and Country Planning in the Town and Country Planning Department.

3. Learned senior counsel for the petitioner drew the attention of this Court to Section II (4) and (5) of Part - A in Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and would submit that as per the said Rules, the charge sheet will have to be filed into Court and it is not sufficient if the respondents have been informed about the proposed charge sheet to be filed by the prosecuting agency.



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4. Learned senior counsel for the petitioner also drew the attention of this Court to the following authorities:

a) Decision rendered by a learned Single Judge of this Court dated **29.06.2006 in W.P.(MD).No.1515 of 2006;**

b) Decision rendered by a learned Single Judge of this Court dated **17.04.2008 in W.P.(MD).No.474 of 2008;**

c) Decision rendered by a learned Single Judge of this Court dated **05.03.2019 in W.P.No.17697 of 2018.**

5. Relying upon the aforesaid authorities, the learned senior counsel appearing for the petitioner would submit that the charge sheet ought to have been filed into Court on or before the crucial date i.e., on or before 28.02.2020 and only then the respondents can deprive the petitioner from promotion.

6. Per contra, learned Special Government Pleader appearing for the respondents drew the attention of this Court to the Judgment of Hon'ble Supreme Court in the case of ***West Bengal Central School Service Commission and Others Vs. Abdul Halim and Others*** reported in 2019



(18) SCC 39 and would submit that this Court while exercising its power under Article 226 of the Constitution of India is not exercising Appellate power. According to him, only when there has been a breach of any fundamental or legal right of the petitioner, or there has been a lapse in performance by the respondents of a legal duty, this Court has the power to interfere with the promotion panel which has been impugned in this Writ Petition.

7. Learned Special Government Pleader appearing for the respondents also drew the attention of this Court to the communication dated 24.10.2019 sent by the Directorate of Vigilance and Anti-Corruption, Chennai - 600 016, the prosecuting agency to the Principal Secretary to Government, Housing and Urban Development (UD2(1)) Department, Chennai - 600 009, wherein, the Principal Secretary has been informed that, on 15.07.2019, a charge sheet was filed against the petitioner before the Special Court for cases under Prevention of Corruption Act, Coimbatore.

8. Relying upon the aforementioned communication dated 24.10.2019, the learned Special Government Pleader would submit that



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having received information as early as on 24.10.2019, about the filing of the charge sheet against the petitioner, the respondents were right in not including the petitioner's name in the impugned promotion panel dated 28.02.2020, as on the crucial date i.e., on 28.02.2020, there was already a charge sheet pending against the petitioner. He would further submit that it is immaterial whether the said charge sheet was filed into Court or not, as long as the respondents were aware that a charge sheet is going to be filed against the petitioner. Subsequently, the charge sheet was filed before the Special Court on 03.05.2021.

9. Learned Special Government Pleader appearing for the respondents would further submit that a purposive interpretation will have to be given for Section II (5) of Part - A in Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and therefore, the respondents were right in not including the petitioner's name in the impugned promotion panel, as the respondents had received information about the charge sheet, even prior to the crucial date i.e., on 28.02.2020 itself.



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Discussion:

10. The only question that arises for consideration is whether on the crucial date i.e., on 28.02.2020 there was a charge sheet pending against the petitioner or not.

11. The contention of the petitioner is that the charge sheet was filed into the Special Court by the prosecuting agency only on 03.05.2021 and therefore, as on the crucial date i.e., on 28.02.2020, there was no charge sheet and therefore, Section II (5) of Part - A in Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 will not apply and there is no bar in the inclusion of the petitioner's name in the impugned promotion panel.

12. The petitioner's name has been excluded in the promotion panel only on the ground that a charge sheet has been filed against him in a criminal case and on the crucial date. The respondents have filed before this Court typed set of papers which includes a communication dated 24.10.2019 addressed to the Principal Secretary to Government, Housing and Urban Development (UD2(1)) Department, Chennai - 600 009 by the



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Directorate of Vigilance and Anti-Corruption, Chennai - 600 016 which is the prosecuting agency. In the said communication, it has been informed to the Principal Secretary, that on 15.07.2019, a charge sheet was filed against the petitioner before the Special Court for cases under the Prevention of Corruption Act, Coimbatore for the offences under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 r/w. Section 109, 166, 167, 177 and 420 of I.P.C. It is also an admitted fact that the same charge sheet which is referred to in the aforesaid communication dated 24.10.2019 of the prosecuting agency was also filed subsequently into the Special Court by the prosecuting agency on 03.05.2021. The respondents, having been informed about the filing of charge sheet as early as on 24.10.2019 much prior to the crucial date for drawing the promotion panel to the post of Joint Director of Town and Country Planning in the Town and Country Planning Department i.e., on 28.02.2020, was right in rejecting the petitioner's inclusion in the impugned promotion panel dated 28.02.2020 for the following reasons:

a) Having been put on notice about the charge sheet filed against the petitioner, on 24.04.2019 itself, that too for the offences under the Prevention of Corruption Act, the respondents cannot now contend that there was no charge sheet on the crucial date i.e., on 28.02.2020. It is also



not in dispute that a charge sheet was filed into the Special Court pertaining to the very same offences and the very same prosecution of the very same prosecuting agency against the petitioner on 03.05.2021;

b) Section II (5) of Part - A in Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 reads as follows:

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.

13. Admittedly on 24.10.2019, the respondents have been informed by the prosecuting agency viz., the Directorate of Vigilance and Anti-Corruption, Chennai - 600 016 that a charge sheet has been filed against the petitioner under the Prevention of Corruption Act on 15.07.2019. The crucial date for drawing the promotion panel is on 28.02.2020. Therefore, as on the crucial date, the respondents were duly informed by the prosecuting



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agency that there was a charge sheet pending against the petitioner. Though, the petitioner may contend that the charge sheet will have to be filed into Court and only the said date when it was filed into Court has to be taken into consideration for the purpose of Rule 5 referred to supra, this Court has to necessarily reject the said contention. The respondents are not a party to the criminal investigation. It is between the prosecuting agency and the petitioner. They may be called as a witness at a later date during the course of trial, but it cannot be interpreted as contended by the petitioner for the purpose of drawing promotion panel that the charge sheet ought to have been actually filed into Court by the prosecuting agency and only under those circumstances, the respondents can exclude the name of the petitioner in the promotion panel for the reason that there was a charge sheet pending against the petitioner as on the crucial date i.e., on 28.02.2020.

14. A purposive interpretation will have to be given for Section II (5) of Part - A in Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which has been extracted supra. It stipulates that there shall be a bar for inclusion of an employee in a promotion panel if specific criminal charges are framed or charge sheet has



been filed in the criminal case on the crucial date.

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15. The respondents having been informed about the charge sheet filed against the petitioner as early as on 24.10.2019 by the communication of the prosecuting agency to the Principal Secretary to Government Housing and Urban Development (UD2(1)) Department, Chennai - 600 009, has rightly excluded the name of the petitioner in the promotion panel on the ground that a charge sheet has been filed against him. In the aforesaid communication dated 24.10.2019, it has been informed to the respondents that as on 15.07.2019, a charge sheet was filed against the petitioner before the Special Court for cases under the Prevention of Corruption Act, Coimbatore. In fact only after obtaining sanction from the Government, the petitioner has been prosecuted for the alleged offences committed by him under the Prevention of Corruption Act and other I.P.C. offences. The sanction of the prosecution in G.O.(3D)No.30, Housing and Urban Development (UD2(1)) Department, dated 29.04.2019 has also been filed by the respondents in their typed set of papers.

16. Learned senior counsel appearing for the petitioner had relied



upon a decision of a learned Single Judge of this Court dated 05.03.2019 passed in W.P.No.17697 of 2018 and would submit that in similar circumstances, the delinquent was directed to be included in the panel for promotion. However, as seen from the said order, the facts of the said case are totally different from the facts of the case on hand. In that decision, the delinquent was not granted promotion due to the pendency of a criminal case for more than eighteen years for no fault of the petitioner therein and only on that ground the learned Single Judge has observed that the delay on the part of the Criminal Court should not be put against the petitioner. However, in the instant case, the charge sheet filed against the petitioner is only of the year 2019 and a Special Court has also taken cognizance of the same and the case was numbered as Spl.C.C.No.2 of 2021 on the file of the Court of Prevention of Corruption, Coimbatore. Therefore, the decision relied upon by the learned senior counsel for the petitioner referred to supra, has no applicability to the facts of the instant case.

17. For the foregoing reasons, this Court does not find any merit in



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this Writ Petition. Accordingly, this Writ Petition is dismissed. No Costs.

Consequently, the connected Writ Miscellaneous Petitions are closed.

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Index : Yes/No
Speaking Order : Yes / No
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W.P.No.14642 of 2014

To

1.The Principal Secretary to Government,
Housing and Urban Development (UD2 (1))
Department, Secretariat,
Chennai - 600 009.

2.The Director of Town and Country Planning,
807, Anna Salai,
Chennai - 600 002.

3.C.Mathivanan,
Joint Director of Town and Country Planning,
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ABDUL QUDDHOSE. J.,

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