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W.P. No.16191 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.16191 of 2018

and

W.M.P. No.19277 of 2018

M.V. Kaliyaperumal

...Petitioner

VS.

1. The Principal Secretary to Government,
Department of Rural Development and Panchayat Raj,
Fort. St. George,
Chennai – 600 009.

2. The Director of Rural Development and
Panchayat Raj,
Panagal Building,
Saidapet,
Chennai – 600 015.

3. The District Collector,
Thanjavur District,
Thanjavur.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 1st respondent passed in G.O. (PA) No.115 Rural Development and Panchayat Raj (E1) Department, dated 13.03.2017 and quash the same and consequently direct the respondents to retrospectively promote the petitioner as Divisional Development Officer (Now re-designated as Assistant



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Director of Panchayat) on par with his junior by including his name in the panel for promotion to the post of Divisional Development Officer for the year 1997-1998 with all consequential service and monetary benefits and to accordingly revise his pension and other pensionary benefits with effect from the date of his retirement on 31.03.2002.

For petitioner : Mr. R. Premnarayan
For respondents : Mr.P. Gurunathan
Addl. Govt. Pleader

ORDER

This writ petition has been filed challenging the order dated 13.03.2017 passed by the 1st respondent rejecting the petitioner's request for promotion as Divisional Development Officer (now re-designated as Assistant Director of Panchayat) on par with his junior by including his name in the panel for promotion to the post of Divisional Development Officer for the year 1997-1998 with all consequential service and monetary benefits and to accordingly revise his pension and other pensionary benefits with effect from the date of his retirement on 31.03.2002, within a time frame to be fixed by this Court.

2. The only issue that arises for consideration in this writ petition is whether the petitioner is entitled for promotion if the charges against the petitioner, which were pending on the crucial date when the seniority panel was finalised and subsequently, the charges were dropped against him.



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3. The petitioner was working as a Block Development Officer and has retired from service on attaining the age of superannuation on 31.03.2002. His next avenue of promotion was to the post of Divisional Development Officer (now re-designated as Assistant Director of Rural Development). Under G.O. Ms. No.368, Personnel Administrative Reforms Department dated 18.10.1993 prescribes the procedure to be followed in the preparation of panel and grant of promotion. As per the aforesaid Government Order, only if specific charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 are pending or currency of punishment in force as on the crucial date, then the name of such person should not be included in the panel and their promotion shall be deferred till the conclusion of disciplinary proceedings or expiry of the punishment. According to the petitioner, his name should have been included in the seniority panel for promotion to the post of Divisional Development Officer for the Panel year 1997-1998. But only due to the pendency of 17(b) charges against him, his name was not included. The crucial date for inclusion in the panel for promotion to the post of Divisional Development Officer for the panel year 1997-1998 is 01.03.1997. The seniority panel for the year 1997-1998 was issued in G.O. (4Pa) No.144, Rural Development and



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Panchayat Raj (E1) Department dated 15.12.1997. The petitioner's name was not included in the abovesaid panel due to the pendency of 17(b) charges against him. Two reasons were given for not including the name of the petitioner name in the above referred seniority panel, they are as follows :-

a) 17(b) charge memo dated 13.10.1997 was pending against the petitioner.

b) a currency of punishment of stoppage of increment for a period of six months without cumulative effect was in force as on the crucial date i.e. on 01.03.1997. The above said punishment was imposed in the proceeding dated 25.08.1997. According to the petitioner neither the 17(b) charge memo nor the currency of punishment was in force as on the crucial date i.e. 01.03.1997. In the 17(b) charge memo, dated 13.10.1997, the petitioner was initially imposed with a punishment of stoppage of increment for a period of one year without cumulative effect vide Proceedings, dated 16.03.1999. However, the Government issued G.O. (D) No.617, Rural Development (E6) Department dated 02.12.2005 setting aside the above said punishment. According to the petitioner, the punishment of stoppage of increment for a period of six months without cumulative effect issued in the 17(b) charge memo was communicated to



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the petitioner only in the year 2007 i.e. after the petitioner's retirement.

According to him, a punishment order will come into force only on the date on which it was served on him. The above said punishment was also set aside by the Government in G.O. (Pa) No.145, Rural Development and Panchayat Raj(E1) Department, dated 13.03.2015. According to the petitioner in view of the dropping of the punishment, the petitioner is entitled for inclusion of his name in the seniority panel for promotion to the post of Divisional Development Officer for the year 1997-1998. However, according to him, the 1st respondent issued the impugned G.O.(P) No.115, Rural Development & Panchayat Raj Department dated 13.03.2017 rejecting the petitioner's request for inclusion of his name in the panel for the year 1997-1998 on the ground that a 17(b) charge memo framed against the petitioner in Proceedings dated 09.01.2001 and the same ended with punishment of cut in pension in the year 2006.

4. A counter affidavit has been filed by the respondents denying the contentions of the petitioner. They would submit that the Government had issued orders in G.O. (D) No.617, Rural Development (E6) Department dated 02.12.2005, cancelling the order of punishment on the ground that the charges are not grave in nature and because the



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petitioner has retired from service on 31.03.2002. It is also stated that the Tamil Nadu Public Service Commission has observed in their revised opinion that further action may be pursued against the petitioner on the basis of the Enquiry report and further explanation offered by the petitioner. According to the respondents, the petitioner cannot take advantage of the lenient view taken by the Government and only due to the aforementioned circumstances, the charges against the petitioner were dropped by the Government.

5. Heard Mr.R. Prem Narayan, learned counsel for the petitioner and Mr.P.Gurunathan, learned Additional Government Pleader for the respondents.

6. The learned counsel for the petitioner would submit that if on the crucial date, there was no charge pending against the petitioner, he ought to have been considered in the seniority panel. He would further submit that though on the crucial date, charges under 17(b) were pending against the petitioner, the same was subsequently dropped and therefore notional promotion ought to have been granted to the petitioner based on his request, which has been declined under the impugned Government Order erroneously. However, he would submit that on instructions that the petitioner is concerned only about the revision of pension and not



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about the arrears of pay and other retirement benefits that may accrue to the petitioner due to the notional promotion on par with his juniors on 02.02.1998.

7. The learned counsel for the petitioner drew the attention of this Court to the following authorities, in support of his submissions, involving identical matters where charges were dropped subsequently after the preparation of the seniority panel, wherein, this Court in the said decisions had included the respective petitioner's name in the seniority panel and granted promotion :-

a) The Division Bench judgment of this Court in the case of ***V.Visweswaran vs. Director of Handloom and Textiles and another reported in 2021 5 MLJ 97***

b) The Division Bench judgment of this Court in the case of ***Government of Tamil Nadu Rep. By its Secretary to Government and another vs. J.Jayaprakash***, dated 29.10.2020 passed in W.A. No.2056 of 2019.

c) The Division Bench judgment of this Court in the case of ***The Principal Secretary to Government and two others vs. Ramkumar***, dated 07.10.2020 passed in W.A. No.2335 of 2019.



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d) The order of the learned Single Bench of this Court dated

25.06.2018 in W.P. No.116 of 2015 in the case of ***P.Manimegalai vs. The Secretary to Government and two others.***

8. Per contra, the learned Additional Government Pleader appearing for the respondents would reiterate the contents of the counter affidavit filed by the respondents before this Court and in particular, he would submit that only on the ground that the charges were not grave in nature and that too for the reason that the petitioner had retired from service on 31.03.2002 itself, the charges against him, which is the subject matter of this writ petition were dropped. He would also submit that the petitioner is not entitled for any arrears of pay or any other retirement benefits, i.e. not entitled for revision of his pension.

Discussion :-

9. The issue raised in this writ petition is now well settled by various decisions of this Court including the decisions relied upon by the learned counsel for the petitioner.

10. In the case of ***V.Visweswaran vs. Director of Handloom and Textiles and another reported in 2021 5 MLJ 97***, it has been held as follows :-



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4. In terms of the above provisions, what would be relevant is whether charge proceedings is pending as on the crucial date. According to the appellant, on the crucial date i.e., 01.03.2014, there was no charge proceedings pending and charge memo was issued only on 12.01.2015. In the light of Section 7 of the conditions of Service Act, the competent authority who draws the panel for promotion has to consider the case of the candidate based on the said provisions namely, Section 7(1). Therefore, we are not agreeable with the findings rendered by the learned Single Bench in paragraph No.5, by laying down the broad proposition that pendency of charge even after the crucial date would be a bar. In fact, we find that there are no adequate reasons to support such a conclusion apart from the statutory provisions having not been taken note of. Therefore, we are of the view that the decision rendered in the writ petition cannot be taken to be laying down a general legal principle.

11. In the case of **Government of Tamil Nadu Rep. By its Secretary to Government and another vs. J.Jayaprakash**, referred to supra, the Division Bench of this Court in paragraph Nos.21 and 28 has held as follows :-

21. These provisions are not relevant as they will apply only on the crucial date and before promotion is granted. These provision will not apply to situations where punishment imposed are later dropped in the appellate proceedings.

28. Merely because subsequent departmental proceedings were initiated in TDP Case No.26/2012 is of no



consequence. The 4th charge memo dated 26.05.2015 was issued much later. It cannot be to the prejudice of the respondent.

In the aforesaid decision, the Division Bench has followed the various decisions of the Hon'ble Supreme Court.

12. In the case of ***The Principal Secretary to Government and two others vs. Ramkumar***, referred to supra, the Division Bench has once again reiterated that the issue of subsequent of charge memo or initiation of fresh departmental proceedings cannot be a bar for considering the promotion of the respondent as an Assistant Director for the panel year 2012-13.

13. In the case of ***P.Manimegalai vs. The Secretary to Government and two others***, referred to supra, the learned Single Judge has also held that the law is well settled on this aspect that once the charges were dropped, the clock must be put back to the time when there was no charge memo against the employee and promotion granted from that date, if otherwise was eligible to be granted promotion.

14. Though the respondents may contend that only due to the fact that the charges were not grave in nature and due to the fact that the



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petitioner had retired on 31.03.2002, the charges were dropped, this

Court is of the considered view that the decisions rendered by the

Division Benches as well as by the learned Single Judge referred to supra, does not differentiate as to the reason for dropping of the charges.

The only criteria to be seen is whether the charges are still pending against the delinquent. Admittedly in the instant case, on the crucial date pursuant to the dropping of the charges, subsequent to the crucial date by the respondents, the petitioner has sought for revision of pension in this writ petition. The decisions relied upon by the learned counsel for the petitioner will squarely apply to the facts of the instant case. But however, since the seniority panel pertains to the year 1997-98 and the petitioner had also retired from service in the year 2002 itself, the question of payment of arrears of pay and other retirement benefits excepting for revision of pension amount will not arise, which is also fairly conceded by the learned counsel for the petitioner.

15. For the foregoing reasons, the impugned G.O. (PA) No.115 Rural Development and Panchayat Raj (E1) Department, dated 13.03.2017 passed by the 1st respondent is hereby quashed and the 1st respondent is directed to notionally promote the petitioner as Divisional Development Officer(now re-designated as Assistant Director of



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Panchayat) as on 02.02.1988 and consequently revise the pension amount payable to him and pay the arrears of revised pension from the date of retirement till date, within a period of three months from the date of receipt of a copy of this order.

16. With the aforesaid directions, this writ petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

22.09.2022

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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To :

1. The Principal Secretary to Government,
Department of Rural Development and Panchayat Raj,
Fort. St. George,
Chennai – 600 009.

2. The Director of Rural Development and
Panchayat Raj,
Panagal Building,
Saidapet,
Chennai – 600 015.

3. The District Collector,
Thanjavur District,
Thanjavur.



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ABDUL QUDDHOSE, J.

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