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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 1796 of 2014

and

M.P.No.1 of 2014

S.Thilagam

... Petitioner

-vs-

1. Government of Tamil Nadu,
Represented by Principal Secretary to
Government,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Rural Development
& Panchayat Raj, Chennai - 600 015.
3. The District Collector,
Salem District, Salem.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records on the file of the first respondent herein in Government Letter No.1516/E1/2013-3 dated 25.04.2013 and quash the same and to consequently direct the first respondent herein to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Assistant Director of Rural Development Department for the year 2009-2010 and to promote the petitioner as such, with retrospective effect from the date of promotion of the petitioner immediate junior therein and to grant the petitioner all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

O R D E R

The order impugned dated 25.04.2013 declining the request of the writ petitioner to include her name in the panel of Block Development Officers fit for promotion to the Post of Assistant



Director of Rural Development is under challenge in the present writ petition.

2. The writ petitioner was recruited as Trainee Assistant by the Tamil Nadu Public Service Commission in the year 1976. She was promoted as Assistant in the year 1984, she was further promoted as Extension Officer in the year 1997 and as Deputy Block Development Officer in the year 2002 and thereafter as Block Development Officer in the year 2005. The petitioner states that she is fully qualified for promotion as Assistant Director of Rural Development and was ripe for empanelment in the panel for the year 2009, wherein the crucial date was 01.03.2009.

3. Admittedly, the Departmental disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules dated 16.10.2009 was initiated. The disciplinary proceeding ended with an order of punishment of stoppage of increment for six months without cumulative effect in proceedings dated 31.05.2011 passed by the 3rd respondent. Thus, the currency of punishment was ended on 30.11.2011. The petitioner preferred an appeal and it is stated to be pending.

4. The learned counsel for the petitioner mainly contended that the charges framed against the writ petitioner cannot be construed as grievous warranting initiation of proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. There was no financial loss to the Panchayat and in respect of certain mistake, the petitioner herself collected the same and deposited the loss to the Panchayat and rectified the same by recovering the said amount from the persons responsible. Thus, for all the purposes, the disciplinary proceedings are to be construed as 17(a) proceedings instead of 17(b). Once the proceedings are considered as 17(a) proceedings under the Tamil Nadu Civil Services (Discipline & Appeal) Rules, then the punishment would not be a bar for promotion to the higher post of Assistant Director of Rural Development. Though the order of punishment was issued on 31.05.2011 the petitioner was imposed with the minor penalty of stoppage of increment for six months without cumulative effect, thus the charges are to be construed as Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules instead of 17(b) and consequently the petitioner must be granted promotion to the post of Assistant Director of Rural Development.

5. In support of the said contention, the learned counsel for the petitioner relied on the orders passed by the learned Single Judge of this Court dated 22.03.2013 in W.P.(MD).No.12725 of 2011 in the case of M.Sampoornam Vs. The State of Tamil Nadu and anr., wherein, the Court had made an observation that as per



guidelines issued by the Government, for the allegations considered as minor in nature, charges can be framed against the petitioner under Rule 17(a) and not under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Relying on the said judgment, the learned counsel for the petitioner reiterated that in the present case also the nature of the allegations are minor and therefore, the action under Rule 17(b) is highly unwarranted.

6. In yet another case in W.A.No.2121 of 2021 dated 01.10.2021, the Hon'ble Division Bench of this Court considered the issue and held that in respect of minor allegations, charge under Rule 17(b) is unwarranted.

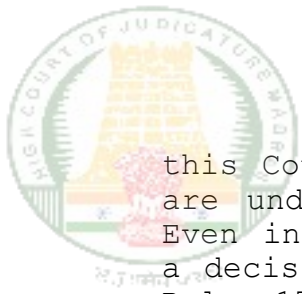
7. The learned Additional Government Pleader objected the said contention by stating that the case of the writ petitioner is distinct and different. The judgments relied on with reference to certain facts cannot be applicable in respect of the facts on hand. The writ petitioner was issued with the charge memo under Rule 17(b) and the allegations are no doubt serious, it is for the Department to take a decision in respect of the nature of allegations and accordingly initiate the proceedings. In the present case, considering the nature of the allegations, the Authorities competent during the relevant point of time initiated disciplinary proceedings and framed charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, which cannot be questioned in the present writ petition as the relief sought for in the writ petition is regarding promotion.

8. The learned Additional Government Pleader further contended that the disciplinary proceedings ended with an order of punishment. It is an admitted fact that the charge memo was pending during the relevant point of time when the panel was prepared and subsequently after passing of the punishment the currency was also there. Thus, the petitioner would be entitled for promotion only after the expiry of currency period, if she is otherwise found eligible and in accordance with the Rules in force.

9. The learned counsel for the petitioner made a submission that the order impugned is a non-speaking order and not even mentioned regarding the witnesses.

10. The learned Additional Government Pleader replied by stating that the said ground is not available for the petitioner at this point of time.

11. Considering the arguments as advanced by the respective learned counsel appearing on behalf of the parties to the lis,



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this Court is of the considered opinion that framing of charges are undoubtedly to be based on the nature of the allegations. Even in certain circumstances, the Authority Competent may take a decision either to create a charges under Rule 17(a) or under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Government guidelines are available for guidance. However, those guidelines are directory in nature and cannot be construed as mandatory as facts and circumstances and nature of the allegations in a particular case plays a pivotal role. The Disciplinary Authority is competent to assess the evidence, documents and the nature of the allegations and form an opinion. Even in certain circumstances, the Competent Authority framed charge under Rule 17(b) based on certain allegations, the same may not be a ground for the delinquent official to seek conversion of the charges or otherwise relying on the nature of the allegations or documents or otherwise. However, the Court cannot venture into an adjudication, which involves facts and circumstances with reference to the documents and evidence made available as those factors are to be adjudicated.

12. As far as the disciplinary proceedings are concerned, once the charges are framed, the delinquent official is entitled to defend the case in the manner contemplated under the Disciplinary and Appeal Rules and he is at liberty to raise all the grounds including the ground of framing of charges either under Rule 17(b) or under Rule 17(a) placing reliance on the Government Orders or Guidelines in force. However in the present case, the petitioner has participated in the process of enquiry. The Enquiry officer submitted his report, the Disciplinary Authority passed the final order imposing the punishment of stoppage of increment for six months without cumulative effect. No doubt, the Disciplinary Authority had taken a lenient view based on the report of the Enquiry Officer. However, this Court cannot go into the validity of the order of punishment, which is not under challenge in the present writ petition.

13. The order under challenge is with reference to the rejection made for promotion to the post of Assistant Director of Rural Development. As far as the promotion is concerned, the Rule contemplates that the punishment is a bar for promotion and also the currency of punishment, when the panel fit for promotion to the higher post is prepared. The employees, who all are facing the disciplinary proceedings are not eligible for inclusion. This being the settled principle, it is admitted that during the relevant point of time when the panel of Block Development Officer is fit for promotion to the post of Assistant Director of Rural Development was published, the petitioner was facing the departmental disciplinary proceeding more specifically under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The disciplinary



proceedings ended with an order of punishment and it has reached its finality.

14. The learned counsel for the petitioner contended that in respect of minor allegations, charge memo under Rule 17(a) of the Discipline and Appeal Rules alone is to be issued. In the present case, the allegations are minor in nature and thus the charge framed under Rule 17(b) was in violation of the Government guidelines. If at all the charge memo was issued under Rule 17(a), the said punishment would not be a bar for promotion and therefore for all purposes, the case of the writ petitioner is to be treated as if the charges are framed under Rule 17(a). Such a presumptive argument would not be a ground to grant the relief in the present case, as the punishment reached its finality and admittedly, the charge memo was issued under Rule 17(b) of the Discipline and Appeal Rules. Now the petitioner cannot turn around and say that the charges would have been issued under Rule 17(a).

15. It is needless to state that even in case where the charge memo under Rule 17(b) is issued, the Authorities Competent are empowered to impose minor punishment considering the gravity or proportionality. So also if any charges are framed under Rule 17(a) of the Rules, such charge memo can be converted as 17(b) charge if necessary or based on certain documents to be traced out. When such powers are conferred to the Disciplinary Authority, the Court cannot form an opinion that the charges would have been framed under Rule 17(b) as the powers of the judicial review under Article 226 of the Constitution of India, cannot be exercised for adjudication of disputed facts. Such disputed facts are to be adjudicated with reference to the documents and evidences and the High Court cannot presume certain facts and arrive a conclusion that the charge memo must be issued under Rule 17(a) or under Rule 17(b). The evidence available, the gravity and other factors are to be assessed by the Competent Authority.

16. As far as the present writ petition is concerned, the relief sought for is to include the name of the petitioner in the panel for promotion to the post of Assistant Director of Rural Development. Admittedly, the petitioner suffered punishment as if attempt to draw an inference that the authority ought to have framed charges under Rule 17(a) and included the name of the writ petitioner during the pendency of 17(a) charges. All such arguments are based on certain assumptions and the Court cannot grant the relief based on such assumptions. The fact remains that 17(b) charges were framed and the punishment was imposed which became final and therefore, the name of the writ petitioner was rightly not included during the relevant point of time.



17. The judgments relied on by the petitioner are to be confined with reference to the facts as the present facts are distinguishable in the case of the writ petitioner. The departmental disciplinary proceedings were admittedly initiated under Rule 17 (b), he participated in the enquiry and the proceedings ended with an order of punishment, no doubt minor punishment was issued. However, the fact remains that the charge memo under Rule 17(b) was pending during the relevant point of time when the panel for promotion to the post of Assistant Director of Rural Development was published by the Competent Authorities. This being the factum, the High Court cannot go into the nature of the allegations in the departmental disciplinary proceedings and form an opinion that the allegations are minor in nature and therefore, the Authorities have made an error in framing the charges under Rule 17(b) instead of 17(a), which would be overstepping and is not with the scope of judicial review under Article 226 of the Constitution of India.

18. This being the factum, this Court is of the opinion that there is no infirmity as such in respect of the decision taken by the respondents regarding the grant of promotion to the petitioner during the relevant point of time and the case of the petitioner is to be considered only after currency of pendency if she is otherwise eligible in accordance with Rules in force.

19. Accordingly, this writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

mp/Svn

To

1. The Principal Secretary
The Government of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai - 600 009.



2. The Commissioner of Rural Development
& Panchayat Raj,
Chennai - 600 015.

3. The District Collector,
Salem District, Salem.

+1cc to M/s.M.Ravi, Advocate, S.R.No.32395

+1cc to the Government Pleader, S.R.No.33101

W.P.No.1796 of 2014

PMK (CO)
UMA (17/06/2022)