



WEB COPY



W.P.No.25533 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.25533 of 2022
and W.M.P.No.24526 of 2022

C.Sakthivel

.... Petitioner

-Vs-

1.The Director of Adi Dravidar Welfare
Ezhilagam, Chepauk, Chennai-600 005.

2.The Director of Tribal Welfare
Ezhilagam, Chepauk, Chennai 600 005.

3.The Project Officer
District Project Office
Kallakurichi District.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to consider the petitioner for promotion to the post of Government Tribal Residential Middle School Headmaster on inclusion of his name in the 2022 panel based on seniority without reference to the pendency of charge memo issued by the 1st respondent in Na.Ka.No.02/10532-2/2015 dated 18.08.2016 within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.C.Sangamithirai
Special Government Pleader



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ORDER

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The prayer sought for herein is for a Writ of Mandamus directing the respondents to consider the petitioner for promotion to the post of Government Tribal Residential Middle School Headmaster on inclusion of his name in the 2022 panel based on seniority without reference to the pendency of charge memo issued by the 1st respondent in Na.Ka.No.02/10532-2/2015 dated 18.08.2016 within a time frame to be fixed by this Court.

2. The petitioner had been working as B.T.Assistant in a School under the control of the respondent Department. There was a disciplinary proceedings initiated against him by framing a charge dated 23.04.2015 and on receipt of the charge memo, the petitioner also had given an explanation on 23.05.2016. Thereafter, it seems that no action was taken and when that was pending without any further action on the part of the respondents, the petitioner had been transferred and after having worked for some time in the transferred place, he wanted to come back to the original place, where he had worked. Therefore, in this regard, during the regular counselling for transfer, expressing his option to come back to the original place where he had worked, the petitioner had sought for transfer.



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3. The said request made by the petitioner was considered to be in violation of rules stating that when the first charge itself was pending the petitioner cannot give any application for transfer for counselling authority and pursuant to which the respondents have framed the second charge dated 18.08.2016.

4. Challenging both the charges ie., the charge dated 23.04.2015 and the charge dated 18.08.2016, the petitioner has moved two writ petitions in W.P.Nos.35366 and 35367 of 2016. when these writ petitions were disposed of by a common order passed by the learned Judge of this Court by order dated 01.11.2016, the following orders have been passed.

" 7. In view of the limited prayer sought for by the petitioner, this Court without going into the merits of the claim of the petitioner, directs the first respondent to pass final orders in the charge memo in Na.Ka.No.02/10532/2015 dated 23.04.2015 based on the explanation submitted by the petitioner dated 23.05.2015 on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

8. With regard to the other writ petition in W.P.No.35366 of 2016 filed to quash the charge memo issued to the petitioner on 18.08.2016 in Na.Ka.No.02/1052-2015,



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the respondents are directed to keep the charge memo in abeyance till final orders were passed in charge memo issued to the petitioner on 23.04.2015."

5. Thus, insofar as the first charge is concerned, orders were directed to be passed within a time frame and insofar as the second charge is concerned, that was directed to be kept pending till the orders are passed in the first charge.

6. In pursuance of the said order, the respondent has ultimately passed orders on 09.01.2019 in respect of the first charge, where on the basis of proven charges, the petitioner was inflicted with the punishment of withholding the increment for a period of two years with cumulative effect.

7. Since that order was passed on 09.01.2019, according to the learned counsel for the petitioner, the petitioner though filed an appeal against the order of punishment, in the meanwhile he has undergone the punishment.

8. However, as directed by the writ Court in the said order at Para 8 referred to above, no orders have been passed in respect of the second charge. In view of the pendency of the second charge as no orders have been passed, the petitioner's promotional avenue is getting affected because, even though the petitioner is eligible to be considered for promotion to the post of Headmaster, he



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was not considered and hence the petitioner has moved the present writ petition with a prayer that the petitioner's candidature for the purpose of promotion to the post of Headmaster may be directed to be considered without reference to the second charge dated 18.08.2016.

9. Heard Mr.G.Sankaran, learned counsel for the petitioner who would submit that, insofar as the first charge is concerned though the same had ended in a penalty, as against which though an appeal has been filed, which is pending, in the meanwhile the petitioner has undergone the punishment and the two years period is over by January 2021 itself.

10. Insofar as the second charge is concerned, orders could have been passed by the respondents because restriction was given only to keep the second charge pending till orders are passed in the first charge and since the orders were passed in the first charge on 09.01.2019, by this time the respondents could have passed orders in the second charge, but for the reasons best known to them since they have not passed any orders, the same has hampered the promotional avenue of the petitioner. Therefore, the learned counsel for the petitioner seeks the indulgence of this Court to issue appropriate directions to the respondents by way of Mandamus to include the petitioner's name in the promotional panel without further reference to the second charge



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memo dated 18.08.2016.

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11. On the other hand, Mrs.C.Sangamithirai learned Special Government Pleader would submit that, insofar as the first charge is concerned it ended in a punishment. Therefore, for five years period there could be no chance of giving any promotion to the petitioner. Insofar as the second charge is concerned that has to be disposed of by completing the enquiry and if enquiry has already been completed, orders would be passed immediately or otherwise within a shortest possible time that may be fixed by this Court enquiry would be completed and orders would be passed on the second charge. Only depending upon the orders to be passed in the second charge, further claim made by the petitioner for getting promotion to the post of Headmaster would be considered.

12. I have considered the submissions made by the learned counsel for either side and have perused the materials placed on record.

13. Insofar as the first charge is concerned, it has ended in punishment that has already been undergone by the petitioner and therefore the 5 years rule would not apply to the petitioner since currency of punishment is already over by 2021 itself. Hence, with regard to the first charge the petitioner's promotion need not be hindered. However, since the second charge dated 18.08.2016 is still



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pending, though the same could have been disposed of as this Court in Para 8 of the earlier order had only restricted the respondents to retain the charge without passing any orders till the orders are passed in the first charge, this Court feels that on competing enquiry on the second charge dated 18.08.2016 as a sequel the petitioner's claim for getting promotion can be considered depending upon the outcome of the decision to be made in the second charge.

14. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That there shall be a direction to the respondents to complete the enquiry and pass orders on the second charge dated 18.08.2016 within a period of six weeks from the date of receipt of a copy of this order.
- It is needless to mention that, depending upon the outcome of the orders to be passed in this regard, the plea of the petitioner to get promotion to the post of Headmaster shall be considered by the respondents and orders to that effect shall be passed.



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15. With the above directions, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

21.09.2022

Index : Yes/No
Internet : Yes/No
KST
To

- 1.The Director of Adi Dravidar Welfare
Ezhilagam, Chepauk, Chennai-600 005.
- 2.The Director of Tribal Welfare
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R. SURESH KUMAR, J.

KST

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