



W.P.(MD)No.1091 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.1091 of 2020

and

W.M.P(MD)Nos.884 of 2020 & 9086 of 2021

S.Kulanthaivel

... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Municipal Administration and Water Supply Department ,
Fort St.George,
Elilagam,
Chennai.

2.The Commissioner
Madurai Corporation,
Madurai.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings Ma.Ni.2 / 32446 /2014, dated 13.11.2014 and quash the



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same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the 2nd respondent to promote the petitioner as Assistant Executive Engineer in the 2nd respondent Corporation from 13.11.2014 with provides all other monetary and other benefits.

For Petitioner : Mr.S.Karthik
For Respondents : Mr.S.P.Maharajan - for R1
Special Government Pleader
: Mr.T.S.Mohamed Mohideen

ORDER

This Writ Petition has been filed to quash the impugned order passed by the 2nd respondent in his proceedings Ma.Ni.2 / 32446 /2014, dated 13.11.2014, on the ground that the same is arbitrary, illegal and without any legal basis and consequently to direct the 2nd respondent to promote the petitioner as Assistant Executive Engineer in the 2nd respondent Corporation from 13.11.2014 provided with all other monetary and other benefits.



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2. The learned counsel for the Petitioner submitted that the petitioner completed B.E. Civil Engineering and joined as Assistant Engineer in the Respondent Corporation on 04.06.2001. Thereafter, the petitioner completed 18 years and 5 months service effectively in the respondent Corporation. As per the seniority list issued by the second respondent Corporation, dated 17.10.2014, the petitioner was placed in the third place in the seniority list among others and they call for objection in the seniority list on 13.11.2014 and they issued a final seniority list. To shock and surprise, the second respondent published the panel of Assistant Executive Engineer on 13.11.2014 and deleted the petitioner's name in the promotion list on the ground that a charge memo dated 26.05.2014 was pending against the petitioner. Challenging the same, the present petition is filed.

3. The learned counsel for the petitioner submitted that the charge memo, dated 26.05.2014 pending against the petitioner is for very flimsy reasons and thereafter, the Enquiry Officer was appointed on 03.07.2014 and a enquiry report was filed on 24.07.2014 and stated that



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all charges are held against the petitioner not proved and on 13.11.2014, the second respondent accepted the enquiry report and passed the final orders and closed the charges against the petitioner. However, even then, the petitioner's name was deleted in the promotion list and denying the promotion to the petitioner is not sustainable one. Hence, he prayed for allowing the writ petition.

4. Per contra, the learned Standing counsel appearing for the respondent Corporation submitted that the petitioner was issued with charge memo, dated 14.09.2012 and an enquiry was conducted as per Rule 8(2) of Madurai Corporation Service Rules. On 29.01.2015, punishment order was passed as stoppage of increment with cumulative effect for three years and the petitioner had received the copy of the order on 05.02.2015. Therefore, charges were pending since 2012 and in the year 2015, the petitioner had suffered a punishment. The writ petition deserves to be dismissed for suppression of material facts. In respect of charge memo issued on 26.05.2014, the petitioner was relieved from the charges on 13.11.2014 as stated by the petitioner, charge memo, dated



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29.01.2015, the petitioner was punished by stoppage of increment for one year with cumulative effect. The petitioner who was facing two charge memos parallelly on the same period and subsequently, suffered punishment in charges and cannot claim that he was not having the knowledge about the order, dated 13.11.2014. The challenge made by the petitioner against 2014 order in the year 2020 is belated and unsustainable and therefore, the writ petition deserves to be dismissed on latches. Hence, prayed for dismissal of the writ petition.

5. Heard, the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for the first respondent and the learned Standing Counsel appearing for the second respondent Corporation.

6. Admittedly, the petitioner's name was deleted in the promotion list on the ground that apart from the charge memo, dated 26.05.2014, there are other charges pending against the petitioner. The charges pending against the petitioner are as follows :



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1) Charge memo, dated 14.09.2012, after conducting enquiry as per Rule 8(2) of Madurai Corporation Rules, a punishment was awarded on 29.01.2015 and one stoppage of increment with cumulative effect for three years and the petitioner received a copy of the punishment order on 05.02.2015 and

2) The another charge memo was issued on 29.01.2015 and after conducting enquiry, the punishment was imposed for stoppage of increment for one year with cumulative effect and further the petitioner facing two charge memos parallelly and the same was ended in punishment and the punishment also suffered and the said punishment was not challenged in any forum.

During the currency of the punishment, the petitioner is not entitled for



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considering his promotion, Hence, the grievance of the petitioner in the writ petition is liable to be rejected and accordingly, prayed for dismissal of the writ petition.

7. The facts in the present case are not in dispute. The petitioner claimed that there was an averment in the affidavit, as if one charge memo, dated 26.05.2014 was alone pending and the same was subsequently, closed, whereas, the respondents by filing counter stating that there are two charge memos were issued on different date namely 14.09.2012 and the same has ended in the punishment on 29.01.2015 for stoppage of increment with cumulative effect for a period of three years and another charge memo was issued on 29.01.2015 and the same was ended in punishment of one year stoppage of increment and during the currency of the punishment the petitioner was not entitled for promotion since the respondent had rightly deleted the name of the petitioner in the promotion list and denying the promotion is perfect in order which cannot be interfered with. However, liberty is granted to the petitioner to make appropriate representation after the currency of punishment is over.



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However, after 2020, if there is no legal impediment the respondent is directed to consider the petitioner's candidature for promotion.

8. With the above direction, this writ petition is dismissed.

No Costs. Consequently, connected miscellaneous petitions are closed.

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Index :Yes/No
Internet : Yes / No
RM



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M.DHANDAPANI,J.

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