

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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DATED: 18.10.2022**CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P.(MD)No.1667 of 2021 and**
W.M.P.(MD)Nos.1411, 1413 & 19308 of 2021

P.Vilvamoorthy,
Assistant Commissiner /
Jewel Verification Officer,
Hindu Religious & Charitable
Endowments Department,
Thanjavur.

... Petitioner

Vs.

1. The Secretary to Government,
Government of Tamil Nadu,
Tourism, Culture and Hindu Religious
Endowment Department,
Fort St. George, Chennai – 600 009.
2. The Additional Chief Secretary,
Tourism, Culture and Hindu Religious
Endowment Department,
Fort St. George, Chennai – 600 009.
3. The Commissioner,
Hindu Religious & Charitable
Endowment Department,
Nungambakkam, Chennai.
4. Renuka Devi,
Assistant Commissioner,
Hindu Religious and Charitable
Endowments, Kanchipuram.

... Respondents



Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in SE.MU.NA.KA. No.51836/2020-1/P.1 dated 16.12.2020 issued by the third respondent and quash the same and direct the respondents to promote the petitioner on par with the junior K.Renukadevi as Joint Commissioner in Hindu Religious and Charitable Endowments Department and all consequential benefits.

For Petitioner : Mr.S.Vellaichamy

For R-1 to R-3 : Mr.J.Ashok,
Additional Government Pleader.

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ORDER

Heard the learned counsel on either side.

2. The writ petitioner wants to be promoted as Deputy Commissioner and placed on par or above the fourth respondent. The case on hand pertains to inclusion in the panel for the year 2013-14 for the post of Deputy Commissioner, Hindu Religious and Charitable Endowments Department. The learned counsel appearing for the petitioner



pointed out that the fourth respondent has been promoted as Joint Commissioner by the impugned order. He would also draw my attention to yet another proceedings vide G.O. (Ms)No.95 Tourism, Culture and Hindu Religious Charitable Endowments Department dated 13.04.2022 whereby one Mohanasundaram who was also junior to the petitioner has also been promoted to the post of Joint Commissioner.

3. The question is whether the petitioner is entitled to promotion to the post of Deputy Commissioner in the panel for the year 2013-14. There is no dispute that the crucial date for empanelling for the year 2013-14 was 01.10.2014. The charge memo under Rule 17(b) was framed against the writ petitioner on 19.08.2013. The disciplinary proceedings concluded only in the year 2017 and the punishment of stoppage of increment for a period of two years without cumulative effect was imposed on the petitioner on 30.03.2017. The said punishment worked out itself by 30.03.2019. The only question that arises for consideration is whether the petitioner is entitled to be treated on par with the fourth respondent.



4. As rightly pointed out by the learned Special Government Pleader, the fourth respondent could not be included in the aforesaid panel for the year 2013-14 because charge memo was pending against her during the relevant time. The said proceedings ended in the punishment of censure. Thereafter the fourth respondent preferred an appeal before the Government and the punishment of stoppage increment imposed on the fourth respondent was also set aside. The outcome of the proceedings relate back to the year 2013-14 and therefore, the promotion of the fourth respondent cannot be faulted.

5. S.No.8 of paragraph No.II in Part A of Schedule XI of Section 7(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is as follows:-

“ (8) Pendency of charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list. ”

On account of the pendency of charges under Rule 17(b)



against the petitioner on the crucial date, there was a bar for inclusion of his name in the approved list.

6. I reject the contention of the learned Special Government Pleader that till 30.03.2024, the writ petitioner is not eligible for promotion. As rightly pointed out by the learned counsel for the petitioner, Rule 13 will come to the petitioner's rescue. Rule 13 of the aforesaid schedule is as under:-

“ (13) If a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion. ”

7. Irregularity or delinquency by the petitioner had taken place prior to 2013. That is obviously beyond the period of five years even from 30.03.2019. Therefore, from 30.03.2019 the petitioner is obviously eligible for getting



promotion. He shall be considered accordingly. This writ petition stands disposed of with the aforesaid clarification and direction. I clarify that if there is no other impediment, the petitioner is eligible for being considered for promotion with effect from 01.04.2019. No costs. Consequently, connected miscellaneous petitions are closed.

18.10.2022

Index : Yes / No
Internet : Yes/ No
PMU

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