



W.A.(MD)No.714 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.714 of 2022
and
C.M.P.(MD)No.6000 of 2022

- 1.The State of Tamil Nadu,
represented by its Secretary,
Department of Municipal Administration
and Water Supply,
Fort St. George, Chennai-600 009.
- 2.The Commissioner of Municipal Administration,
Ezhilagam Annex, Chepauk,
Chennai 600 005.
- 3.The Commissioner,
Pollachi Municipality,
Palaghat Road,
Pollachi-642 001.

... Appellants

Vs.

A.Sundarambal

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.7813 of 2021, dated 01.07.2021.



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For Appellants :Mr.T.Ajmad Khan

Government Advocate

For Respondent :Mr.K.Ragatheesh Kumar

for M/s.Isaac Chambers

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed challenging the order passed in Writ Petition W.P.(MD)No.7813 of 2021, dated 01.07.2021. The respondents in the writ petition are the appellants in the present appeal and the writ petitioner is the respondent herein.

2. The prayer in the writ petition W.P.(MD)No.7813 of 2021 is for Writ of Certiorarified Mandamus, to quash the impugned proceedings dated 08.09.2016 issued in ROC. No. 5382/2015/C1 by the 2nd appellant / respondent and to direct the 1st and 2nd appellants / respondents to give promotion to the respondent / writ petitioner as Joint Director of Municipal Administration as per the recommendation made in her favour by the 2nd appellant /



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WEB COPY respondent, vide proceedings Roc. No. 5382/2015/C1, dated 29.07.2016, with all attendant benefits including service seniority, salary and allowances.

3. The facts of the case as stated in the affidavit filed in writ petition is that the respondent herein was selected through TNPSC and was appointed as Municipal Commissioner Grade II, vide G.O.(4D)No.2, Municipal Administration and Water Supply Department, dated 27.01.2004 and joined the service on 16.02.2004. The respondent herein was promoted as Municipal Commissioner Grade I on 03.04.2006, then, as Municipal Commissioner Selection Grade on 24.04.2009 and was further promoted as Municipal Commissioner Special Grade on 04.01.2012 and posted in Rajapalayam Municipality and has put in 17 years uninterrupted service and was awaiting next promotion to the post of Joint Director of Municipal Administration, which service comes under the Tamil Nadu Municipal Commissioners' Service. The crucial date for preparation of panel for appointment in category in municipal services is 15th March every year. In the year 2016, the



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2nd appellant Commissioner considered the list of eligible Municipal Commissioners in the state of Tamil Nadu for promoting them as Joint Director of Municipal Administration for filling up two vacancies.

4. In the selection process, the 2nd appellant Commissioner has found the respondent herein and one P.Vijayalakshmi, then Municipal Commissioner, Karaikudi, as eligible candidates for promotion and recommended through Roc.No.5382/2015/C1, dated 29.07.2016. After this recommendation, a charge memo was issued by the 2nd appellant in Roc.No.22580/2016/C4-1, dated 07.09.2016, framing five charges which are related to a tender allotted in favour of one Thirumoorthi in the year 2013, when the respondent herein was serving as Municipal Commissioner at Pollachi Municipality. The said charge memo was issued as per the observations made by the Principal Bench of Madras High Court in W.P.No.14522 of 2016, dated 27.04.2016, wherein this Court has directed to commence a full-fledged enquiry into the matter after issuing notice to all concerned authorities and further directed to complete the enquiry



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5. The entire issue arose due to a petition filed by one Thirumoorthi who was a successful bidder in the tender process to lease out the municipal land and building. The said Thirumoorthi being the successful bidder was given possession of the building. After taking possession, he sought permission to carry out some work in the building and the same was granted. The said lessee while carrying out the said works has unauthorizedly encroached another portion of vacant building and was enjoying the same. After noticing the said encroachment, the municipality revised the lease amount and subsequently, the said lessee approached the High Court in W.P.No.14522 of 2016, claiming refund of expenditure incurred towards development of the building. While considering that petition, the Court directed to take further action against the said Thirumoorthi and all other concerned officials. Based on the direction, the second appellant herein had issued a charge memo, dated 07.09.2016. Similarly, disciplinary proceedings were also initiated against other employees serving in various cadres in the



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municipality. The respondent herein had replied to the show cause notice wherein she has submitted the lease was conducted in accordance to law following due process of law. The moment it was brought to the knowledge that the said Thirumoorthi had encroached some portion of building, necessary proceedings were initiated for enhancing rent and it was increased with a rider that the increase is subject to the final outcome of the enquiry. Later, action was initiated to cancel the lease and finally, his lease was cancelled because of violation of conditions. After the reply from the respondent herein, the appellants appointed an enquiry officer namely Sandeep Nandhuri, but he could not continue the enquiry since he was promoted as District Collector. Another officer namely P.Vijayalakshmi was appointed as enquiry office and as she was from equal cadre of the respondent herein, she was also relieved from the enquiry officer position.

6. In the meanwhile, vide Roc.No.26896/2016/B1, dated 24.04.2019, the charge memo was modified as per the instructions of Directorate of Vigilance and Anti-Corruption. Thereafter, the



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respondent herein was directed to submit a fresh defense statement within 15 days. On 15.05.2019, one Thirumavalavan, Superintending Engineer, was appointed as enquiry officer. The respondent herein submitted her reply on 01.07.2019. The enquiry officer conducted enquiries on 15.07.2019, 16.07.2019 and has concluded the enquiry on 31.08.2019. Even after more than one year and 7 months, disciplinary proceeding was not concluded. Hence, the respondent herein submitted a representation requesting to conclude the disciplinary proceedings.

7. In the meanwhile, the first appellant, vide letter dated 27.01.2021, communicated the enquiry report, wherein it is held the charges against the respondent herein are “not proved”. But the department has differed from the said findings of the enquiry officer and held all the charges were proved. The respondent herein was directed to submit further explanation for differing from the enquiry report.

8. The contention of the respondent herein is that on bare



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reading of the reasons would show that in order to impose some punishments, the appellants are raising various “new grounds”, which was never raised before. In the meanwhile, the respondent herein submitted a representation to consider her name for promotion to the post of Joint Director, vide letters, dated 04.03.2019, 09.07.2019, 07.01.2021 and 25.01.2021. Without considering the same, the second appellant initiated disciplinary proceedings against 8 employees including the respondent herein. The second appellant has passed final order against the 2 employees. However, the first and second appellants had not passed any final orders and concluded the disciplinary proceedings against the respondent herein, despite the fact that the enquiry officer has held that none of the charges levelled against the respondent herein are proved. The contention of the respondent herein is that the charge memo was issued on 07.09.2016 and the same was modified on 24.04.2019 and final orders are not passed. However, the respondent herein is eligible for the promotion to the post of Joint Director from the panel 2015-2016 and the crucial date is 15.03.2016, hence as on the crucial date there was no charge memo



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at all. Therefore, the respondent herein is alleging the delay in promotion is deliberate. Hence, the writ petition is filed to quash the impugned order which had directed to revoke the recommendation for promotion. The learned Single Judge has considered whether the respondent herein is entitled to promotion in the year 2016. If so, whether the subsequent communication requesting the first appellant to withdraw the name of the respondent herein from the seniority panel is correct. The learned Single Judge has come to the conclusion by referring to various judgements that the impugned order recommending to withdraw the name of the respondent herein is not legally sustainable and allowed the writ petition. Aggrieved over the same, the appellants herein had preferred this writ appeal.

9. Heard Mr.T.Ajmad Khan, learned Government Advocate appearing for the appellants and Mr.K.Ragatheesh Kumar, learned Counsel appearing for the respondent.

10. The appellants raised a question of maintainability of



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writ petition before Madurai Bench, since the respondent herein had arrayed the Commissioner, Pollachi Municipality as one of the parties in the writ petition and the first and second appellants are stationed at Chennai. The Learned Counsel appearing for the respondent herein submitted that the respondent received a charge memo while she was serving in Karaikudi Municipality and at the time of filing the writ petition the respondent herein was serving in Rajapalayam Municipality. Since the respondent herein had received charge memo while she was serving in Karaikudi Municipality and has sought promotion while servicing in the Rajapalayam Municipality, this Court is of the considered opinion that Madurai Bench has jurisdiction to entertain the writ petition.

11. It is seen from the records that the appellants have not raised any jurisdictional question before the learned Single Judge and even in the grounds of appeal the appellants have not raised any jurisdictional question. But by relying on the residual ground wherein the appellants had reserved their rights to raising additional grounds, the appellants have raised the question on



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maintainability. Since this Court has already held that the respondent herein was served with a charge memo while she was serving in Karaikudi Municipality and has sought promotion while she was serving in Rajapalayam Municipality, this Court is having jurisdiction to entertain the writ petition. Moreover, the question of territorial jurisdiction ought to be raised at the earliest point of time and not at the appellate stage. Therefore, the question of maintainability is rejected.

12. The crucial date for considering for promotion is 15.03.2016, the respondent herein was recommended for granting promotion on 29.07.2016 and there was no charge memo when the name of the respondent was recommended. Since the charge memo was issued only on 07.09.2016 and the modified charge memo was issued on 24.04.2019, the claim of the respondent is that she is eligible for promotion and hence the subsequent impugned communication to delete the name of the respondent is illegal. Moreover, it is also seen from the records that from 07.09.2016 onwards i.e. for more than 6 years, the respondent herein was not



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granted any promotions citing the pending disciplinary proceedings. In the meanwhile, 15 of the respondent's juniors were promoted to the post of Joint Director. Hence, the respondent herein had filed the writ petition challenging the communication wherein, it is directing the second appellant from removing the respondent's name from the panel of eligible candidates for promotion with consequential relief.

13. The Learned Counsel appearing for the appellants submitted that the provisions stated in Paragraph II, Sub-paragraph (1), (8), (10) and (15) of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 clearly states that the respondent is not entitled to be considered when the disciplinary proceedings are pending and the relevant provisions are extracted hereunder:

“Consideration of members for Inclusion in the approved lists:

(1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of service and no specific charges have been framed, promotion or



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appointment of such member of service shall be considered on the basis of the merit revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion

(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.

(10) That the name of a member of service placed under suspension on the crucial date or on the date of consideration for actual promotion shall not be considered for inclusion in the approved panel list or for actual promotion as the case may be and his/her name shall be deferred till finalization of disciplinary proceedings.

(15) That no Member of service shall be promoted or appointed to a post if the member is undergoing any punishment imposed under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules either on the crucial date or on the date of consideration for actual promotion.”

14. After hearing the submission of the appellants this



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Court have given its anxious consideration. As far as Sub-paragraphs 1 and 8 are concerned the member shall be considered if no specific charges are framed. In the present case as there is no specific charge as on the date of recommendation. As far as Sub-paragraph 10, the appellants submitted that it states that any member who is placed under suspension on crucial date or on the date of consideration for actual promotion shall not be considered for inclusion in the approved panel list or for actual promotion, names shall be deferred till the finalization of disciplinary proceedings and since the disciplinary proceedings was not finalized, the respondent cannot claim any promotion. In the present case, the respondent herein was not under suspension at any point of time and therefore this sub paragraph also is not applicable. As far as the Sub-rule 15 is concerned, the appellant submitted that no member of service shall be promoted or appointed, if the members undergoing any punishment. In the present case, right from 2016 onwards there was no punishment against the respondent herein, hence, the said sub paragraph is not applicable to the present case.



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15. The Learned Single Judge had considered the case of the respondent herein by relying on the judgment rendered by Hon'ble Supreme Court in Union of India and others Vs. K.V. Jankiraman and others reported in (1991) 4 SCC 109. The said judgment is followed in the Director General of Police and others Vs. K.Pitchai reported in 2021 (1) WLR 26 rendered by the Hon'ble First Bench of this Court. The relevant portion of High Court of Madras is extracted hereunder:

“12. Upon perusal of the aforesaid, it is clear that a pending enquiry at a pre-charge memo/charge sheet stage is not a bar for the consideration of an employee for promotion. However, once charges are framed or a charge sheet is filed in a criminal case, the promotion of such persons is required to be deferred till such proceedings are concluded. Thus, the critical activity for triggering the disability to be considered for promotion is the framing of charges or filing of the charge sheet in a criminal case. Therefore, the next aspect to be considered is whether it is sufficient that charges are framed or is it necessary that the charge memo/ charge sheet should be served on the delinquent employee. Towards this end, the law on this issue should be examined.”



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In the light of the above discussion the position of law is clear that mere preparation of charge memo is not sufficient. Unless the charge memo is issued to the concerned employee, the disciplinary proceedings cannot be said to have commenced or pending.

16. The appellants submitted that as per the relevant rules the promotion ought to be deferred until the disciplinary proceedings had attained finality and the same is in consonance with the said rules framed in Tamil Nadu Government Servants Conditions of Service Act, 2016. This contention may be acceptable if the disciplinary proceedings is completed within reasonable time, but not for belated proceedings. More so, when the disciplinary proceedings are prolonged for more than 6 years. In the present case, the first charge memo was issued on 07.09.2016 and the modified charge memo was issued on 24.04.2019 and the enquiry report was submitted on 27.01.2021 and in the enquiry report the charges were held "not proved". But the appellants are differing from the enquiry report. The reasons cited for differing from the enquiry report is very vague. It is also seen from the records that



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the appellants had passed final orders against two delinquents but has not passed any final order against the present respondent till now. As on the crucial date, there was no charge memo and the respondent herein was not facing any disciplinary proceedings. In such circumstances, the respondent is losing her valuable right of promotion from 2016 till date. Therefore, this Court is of the considered opinion that the respondent herein is entitled for promotion in the year 2016 from the panel 2015-2016 and the recommendation to cancel the respondent's name from the panel is illegal. The Learned Single Judge is absolutely right in allowing the writ petition directing the appellants to grant promotion to the respondent herein. Hence the order passed in writ petition is confirmed and the appeal filed by the appellants is dismissed.

17. The appellants are directed to promote the respondent Sundarambal to the post of Joint Director along with the said T.Vijayalakshmi, who was also recommended by second appellant on 29.07.2016. The said exercise shall be completed within the period of 4 weeks from the date of receipt of a copy of this judgment.



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WEB COPY 18. For the reasons stated above, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19. Before parting with the judgment, this Court is of the considered opinion that the provisions relating to withholding promotion pending disciplinary proceedings should be suitably amended to protect the innocent employees/servants of Government who are discharged from all charges. In the present case, the respondent/writ petitioner was in the panel for the year 2015-2016. The charge memo was issued on 07.09.2016. The respondent / writ petitioner's juniors 15 in number were promoted from 2016 onwards and the enquiry report has held that charges are not proved. In such circumstances the respondent / writ petitioner is losing her valuable right of promotion for the period from 2016 to 2023. More so, when the charges were held not proved by the enquiry officer. Even though the appellants have differed from the enquiry report and the appellants had passed order against two other delinquents, the appellants had not passed any final order



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against the respondent / writ petitioner till now, thereby causing irreparable loss to the petitioner. The Government may consider amending the rules suitably to prevent irreparable injury in cases when unexplained delay causes immense hardships to the delinquents. Before commencement of disciplinary proceedings, the delinquent ought to be considered for promotion. Moreover, higher authorities can stall promotion of an innocent by initiating disciplinary proceedings by framing charges and after promoting others, the charges would be dropped. This power without any guidelines leads to arbitrariness. In several cases, charges are framed only as a tool to grant promotion to juniors in the list and to stall promotion of seniors on account of proposed action against them. The Government shall consider to amend the rules for the reasons as stated supra.

[S.S.S.R., J.] [S.S.Y., J.]
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Government of Tamil Nadu,
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