BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13322 of 2022

L.Subramanian ... Petitioner

Vs

1.The Principal Secretary to Government,
Commercial Taxes and Registration (A1) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Principal Secretary / Commissioner of Commercial Taxes,
O/o. the Commissioner of Commercial Taxes,
Chepauk, Chennai 600 005.

3.The Deputy Commissioner (State Tax),
O/o. the Deputy Commissioner (ST),
Virudhunagar,
Virudhunagar District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Memo No.P1/21027/2019 dated 06.10.2021 on the file of the Respondent No.2 and quash the same as illegal and consequently directing the Respondent No.2 to promote the petitioner to the post of Commercial Tax Officer as on 01.03.2014 within the time stipulated by this Court.

For Petitioner : Mr.S.Louis

For Respondents : Mr.Veera Kathiravan,
Addl. Advocate General,
Assisted by Mr.A.K.Manikkam,
Spl. Government Pleader.

ORDER

Heard the learned counsel for the writ petitioner and the learned Additional Advocate General for the respondents.

2.The writ petitioner is serving the respondent department as a Deputy Commercial Tax Officer. He seeks promotion to the post of Commercial Tax Officer. The contention of the learned counsel for the petitioner is that the crucial date is 01.03.2014. On the said date, the petitioner was not under any cloud and he was rightly included in the promotion panel. There were totally 324 persons included in the said panel. The petitioner figured at Serial No.306. The petitioner was implicated in a trap case on 05.12.2014 and the criminal prosecution initiated under the Prevention of Corruption Act is still pending. But the petitioner's turn for actual promotion came on 04.03.2015. On the said date, no final report had been filed and no charges had been framed. The petitioner's juniors got promoted as Commercial Tax Officer on 04.03.2015. Only in the year 2015, the criminal case registered against the petitioner culminated into a charge sheet and the case was taken cognizance in the year 2016 in Spl.C.C.No.1 of 2016 on the file of the Special Court for Prevention of Corruption Act Cases, Virudhunagar.

3.Since the petitioner was wrongfully denied promotion, He filed W.P.(MD)No.7658 of 2020 before this Court. Vide order dated 17.08.2020, the writ petition was disposed of with the following direction:-

> *"12.In that view of the matter, this Court is inclined to dispose of this writ petition with the following direction:*
>
> > *"The respondents are hereby directed to consider the representation of the petitioner dated 16.09.2019 and pass orders thereon on merits by taking into account the aforesaid discussion made in this order and accordingly, pass necessary orders with regard to the claim of the petitioner for getting promotion to the post of Commercial Tax Officer from the year 2014/2015 and such endeavour shall be made and final order shall be passed within a period of 8 weeks from the date of receipt of a copy of this order."*

4.The respondents filed Rev.Apl.W(MD)No.19 of 2021 but the same was dismissed on 07.09.2021. The learned counsel for the petitioner while reiterating all the contentions set out in the affidavit filed in support of the writ petition contended that the respondents are wrongfully invoking the provisions of Tamil Nadu Act No.14 of 2016. According to the petitioner, the petitioner's case must be considered with reference to legal position that obtained prior to the proclamation of Tamil Nadu Government Servants (Conditions of Service) Act, 2016. He called upon this Court to set aside the order impugned in this writ petition and allow the writ petition as prayed for.

5.The respondents have filed a detailed counter affidavit and the learned Additional Advocate General took me through its contents. He contended that in view of G.O.(Ms) No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, the petitioner does not have a case.

6.I carefully considered the rival contentions and went through the materials on record. It is no doubt true that on the crucial date ie., 01.03.2014, the petitioner was entitled to be considered for promotion to the post of Commercial Tax Officer and he was rightly included in the panel. Unfortunately, he was implicated in a trap case on 05.12.2014. The learned counsel for the petitioner relied on the order dated 27.06.2022 in W.P.(MD)No.13906 of 2021 (M.Baskaran Vs. Agricultural Production Commissioner and Principal Secretary to Government and Another). The said writ petitioner was involved in a vigilance case and a learned Judge had held that the position that obtained on the crucial date alone is material and that the subsequent developments ought to be ignored.

7.The petitioner's turn for actual promotion came on 04.03.2015. It is true that on the said date ie., 04.03.2015, no final report had been filed in the criminal case nor charges had been framed. If there was no other adverse development, the petitioner's entitlement for promotion to the post of Commercial Tax Officer is beyond doubt. But unfortunately again for the petitioner, he continued to be under suspension. It is well settled that a suspended employee is not entitled to be promoted. The suspension lasted for almost three years. It was revoked only on 10.08.2017. Therefore, the position that obtained immediately after revocation will have to be taken note of. In other words, the petitioner could have been actually promoted only on 11.08.2017. Clause 5 of G.O.(Ms) No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 reads as follows:-

> *"(5) If specific charges are framed or charge sheet is filed in the criminal case before actual promotion the person concerned shall not be promoted notwithstanding the fact that his name has been included in the panel. The instructions in para (3) above will apply in his case thereafter."*

8.The said clause states that if before actual promotion, specific charges have been framed or final report had been filed against the employee, then he cannot be promoted. By 07.10.2017, charges had been framed against the writ petitioner. Therefore, in the light of the aforesaid clause set out in G.O.(Ms) No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, it is not possible for this Court to grant relief as sought for by the writ petitioner. The expression "actual promotion" owing in the above clause makes all the difference.

9.The learned Additional Advocate General would state that the writ petitioner had been once again levied with punishment in the year 2019 and that as per the provisions of the new Act, his turn for promotion will only come in the year 2024. The learned counsel for the writ petitioner of course would state that against the subsequent penalty imposed in the year 2019, he has filed a writ petition and that the same is pending. I however refrain from going into the said aspect. I am not in a position to grant relief for the following reasons:-

"(1) On 04.03.2015, the petitioner was under suspension and therefore, he could not be promoted.

(2) On 10.08.2017 suspension was revoked and charges have been framed in the vigilance case. Hence, G.O.(Ms) No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 came in the way."

10.Looked at from any angle, I cannot grant relief to the writ petitioner and the writ petition stands dismissed. No costs.

27.09.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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