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W.P.(MD)NO.16265 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16265 of 2022

A.Baskaran

... Petitioner

Vs.

1. The Additional Chief Secretary,
Home (Transport II) Department Secretariat,
Chennai – 9.

2. The Commissioner Transport Department,
Chennai – 5.

... 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 relating to Letter No. 17900 / Tr.II / 2019-5 dated 22.04.2020, quash the same and direct the respondents to include the petitioner in the Panel for promotion as Deputy Transport Commissioner.

For Petitioner : Mr.T.N.Rajagopalan

For Respondents: Mr.A.K.Manikkam,
Special Government Pleader.

* * *

**ORDER**

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Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the respondents.

2. The petitioner joined the Transport Department as Motor Vehicle Inspector Grade II in the year 1993. He was promoted as Motor Vehicle Inspector Grade I in the year 1999. He became Regional Transport Officer in the year 2009. The next promotional post is that of Deputy Transport Commissioner. The petitioner could not secure promotion to the said post on account of his implication in a vigilance case. Though the petitioner was included in the panel for the year 2018-19, the department citing the pendency of the criminal case, has declined to grant promotion. The petitioner filed W.P.No.30872 of 2019. This Court vide Order dated 01.11.2019 directed the first respondent herein to consider the petitioner's representation dated 27.03.2019. Pursuant to the said direction, the impugned rejection order came to be passed. Challenging the same, the present writ petition came to be filed.



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3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He pointed out that the petitioner has not been booked in a trap case. On the other hand, he is being prosecuted only for possessing assets disproportionate to his known sources of income. The First Information Report was registered in the year 2008. However, sanction was accorded only in the year 2014. Final report came to be filed in the year 2016. The petitioner filed discharge petition in the year 2016 itself. It was taken up for enquiry few months back. The petitioner was always ready to get along with the discharge application. He did not contribute to the delay. The order has been reserved some 1 ½ months back. Order has not been passed in the discharge application. The petitioner's counsel submitted that in such cases, this Court has been consistently directing the competent authority to confer temporary promotion after taking undertaking from the delinquent official. The delinquent official is called upon to execute an undertaking that in the event of the criminal case ending against him, he



can be reverted back. The petitioner is ready to give such an undertaking.

4. The learned counsel appearing for the writ petitioner relied on the order dated **19.08.2016** made in ***W.P.No.28925 of 2016 (P.Periyasamy V. The Commissioner of Transport, Chennai)*** and the order dated **11.11.2019** made in ***W.P.(MD)No.21879 of 2019 (Jaber Sadiq V. The District Collector, Dindigul District)*** in support of his contention. He called upon this Court to quash the impugned order and grant relief as prayed for.

5. The respondents have filed a detailed counter affidavit. The learned Special Government Pleader took me through its contents. He strongly submitted that the impugned order does not call for any interference.

6. I carefully considered the rival contentions and went through the materials on record.

7. It is true that a criminal case was registered



against the petitioner way back in the year 2008 and final report was filed only in the year 2016. This delay cannot be taken advantage by the writ petitioner because even according to him, his right to be promoted accrued only in the year 2018-19. Therefore, the position that obtained on the crucial date alone will be taken into account. On the crucial date, admittedly, the charge sheet had been filed against the writ petitioner. The case against the writ petitioner is that possession of assets disproportionate to his known sources of income. The learned Special Government Pleader draws my attention to Schedule XI of Tamil Nadu Government Servants (Conditions of Service) Act 2016. Schedule XI Part-A-II Clause (5) of the Act reads as follows:-

“ Mere filing of cases in Courts by the appropriate Investigating Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list.”



8. In the case on hand, the charge sheet had been filed in the criminal case on the crucial date. That is why, the petitioner could not be granted promotion. The impugned order passed by the first respondent is based on the aforesaid statutory provision. The impugned order reads that since C.C.No.5 of 2016 is pending against the writ petitioner on the file of the Special Judge, Trichy, the petitioner's request for inclusion of his name in the panel for the year 2018-19 for promotion as Deputy Transport Commissioner is not feasible for compliance. The reason assigned by the authority is well founded.

9. At the same time, I cannot lose sight of the fact that the writ petitioner cannot be made to suffer unduly and indefinitely. The petitioner's counsel states that he filed a discharge petition in Cr.M.P.No.417 of 2018 long back. He would further state that he was always ready to get along and only the State is dragging on the matter. Final arguments have been advanced and order has been reserved. If the petitioner is discharged from the said criminal case, he shall be included in the promotion panel for the year 2018-19



forthwith and he shall be granted all the consequential benefits.

10. With this direction to the first respondent, the impugned order is sustained. This writ petition stands disposed of. No costs.

15.11.2022

Index : Yes / No
Internet : Yes/ No

PMU

To:

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G.R.SWAMINATHAN,J.

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