



W.P(MD)No.11130 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

W.P(MD).No.11130 of 2016

S.Selvanayagam,

: Petitioner

Vs

1. The Principal Chief Conservator of Forest,
Panagal Building,
Saidapet,
Chennai - 600 015.

2. The Conservator of Forest,
Dindigul Circle,
Dindigul District.

3. The District Forest Officer,
Velu Natchiyar Valagam,
Dindigul Division,
Dindigul.

: Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to consider the Petitioner's representation, dated 24.03.2016 and promote the



W.P(MD)No.11130 of 2016

petitioner to the post of Forester from the date on which the Petitioner immediate junior is given promotion.

For Petitioner : M/s.V.R.Venkatesan,

For Respondents : Mr.R.Suresh Kumar,

Additional Government Pleader (Crl.Side)

ORDER

This writ petition has been filed in the nature of Mandamus, seeking a direction to the respondents to consider the petitioner's representation, dated 24.03.2016 and promote the petitioner to the post of Forester from the date on which the petitioner immediate junior is given promotion.

2.The learned Counsel appearing for the petitioner submitted that the petitioner had joined as Forest Guard at Mudhumalai Wild Life Sanctuary and National Park, Udagamandalam, Masinagudi Range, Moyar Beat, Coimbatore Circle, Coimbatore District, on 18.11.2000. Thereafter, he was transferred to Kodaikanal Division, Periyakulam Range, Devathanampatti



W.P(MD)No.11130 of 2016

Beat, on 09.07.2003. While he was working at Devathanampatti Beat, a charge memo was issued under Rule 17(A) of Tamil Nadu Government Servant (Discipline and Appeal Rule), on 11.08.2004, on the allegation of illegal cutting of teak wood. He was placed under suspension on 20.08.2004, on the above said charge. Again, a charge-memo, dated 23.09.2005, was issued on the same set of allegations for different trees. He gave his explanation, domestic enquiry was conducted and the enquiry officer found in his report, dated 29.11.2016, that the charges against the petitioner are true. Punishment of stoppage of increment with cumulative effect for a period of two years from 13.11.2007 to 13.11.2009 was ordered by the Principal Chief Conservator of Forest. The check period came to end on 13.11.2012. The crucial date for preparing panel for the promotion to the post of Forester, falls in the month of April, 2013. The petitioner's punishment period and the check period got over on 13.11.2012. Hence, the petitioner is entitled to be considered for the promotion to the post of Forester. However, the petitioner's name was not included in the panel. Therefore, he submitted a representation to the first respondent, on 24.03.2016, seeking to promote him to the post of Forester. But till now, the said representation is not considered. Therefore, this writ petition had been filed.



W.P(MD)No.11130 of 2016

3.Per contra, the learned Additional Government Pleader (Crl.Side) appearing for the respondents submitted that there was a criminal case registered against the petitioner in S.T.O.R.No.1 of 2014, for the offences under Sections 21(B) and 21(D) of Tamil Nadu Forest Act, 1V of 1882 and Rule 45 of the Scheduled Timber Rules. The petitioner is the first accused in this case and the same is pending in Spl.C.C.No.25 of 2014, on the file of the learned Chief Judicial Magistrate, Dindigul District. Therefore, the petitioner's case has got to be rejected.

4.Considered the rival submissions and perused the records.

5.On a perusal of records, it shows that the charge, dated 22.10.2004, was issued against the petitioner for certain misconduct and he was suspended on 06.07.2005. Later, his suspension was revoked on 26.07.2005. Then, he was imposed with a punishment of stoppage of increment for a period of one year on 30.11.2005 and another punishment of stoppage of increment for two years with cumulative effect was ordered against the petitioner on 30.11.2005. His suspension for the second punishment was revoked on 21.01.2010. Then, he was posted at Virupatchi Beat, Dindigul District. Admittedly, the currency



W.P(MD)No.11130 of 2016

of punishment and the check period got over on 12.11.2012.

WEB COPY

6.It is the submission of the learned Counsel appearing for the petitioner that for the same charges, the criminal case in Spl.C.C.No.25 of 2014, is still pending. The petitioner has already suffered punishment in the departmental proceedings. Citing the pendency of the criminal case, the avenue for promotion cannot be shut down. In support of his submission, he relied on the unreported judgment of this Court, ***dated 10.07.2020, made in W.P(MD)No.7506 of 2020***, in the matter of ***M.Kaliamoorthy vs The Registrar of Co-operative Societies and two others***, wherein, this Court has held that the promotion can be considered subject to the outcome of the criminal proceedings. It is useful to refer to paragraph Nos.5 and 6 of the order wherein, this Court observed as follows:

So far as the pendency of the criminal case is concerned, the learned counsel for the petitioner has relied upon two decisions. One is W.P(MD)No.17697 of 2018 (AG.Chandrasekar vs. The Principal Secretary to Government and another), where the learned Judge of this Court considering a similar plea has given a direction to the following effect:-

“13. For all the foregoing reasons, the first respondent is directed to include the name of the petitioner in the panel for promotion to the post of Additional Registrar of Co-operative Societies and consequently, promote him, subject to any other



WEB COPY

disqualification apart from the pendency of the criminal proceedings. The respondents are at liberty to grant such a promotion on condition that the promotion would be subject to the decision of the proceedings in C.C.No.1 of 2020 pending on the file of Special Court under Prevention of Corruption Act, Chennai. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs."

6. Another one is W.P(MD)No.6677 of 2020 (**M.P.Karthikeyan vs. The Registrar of Co-operative Societies, Chennai and two others**), where also a direction was given to the effect that when the representation of the petitioner was considered by the second respondent, opportunity has to be given to the petitioner to explain his circumstances and thereafter, necessary orders be passed therein.

7. Further the learned Counsel appearing for the petitioner also relied on the decision of this Court, ***dated 14.07.2017***, made in ***W.P.No.8771 of 2013***, in the matter of ***R.Manohar Vs. The Principal Secretary to Government*** wherein, paragraph No.5 this Court held as follows:

5. Upon consideration of the rival submissions made by the learned counsels for the parties and after perusing the relevant materials, this Court is of the view that this case, cannot be treated differently in the matter of promotion, since similarly placed Engineers who had the benefit of directions obtained from this Court in writ proceedings had been granted promotion to the next higher cadre, pending finalisation of the criminal case. It is needless to point out that the criminal case, which was initiated in 2001-2002, unduly prolonged for nearly 14 years and the same is yet to attain finality. That being the case, the petitioner cannot be denied promotion for indefinite period waiting for



WEB COPY

finalisation of the criminal case. In fact, there are catena of decisions which held that undue delay in finalisation of disciplinary action/criminal case cannot be a bar for consideration of promotion of the employees concerned, in case they are otherwise qualified, as mere pendency of the disciplinary action/criminal case cannot be held against them, prejudicing their rights for earning the promotion.

8.In the judgment referred above, there is an observation that the pendency of criminal case shall not stand in the way of promotion and any such promotion is given, shall be subject to the out-come of the final order passed in the criminal case.

9.Mr.R.Suresh Kumar, the learned Additional Government Pleader (Crl.Side) drew the attention of this Court to the Paragraph II Part A Schedule XI of Section 7(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follows:

II.Consideration of members for inclusion in the approved lists:-

(5)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.



W.P(MD)No.11130 of 2016

and further submitted that if specific charges are framed and a charge sheet has been filed, the criminal case on the crucial date, the petitioner's name shall not be considered for inclusion in the approved list.

10. There are no materials produced before this Court with regard to the criminal case in Spl.C.C.No.25 of 2014, pending against the petitioner. It is not known as to whether, the criminal case was registered for the same set of charges, for which, the petitioner has faced domestic enquiry and imposed with punishment.

11. Considering the legal position highlighted in W.P(MD)No.7506 of 2020 and the fact that the period of currency of punishment and the check period was got over before the date, on which the panel for promotion to the post of Forester, was prepared, this Court directs the first respondent to consider the petitioner's representation, dated 24.03.2016 and pass appropriate orders in the manner known to law, within a period of eight weeks from the date of receipt of a copy of this order.



W.P(MD)No.11130 of 2016

12. With the above direction, this writ petition stands disposed of. No costs.

WEB COPY

21.07.2022
(1/2)

Index : Yes / No
Internet : Yes/ No
lr

To

1. The Principal Chief Conservator of Forest,
Panagal Building,
Saidapet,
Chennai - 600 015.

2. The Conservator of Forest,
Dindigul Circle,
Dindigul District.

3. The District Forest Officer,
Velu Natchiyar Valagam,
Dindigul Division,
Dindigul.



WEB COPY



W.P(MD)No.11130 of 2016

G. CHANDRASEKHARAN, J.

lr

W.P(MD).No.11130 of 2016

21.07.2022
(1/2)