



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.22577 of 2021

and W.M.P. (MD)No.19096 of 2021

WEB COPY

S.Rathika

... Petitioner

versus

1. The Transport Commissioner,
Chepauk,
Chennai - 600 005.

2. The Regional Transport Officer,
O/o. The Regional Transport Officer,
Thanjavur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in Pro.R.No.36178/RA2/2021 (E.O.No.663/2021) dated 08.12.2021 and quash the same as illegal and consequently, direct the respondents to promote the petitioner to the post of Superintendent from the date on which her immediate junior was promoted in conformity with the order dated 15.09.2021 made in W.P. (MD)No.22867 of 2017.

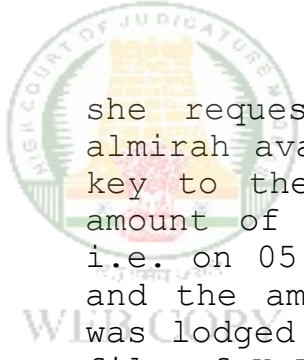
For Petitioner : Mr.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.J.Ashok,
Additional Government Pleader

ORDER

This writ petition is filed as against the order, dated 08.12.2021, rejecting the petitioner's promotion on the ground that an enquiry under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules has been contemplated against the petitioner.

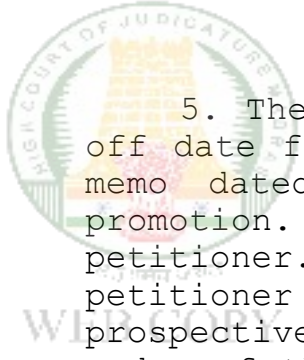
2. The petitioner was appointed as a Typists on 09.04.2001 at Regional Transport Office, Ramanathapuram and she was promoted as Assistant on 03.02.2006 at Regional Transport Office, Madurai North. While she was working as Assistant at Regional Transport Office, Madurai (North), she was deputed for a duty of consolidation of cash, which has to be handed over to the Accountant. On a fateful day, i.e. on 04.07.2008, the Accountant informed the petitioner that she had to leave the office to take care of her child and therefore,



she requested the petitioner to keep the amount in the wooden almirah available in her cabin and she also handed over the almirah key to the petitioner. The petitioner also placed the collected amount of Rs.7,69,413/- in the wooden almirah. On the next day, i.e. on 05.07.2008, it was found that the wooden almirah was broken and the amount collected was also stolen. Therefore, a complaint was lodged and a case in Crime No.663 of 2008 was registered on the file of K.Pudur Police Station, Madurai.

3. While so, a charge memo dated 23.10.2008 was issued to the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, alleging that she did not hand over the money to the Accountant and committed negligence of duty resulting in loss of Government money to the tune of Rs.7,69,413/-. In response to the charge memo, she submitted her detailed explanation dated 23.12.2008 refuting the allegation. Not satisfied with the said explanation, an Enquiry Officer was appointed and after the enquiry, the Enquiry Officer submitted his report holding that the charges were proved. Thereafter, there was no progress in the disciplinary proceedings and the entire proceedings was kept pending for a quite long time. Due to the pendency of the disciplinary proceedings, her name was deferred for promotion to the post of Superintendent. Thereafter, vide G.O.(2D) No.313, Home (Transport-II) Department, dated 25.10.2017, the petitioner was imposed with the punishment of stoppage of increment for the period of three years with cumulative effect. The petitioner filed a writ petition in W.P.(MD)No.22867 of 2017 challenging the order of punishment and also for a consequential direction to the respondents to promote her to the post of Superintendent from the date on which her immediate junior was promoted. This Court, vide order dated 15.09.2021, allowed the writ petition with a direction to the respondents to promote the petitioner to the post of Superintendent from the date on which her immediate junior was promoted. When the petitioner due to be promoted as per the order of this Court, a fresh charge memo dated 12.11.2021 has been issued to the petitioner. By referring the same, the petitioner has been denied promotion, by the order impunged in this writ petition.

4. On earlier occasion, when the writ petition was taken up for hearing, the learned Additional Government Pleader takes notice for the respondents and sought short accommodation to get written instructions in this case. At the request of the learned Additional Government Pleader, the case stood posted on 07.01.2022. Today, when the matter is taken up for hearing, the learned Additional Government Pleader, by referring Schedule 11 part A(2) of the Tamil Nadu Service Condition of Servants Act 2006, opposed this writ petition that pending the charges, the petitioner is not entitled for promotion. Therefore, he seeks time to file a counter in this case.



5. The learned counsel for the petitioner submits that the cut off date for promotion is on 31.05.2013 and 20.03.2018. The charge memo dated 12.11.2021 is subsequent to the cut off date for promotion. As on that date, there was no charge pending against the petitioner. Therefore, there is no impediment to consider the petitioner for promotion. Further, the charge memo will have only prospective effect not retrospective effect. He has relied upon the order of this Court passed in W.P.No.7986 of 2017 dated 15.03.2019 and also the order passed by this Court in Rev. Aplc.(MD)No.23 of 2020 in W.A.(MD)No.122 of 2016.

6. The issue involved in the writ petition is as to whether the petitioner can be denied promotion, based on the charge memo issued subsequent to the cut off date.

7. The learned Additional Government Pleader by referring Schedule XI, Part A, Clause II of the Tamil Nadu Service Condition of Servants Act 2006, opposed this writ petition that pending the charges, the petitioner is not entitled for promotion. The Schedule XI, Part-A, Clause II(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is extracted as under:

"II. 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 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."

9. The similar issue was dealt with by this Court in W.P.(MD)No.7986 of 2017 and the same was allowed by this Court vide order dated 15.03.2019. The relevant portions are extracted hereunder:

"5.The learned Senior counsel would also rely on a decision of the learned Single Judge of this Court, rendered in W.P.No.3405 of 2014, dated 07.02.2014. The learned Judge, in identical circumstances, allowed the writ petition. He would draw the attention of this Court to Paragraph Nos.4 to 7, which are extracted hereunder.



"4. I have heard the submissions made on either side and perused the materials available on record.

5. Now, the question that falls for consideration is, whether the subsequent charge memo dated 17.12.2013 issued by the Deputy Inspector General of Police, after the pronouncement of the judgment in the criminal case acquitting the petitioner, will be a bar to include the name of the petitioner in the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the panel year 2011-2012.

6. In this regard, the order of this Court made in W.P.No.1277 of 2009 dated 15.9.2009 in the case of P.Chinnadurai vs. 1.The Secretary to Government, Commercial Taxes & registration Department, Fort St. George, Chennai-9 and another, which was relied on by the learned Senior Counsel appearing for the petitioner, gives a fitting answer to the said question. In the said writ petition, this Court has held as follows:-

" 19. ... the mere pendency of second charge memo dated 17.11.2008 cannot be a bar for inclusion of the petitioner in the panel for District Registrar for the year 1999-2000 considering the fact that in respect of the panel for District Registrar for the year 1999-2000, either on the crucial date viz., 1.4.1999 or on the date of consideration viz., 3.4.2003 or on the date of actual promotion viz., 30.4.2003 in which his junior was promoted as District Registrar, there was no formulated charge memo pending against the petitioner except the criminal case which ultimately ended in acquittal, and the petitioner was not kept under suspension. In such circumstances, the reliance placed by the respondents on the instructions of the Government letter dated 7.10.2005, to deny the promotion on the basis of pendency of criminal case which later ended in acquittal is not sustainable and therefore, the writ petitioner is entitled to the reliefs claimed in this writ petition."

A reading of the said order would show that when there is no currency of punishment on the crucial date or on the date of consideration, the subsequent charge memo cannot be a bar for inclusion of the petitioner's name in the panel for promotion. In the instant case, the only hurdle for including the name of the petitioner on the crucial date viz., 1.6.2011 and the date of consideration viz., 4.8.2012, is the pendency of the criminal

https://hcservices.ecourts.gov.in/case_details pending against the petitioner. In the said



criminal case, judgment was delivered on 23.1.2013 acquitting the petitioner. When once the petitioner gets acquittal in the criminal case, absolutely there is no legal impediment in including the petitioner's name in the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the panel year 2011-2012, since there is no currency of punishment on the date of preparation of the panel and on the date of consideration. The second charge memo issued subsequent to the acquittal, will not be a bar for including the name of the petitioner in the panel. Therefore, I am of the opinion that the petitioner is entitled for the relief that has been sought for by him.

7. In the result, the impugned order of the first respondent dated 22.1.2014 is set aside and the writ petition is allowed. The respondents are directed to promote the petitioner as Inspector of Police, category-I by including his name in the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the year 2011-2012 without reference to the charge memo issued to the petitioner on 18.12.2013 in P.R.No.94 of 2013 and grant him all consequential service and monetary benefits on par with his juniors. The said exercise has to be carried out within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

The learned Senior counsel would submit that therefore, in all force, the petitioner is entitled to succeed and the impugned order passed by the first respondent is liable to be interfered with. 6. Per contra, the learned Additional Government Pleader would submit that the charge Memo issued on 18.10.2016 is not on the basis of fresh set of allegations, but it was in continuation of the same allegations, which were the basis of the criminal proceedings. Therefore, it must be construed that the Departmental proceedings is only in continuance of the earlier charges framed against the petitioner, in which event, the petitioner cannot be considered for promotion and rightly the first respondent passed the order rejecting the claim of the petitioner. According to the learned Additional Government Pleader, once on the date when the promotion is to be effected the petitioner is facing departmental action, he cannot be considered for promotion.

7. Heard the learned Senior counsel for the petitioner and the learned Additional Government Pleader for the respondents.

8. The above facts have been admitted. As rightly contended by the learned Senior counsel for the petitioner,



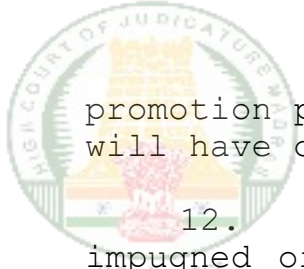
when the Criminal Court has acquitted the petitioner and once the petitioner was denied his due promotion only on the basis of pendency of criminal case, the petitioner, on being acquitted, is entitled to be considered for promotion on par with his immediate Junior. The Rule position as extracted above is very clear on that aspect. Although it may be a fact that the Departmental charge memo dated 18.10.2016 is on the basis of same set of allegations, nevertheless, the said subsequent charge memo issued in 2016 cannot be a bar for considering the promotion of the petitioner as Assistant Director for the panel year 2012-13. The reliance placed by the learned Senior counsel on the decision of the learned Single Judge in W.P.No.3405 of 2014, dated 7.2.2013, is squarely on that point. The learned single Judge, in identical circumstances allowed the claim of the petitioner therein. Even otherwise, the legal principle, which has been laid down by the Courts are very clear that when an employee is either acquitted or exonerated from the criminal or departmental charges, he is entitled to be considered for promotion on par with his immediate Junior from the date on which his immediate Junior was promoted. Any subsequent action either on the same set of allegations or otherwise, cannot be an embargo to consider the employee for promotion to the next higher grade. The State Government Rule on this aspect, as extracted above, is supportive to the stand taken by the learned Senior counsel for the petitioner. Even otherwise, the law on this aspect is very clear that once the employee is acquitted of the criminal charges and the promotion was withheld only on the basis of such pendency of criminal action, on being acquitted, the employee statutorily is entitled to all benefits which would have been otherwise derived, but for the pendency of the criminal action."

10. A Division Bench of this Court in Rev.Aplc.(MD)No.23 of 2020, vide order dated 03.02.2021, passed the following order:

"We do not find any reason to interfere with the order passed. The charge memo has come into being subsequently and the panel has been drawn in the year 2007-08.

2. In view of the above said admitted factual position, there is no bar at the relevant point of time for considering promotion. Accordingly, the Review Application stands dismissed. No costs."

11. The petitioner's promotion was denied by referring the charge memo dated 12.11.2021. It is true that the pendency of the charge is a bar for subsequent promotion. But, in this case, according to the learned counsel for the petitioner, the petitioner due to get promotion in the year 2013 and 2018 and as on the year 2013 and 2018, the petitioner was not facing any charge. Therefore, there is no impediment for the petitioner to be considered for the



promotion panel of the year 2013 and 2018. Further, the charge memo will have only prospective effect not retrospective effect.

12. In the light of above decisions (cited supra), the impugned order passed by the second respondent dated 08.12.2021 is hereby quashed and the writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Transport Commissioner,
Chepauk,
Chennai - 600 005.

2. The Regional Transport Officer,
O/o. The Regional Transport Officer,
Thanjavur.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-1053[F] dated 10/01/2022)

+1 CC to M/s.SPL GP (SR-1295[F] dated 11/01/2022)

W.P(MD)No.22577 of 2021
07.01.2022

MGJ(23.03.2022) 7P 5C