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W.P.No.10956 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.10956 of 2016

and

W.M.P.No.9547 of 2016

P.Suresh Babu

.. Petitioner

/versus/

1.The Principal Secretary to Government of TamilNadu (FAC)
Commercial Taxes and Registration Department,
Fort St. George, Chennai-9.

2.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai.

.. Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent passed in his proceedings G.O.Ms.No.49, CT and R(H) Department, dated 26.02.2016 and quash the same in so far as it excludes the petitioner and consequently direct the respondents to include the petitioner for promotion to the post of District Registrar for the panel year 2014-2015 without reference to the charge memo dated 29.05.2015 in the light of orders passed by this Hon'ble Court in



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W.A.No.2520/2013 dated 06.03.2014 and W.P.No.28351/2012 dated 23.08.2013.

For Petitioner :Mr.V.Vijay Shankar

For Respondents : Mr.K.H.Ravikumar,
Government Advocate for R1 and R2

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ORDER

The petitioner seeks for promotion to the post of District Registrar by quashing of the impugned promotion panel in G.O.Ms.No.49, CT and R(H) Department, dated 26.02.2016, wherein his name was excluded.

2. According to the learned counsel appearing for the petitioner, there were no disciplinary proceedings pending on the crucial date (i.e.) 01.04.2014, when the promotional panel for the year 2014-2015 was drawn. Therefore, non-inclusion of the petitioner's name in the promotional panel is illegal.

3. The learned Government Advocate appearing for the respondents, on written instructions, submitted that, the petitioner was levelled with certain charges through a charge memo dated 29.05.2015.



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Since the department were contemplating disciplinary action against the petitioner, his name was not included in the promotional panel for the year 2014-2015. Further, he submitted that, the petitioner's name was subsequently included in the promotional panel for the year 2019-2020 for the post of District Registrar and he was also promoted.

4. The only issue arises for consideration in the present writ petition is as to whether the department was justified in not including the petitioner's name in the promotional panel for the year 2014-2015, when there was no disciplinary proceedings pending as on the crucial date (i.e.) 01.04.2014, when the promotional panel was drawn. In various orders passed by this Court, it has been clarified that the pendency of the criminal proceedings would commence from the date on which the charges were levelled against the delinquent officer.

5. Admittedly, in the present case, the crucial date for the promotion panel for the post of District Registrar for the year 2014-2015, was on 01.04.2014. The charges against the petitioner were levelled through a charge memo dated 29.05.2015. These two dates are not in dispute. When



the charges itself came to be framed, after the crucial date of the promotional panel, there was no justification on the part of the department for excluding the petitioner's name in the panel, when no disciplinary proceedings were even initiated against him. The Hon'ble Division Bench of this Court in *V.Visweswaran v. The Director of Handloom and Textiles, Kuralagam, 2nd floor, Chennai-600 108 and another in W.A.(MD)No.846 of 2019, dated 22.06.2021*, had upheld the aforesaid proposition in the following manner:-

“3.The only issue which falls for consideration in this appeal is whether the appellant's name can be passed over and not included in the panel for promotion to the post of Handloom officer on the ground that a charge memo was issued much after the crucial date. In this regard, it is relevant to note Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service Act), 2016 which reads as follows:-

“Mere filing of cases in Courts by the appropriate investigation 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.”

4. In terms of the above provisions, what would be relevant is whether charge proceedings is pending as on the crucial date. According to the appellant, on the crucial date i.e., 01.03.2014, there was no charge proceedings pending and charge memo was issued



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only on 12.01.2015. In the light of Section 7 of the Conditions of Service Act, the competent authority who draws the panel for promotion has to consider the case of the candidate based on the said provisions namely, Section 7(1). Therefore, we are not agreeable with the findings rendered by the learned Single Bench in paragraph No.5, by laying down the broad proposition that pendency of charge even after the crucial date would be a bar. In fact, we find that there are no adequate reasons to support such a conclusion apart from the statutory provisions having not been taken note of. Therefore, we are of the view that the decision rendered in the writ petition cannot be taken to be laying down a general legal principal.”

6. Thus, the proceedings of the respondents in omitting the name of the petitioner for the year 2014-2015 in the promotional panel for the post of District Registrar cannot be sustained and consequently, the petitioner would be entitled for notional promotion to the post of District Registrar in the promotional panel year 2014-2015, on par with his immediate junior.

7. Accordingly, this Writ Petition stands disposed of. There will be a direction to the respondents to pass appropriate orders, granting notional promotion to the petitioner, for the post of District Registrar in the promotional panel for the year 2014-2015, on par with his immediate junior in the said panel, together with all service and monetary benefits.



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Such order shall be passed, at least, within a period of four weeks, from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

27.02.2023

Index:yes/no
Speaking order/non speaking
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To:

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2.The Inspector General of Registration,
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M.S.RAMESH,J.

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