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W.P.Nos.5036 of 2023 and 27417 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.5036 of 2023 and 27417 of 2022
and WMP Nos.5062, 5063, 5064 and 5066 of 2023

V.Ramakrishnan

.. Petitioner in both the writ petitions

Vs

1. The State of Tamil Nadu Rep by its
Additional Chief Secretary to Government,
Energy Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Chief Electrical Inspector to Government,
Thiru.Vi.Ka.Industrial Estate,
Guindy,
Chennai-600 032.

... Respondents in both the writ petitions

PRAYER in W.P.No.27417 of 2022:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to publish the panel for promotion to the post of Senior Electrical Inspector for the year 2018-2019 after including the name of the petitioner in the said panel and consequently to direct the respondents to promote the petitioner to the post of Senior Electrical Inspector without reference to the Charge Memo issued by the 2nd respondent in Proceedings Proc.No.Ku.A.No.13651/E3/2021 dated 13.06.2022.



W.P.Nos.5036 of 2023 and 27417 of 2022

PRAYER in W.P.No.5036 of 2023:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the 1st respondent in Letter No.2436/D2/2019, dated 30.01.2023 and to quash the same and consequently to direct the respondents to include the name of the petitioner in the panel for promotion to the post of Senior Electrical Inspector for the year 2018-2019 and to promote the petitioner to the post of Senior Electrical Inspector in accordance with his seniority and without reference to the Charge Memo issued by the 2nd respondent in Proceedings Proc.No.Ku,Aa.No.13651/E3/2021 dated 13.06.2022.

For Petitioner : Mr.Ravi Shanmugam
Senior Counsel for
Mr.R.Prem Narayanan
For Respondents : Mr.P.Gurunathan
AGP

COMMON ORDER

W.P.No.5036 of 2023:

Through an impugned order dated 30.01.2023, the petitioner's name is claimed to have been omitted in the promotional panel drawn up for the post of Senior Electrical Inspector for the year 2018-2019 on the ground that the charges under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 dated 13.06.2022 is pending against the petitioner.



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2. Admittedly, the crucial date for drawing the promotional panel for the post of Senior Electrical Inspector is the first day of November every year i.e., 01.11.2018 for the present promotional panel. The respondents have relied upon the Charge Memo dated 13.06.2022, which is apparently after the crucial date.

3. This Court, in various decisions have clarified that pendency of disciplinary proceedings will be a bar for inclusion of the name of a Government Servant in the promotional panel and in case, the charges have been framed after the crucial date, the same cannot be a bar for inclusion. In the case of ***V.Visweswaran vs The Director of Handloom and Textiles and another*** passed in ***W.A.(MD)No.846 of 2019*** dated ***22.06.2021***, such a preposition was upheld in the following manner:-

“ 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 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.”

4. Likewise, the learned Single Judge of this Court in the case of ***M.Chandran vs The Director of School Education and others*** passed in ***W.P.(MD)No.19525 of 2018 dated 15.02.2019*** had also taken a similar view as follows:-

*“ 8. On reading the said judgment as cited supra, this Court is of the view that as already decided, when there was no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. In view of the said legal proposition, as has been propounded by the Hon'ble Apex Court in **Bank of India***



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and A. Kalaiselvan, cases referred to supra, this Court is of the considered view that in the present case also, the subsequent charge has been framed during the month of May' 2018, whereas the crucial date for the panel for the year 2018 was 01.01.2018 and on that date, if the petitioner was otherwise eligible and qualified, there can be no impediment for considering his name for promotion."

5. The aforesaid position has been affirmed by the Hon'ble Division Bench in W.A.(MD)No.132 of 2021 dated 09.02.2021.

6. The aforesaid extracts are self explanatory. When admittedly, charge Memo was issued only on 13.06.2022 and the crucial date for promotional panel is 01.11.2018, citing the charge memo as pendency of disciplinary proceedings is not legally sustainable.

7. The learned Senior Counsel for the petitioner submits that the promotional panel for the year 2018-2019 has already been acted upon and the petitioner's junior has also been promoted to the post of Senior Electrical Inspector.



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8. Accordingly, there shall be a direction to the respondents to include the petitioner's name in the panel of promotion to the post of Senior Electrical Inspector for the year 2018-2019 and pass an order of promotion on par with his immediate juniors. Such an order of promotion would be passed atleast within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, WP No.5036 of 2023 is allowed.

W.P.No.27417 of 2022

The prayer for publishing the panel for promotion to the post of Senior Electrical Inspector for the year 2018-2019 has become infructuous since the panel has already been published. Accordingly, WP No.27417 of 2022 is dismissed as infructuous.

No costs. Consequently, all the connected miscellaneous petitions are closed.

14.06.2023

Index:Yes/No
Speaking order/Non-speaking order
sr



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- To
1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Energy Department,
Secretariat, Fort St.George,
Chennai-600 009.
 2. The Chief Electrical Inspector to Government,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-600 032.



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M.S.RAMESH,J.,

sr

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