



W.P.No.9740 of 2020

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 19.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD**

W.P.No.9740 of 2020

P. Manoharan

... Petitioner

**Vs.**

The Commissioner of Municipal Administration  
M.R.C.Nagar,  
Chennai.

... Respondent

**PRAYER :** Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus calling for the records pertaining to the impugned list of approved panel for the promotion to the post of Assistant Executive Engineer for the year 2019-20 vide R.O.C.No.28618/2019/F1 dated 17.02.2020 and the impugned proceedings in Na.Ka.No.28618/2019/F1 dated 09.03.2020 of the respondent and consequently direct the respondent to add the petitioner's name in the list of approved panel for the promotion to the post of Assistant Executive Engineer for the year 2019-20 afresh and consider his promotion in accordance with law.

For Petitioners : Ms.R.Rebecca Vasanthiripery  
for Mr.D.R.Arun Kumar

For Respondents : Mr.K.Tamilvendan  
Government Advocate



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## **ORDER**

This Writ Petition has been filed seeking to call for the records pertaining to the impugned list of approved panel for the promotion to the post of Assistant Executive Engineer for the year 2019-20 vide R.O.C.No.28618/2019/F1 dated 17.02.2020 and the impugned proceedings in Na.Ka.No.28618/2019/F1 dated 09.03.2020 of the respondent and consequently direct the respondent to add the petitioner's name in the list of approved panel for the promotion to the post of Assistant Executive Engineer for the year 2019-20 afresh and consider his promotion in accordance with law.

2. The learned counsel for the petitioner submitted that the petitioner was working as a Municipal Engineer in the Pernambut Municipality and had the unblemished records of 29 years of service except an order of “Censure” passed by the respondent on 14.09.2018 for no fault on his part while he was working as Assistant Engineer (Municipal), Aranthangi Municipality. He was also incharge of the Municipal Commissioner at the time of alleged commission of delinquency and one Tmt.Seema, Assistant Engineer was solely responsible for the charges framed. The respondent herein has published the list of panel for the promotion to the post of the Assistant Executive Engineer for the year



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2019-2020 on 17.02.2020. Even though the petitioner was fully eligible for the promotion, his name was not included in the said list on the ground that he was awardee with a punishment of censure on 12.09.2018 and the one year punishment was not completed as on the crucial date i.e., 15.03.2019. The learned senior counsel further submitted that the petitioner has deprived the chance of getting promoted in the two panels approved on 17.02.2020 i.e., for 2018-2019 & 2019-20 and he has sent his objection to the respondent on 24.02.2020 since the punishment of censure has no role to play in the promotion based on seniority for a non-selection post of the Assistant Executive Engineer. The respondent has overruled the petitioner's objection and passed the impugned order dated 09.03.2020. The learned counsel drew the attention of this Court to the charge memo issued to the petitioner and the details of the charges framed are as follows:-

### **Charge No.1**

“ that you had failed to commence to erect the 19 nos. of bore wells out of 27 nos. with mini power pumps on 30.04.2014, since the work orders were already issued on 08.04.2014 under State Disaster Relief Fund and Municipal General Fund after lapse of three weeks”.



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**Findings of the enquiry officer for Charge No.1**

The Work order was issued on 08.04.2014 to one Thiru.Sathyaseelan for drilling of 27 bore wells and erection of mini power pumps and a copy of the work order was served to Tmt.K.Seema, Assistant Engineer, so as to oversee and complete the execution of the works expeditiously. As a Municipal Engineer the petitioner's responsibility is inspecting and check-measuring all the works being carried out in the Municipality. He has given instructions to the Assistant Engineer to speed up the work and complete them in the scheduled time. As she has not heeded to the advices, several memos were issued to her and wrote letters to the District Collector, Pudukottai and Director of Municipal Administration to transfer the Assistant Engineer. The petitioner for the poor progress in execution of the work issued memo to Assistant Engineer Tmt.Seema, but she never cared to submit her explanation. The petitioner also stated that the cause of delay was not out of wanton act or negligence on his part but of the lethargic attitude of the Assistant Engineer Tmt.Seema which is out of his bounds. Even though, the Assistant Engineer is solely responsible for non execution of work, as a supervising officer, the Delinquent Officer might have taken necessary steps other than issuing memos to Assistant Engineer,



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notices to the contractor etc., since he is also responsible for the delay in execution of the work. Hence this charge is held as **proved**.

### **Charge No.2**

“that you failed to commence to replace the water supply distribution pipe line for 6.00 km on 30.04.2014 since the work orders were already issued on 08.04.2014 under State Disaster Relief fund and Municipal General Fund after lapse of three weeks”.

### **The findings of the enquiry officer for Charge No.2**

From the reports received from the Municipal Commissioner (incharge), it is ascertained that the works have been completed only after 4 months of the due date (23.04.2014) ie., on 12.08.2014. However, the delay is not only on the part of Municipal Engineer but the Assistant Engineer is also responsible. Hence, in my opinion disciplinary action might have taken against the Assistant Engineer also. Hence, the charge is held as **proved**.

### **Charge No.3**

“that you are not paying the personal attention to provide the water



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supply to the public during the summer season on war foot basis”.

### **Findings of the enquiry officer for Charge No.3:**

Pudukottai district also shows that during April 2014, the water supplied through different sources and the frequency of water supply is 100 LPCD once in daily. Hence the charge that the delinquent officer has not paid personal attention to provide water supply to the public during summer does not hold good. Hence, this charge is held as **not proved**.

### **Charge No.4**

“that as you are holding the higher responsible post for the public service, you are responsible for neglecting and ignoring the instructions of the higher officials”.

### **Findings of the Enquiry Officer for Charge No.4**

The records produced shows that the Delinquent Officer has taken action to comply with the instructions of higher officials. Hence, it is clear that he has not neglected or ignored the instructions of the higher officials. Hence, the charge is held as **not proved**.



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### **Charge No.5**

“that you are derelicted from the integrity and devotion to duty, as per Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973”.

### **Findings of the Enquiry officer for Charge No.5**

The delinquent officer has taken action to start the work by issuing memos to the Assistant Engineer and notices to the contractor. He informed the Commissioner of Municipal Administration and District Collector about the lethargic attitude of the Assistant Engineer towards her duties and requested to transfer her from Aranthangi Municipality on 30.04.2014 and 09.05.2014 respectively. From the defence statement and action taken by the Delinquent Officer, it is concluded that he has not derelicted from the integrity and devotion to duty. Hence, this charge is held as **not proved**.

3. The learned counsel appearing for the petitioner drew the attention of this Court to the impugned order dated 09.03.2020 vide Na.Ka.No.28618/2019/F1 and the relevant portion is extracted as below:-



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பார்வை-3ல் உள்ள திரு.பி.மணோகன் என்பவர் நகராட்சி பொறியாளராக அறந்தாங்கி நகராட்சியில் பணிபுரிந்த போது, கோவை காலத்தில் எற்படக்கூடிய குடிநீர் பற்றாக்குறையினை கவனிக்கின்றும் வகைமிக் பொதுநீதியிலிருந்து ரூ.20.00 இலட்சம் மதிப்பீட்டில் 8 எண்ணிக்கையில் ஆழ்க்குழாய் கிணறு ஆமைத்து மின்விசை மூல் அமைக்க 06.04.2014 அன்று பணி உத்தரவு வழங்கப்பட்டு, மாவட்ட ஆட்சியரால் 30.04.2014ல் நேரடி ஆய்வு மேற்கொள்ளப்பட்டதில் ஒப்பந்தப்புள்ளி நிபந்தனையின்படி மேற்படி பணி 07.05.2014-க்குள் முடிக்க நடவடிக்கை மேற்கொள்ளாததால் அண்ணா மீது 8(2)-ல் கீழ் நகராட்சி நிர்வாக ஆணையர் அலுவலரின் குறிப்பாணை ந.க.எண்.14625/2014/எ/1, நாள் 26.06.2014ல் குற்றஞ்சாட்டுகள் சமத்தப்பட்டது. மேற்படி குற்றஞ்சாட்டிற்கு தண்ணையாக நகராட்சி நிர்வாக ஆணையர் அலுவலரின் செயல்துறைகள் ந.க.எண்.14625/2014/எ/1 நாள் 12.09.2018ல் 'தண்டனை' வழங்கி ஆணையிடப்பட்டுள்ளது. மேற்படி நிகழ்வு நடந்த காலம் 07.05.2014ல் இருந்து 06.05.2019 வரை ஐந்தாண்டு காலத்திற்கு உட்பட்டு உள்ள தினவரில், தேர்தலோர் மீதியலின் Crucial date March 15 என உள்ள தினவரில் தனியருக்கு தண்டனை வழங்கப்பட்டது 12.09.2018 என்பதால் ஒரு வருடம் தண்டனை காலம் நிறைவு செய்யப்படவில்லை. எனவே 2019-2020 ஆண்டிற்கான உதவி செ.பு.பொறியாளர் பதவி உயர்விற்கான தேர்தலோர் பட்டியலில் தனியரின் பெயரை சேர்த்து உதவிசெயற்பொறியாளர் பதவி உயர்வு வழங்க இயலாதென்ற விவரம் தெரிவிக்கப்படுகிறது.

4. The learned counsel further submitted that a memorandum dated 28.05.2015 was issued to the petitioner to give reply towards the enquiry report dated 23.04.2015 and in which it is stated that if the petitioner fails to submit within 15 days on receipt of this memo it will be presumed that he has no representation to make and further action will be on merits of the case and the proceedings was passed by the respondent on 20.09.2018 after a lapse of three years.



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5. In this context, the learned counsel relied upon the judgment of this Court in W.P.No.9004 of 2016 dated 02.08.2018 and also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***M.Raghavelu Vs Governemnt of Andhara Pradesh and another*** reported in (1997) 10 SCC 779, wherein at para 2, 3 & 4 held thus:-

*“2. The enquiry officer has found that the charge has been proved and he has also specifically stated in para 42 of his report as follows:*

*“But taking into consideration the fact that he is not actually in charge of the building construction, but only overall in-charge being the Exectuvie Engineer of the Panchayat Raj, it is hereby recommended to the Government that two increments may be stopped with cumulative effect as far as this charged officer is concerned.”*

*3. Accepting the recommendation of the enquiry officer, the disciplinary authority imposed the penalty as recommended. Against that, the appellant preferred a representation petition before the Tribunal without success. Hence the present appeal by special leave.*

*4. Mr.A.V.Rangam, learned counsel for the appellant, submits that the appellant was not factually in charge of the building construction, as admitted by the enquiry officer and as a matter of fact the persons, namely the Deputy Executive Engineer and the Supervisor, who were directly in charge of the building construction, were similarly charged for identical misconduct and on the same set of evidence, though in different proceedings, they were exonerated of the charge. The Government who is the punishing authority, accepting the recommendation, exonerated them of the charge”.*



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6. Counter affidavit dated 04.11.2020 has been filed by the respondent. The learned Government Advocate appearing for the respondent submitted that while the petitioner was working as Municipal Engineer Grade-III & Commissioner Incharge in the Aranthangi Municipality, he had not shown any progress in the implementation of water supply distribution works in the Aranthangi Municipality. In the absence of the Municipal Commissioner post the Municipal Engineers were given Additional Charge to the post of the Municipal Commissioner and there is no work burden as stated by the petitioner. The petitioner has not shown any progress in the implementation of Water supply distribution works. Due to the lethargic attitude and the work was not completed within the estimated timeline and it causes great hardship to the general public.

7. The learned Government Advocate further submitted that moreover being the supervising authority of the said project the petitioner has not taken any steps to complete the same within the prescribed timeline. Further several complaints were received by the Collector, Pudukottai District against the Municipality for non completion of work and the District Collector by his letter in D.O.letter No.1224/A4/2014 dated 26.05.2014 has sent a report against



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the petitioner and requested to take severe action against the petitioner. Based on the report of the District Collector, Pudukottai District the petitioner was suspended from service by the proceedings of this respondent office in Proceedings No.14625/2014/F1 dated 15.05.2014 and thereafter the same was revoked. Further the departmental action was initiated against the petitioner and Charge memo was issued to the petitioner under Rule 8(2) of Tamil Nadu Municipal Service (Discipline & Appeal) Rules, 1970 and five charges were levelled against him vide proceedings of this office in ROC.No.14625/2014/F1, dated 26.06.2014. Further as per the proceedings of this respondent, the Joint Director (Corporations) was appointed as Enquiry officer to inquire into the charges and the enquiry officer submitted his report on 23.04.2015 and held that charges 1 & 2 were proved and the remaining charges 3, 4 & 5 were not proved. The enquiry officer report was communicated to the petitioner vide proceedings dated 28.05.2015 and he has been requested to submit his further defence in the above issue. But the petitioner has submitted his further representation only on 19.06.2018 after a lapse of 3 years and thereafter being the Disciplinary Authority this respondent has passed an order vide proceedings ROC.No.14625/2014/F1 dated 12.09.2018 awarded the punishment of Censure to the petitioner. It is submitted that subsequently this respondent as usual has



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published the panel to the post of Assistant Executive Engineer for the period of 2019-2020 by his proceedings in ROC.No.28618/2019/F1, dated 17.02.2020 and the petitioner's name was not included in the panel for the reason that he was imposed a punishment of Censure only on 12.09.2018 within one year before the crucial date i.e., 15.03.2019. As per clause II – (14) under Schedule XI of Tamil Nadu Government Servants (Conditions of Service) Act 2016, the punishment of 'Censure' imposed on a member of service within a period of one year proceeding the crucial date shall not be held against a member of service, if the delinquency in respect of which such punishment is imposed had occurred prior to five years proceedings the crucial date. In such cases the name of the member of service shall be considered for inclusion in the approved list. But in the case on hand the said five years period was also not completed as the year of occurrence also within the said five years.

8. Heard both side and perused the materials available on record.

9. In the case on hand, the petitioner was the Commissioner incharge of Aranthangi Municipality and the following charges were framed against him.

**Charge No.1**



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“ that you had failed to commence to erect the 19 nos. of bore wells out of 27 nos. with mini power pumps on 30.04.2014, since the work orders were already issued on 08.04.2014 under State Disaster Relief Fund and Municipal General Fund after lapse of three weeks”.

### **Findings of the enquiry officer for Charge No.1**

The Work order was issued on 08.04.2014 to one Thiru.Sathyaseelan for drilling of 27 bore wells and erection of mini power pumps and a copy of the work order was served to Tmt.K.Seema, Assistant Engineer, so as to oversee and complete the execution of the works expeditiously. As a Municipal Engineer the petitioner's responsibility is inspecting and check-measuring all the works being carried out in the Municipality. He has given instructions to the Assistant Engineer to speed up the work and complete them in the scheduled time. As she has not heeded to the advices, several memos were issued to her and wrote letters to the District Collector, Pudukottai and Director of Municipal Administration to transfer the Assistant Engineer. The petitioner for the poor progress in execution of the work issued memo to Assistant Engineer Tmt.Seema, but she never cared to submit her explanation. The petitioner also stated that the cause of delay was not out of wanton act or negligence on his



part but of the lethargic attitude of the Assistant Engineer Tmt.Seema which is out of his bounds. Even though, the Assistant Engineer is solely responsible for non execution of work, as a supervising officer, the Delinquent Officer might have taken necessary steps other than issuing memos to Assistant Engineer, notices to the contractor etc., since he is also responsible for the delay in execution of the work. Hence this charge is held as **proved**.

### **Charge No.2**

“that you failed to commence to replace the water supply distribution pipe line for 6.00 km on 30.04.2014 since the work orders were already issued on 08.04.2014 under State Disaster Relief fund and Municipal General Fund after laps of three weeks”.

### **Findings of the enquiry officer for Charge No.2**

From the reports received from the Municipal Commissioner (incharge), it is ascertained that the works have been completed only after 4 months of the due date (23.04.2014) ie., on 12.08.2014. However, the delay is not only on the part of Municipal Engineer but the Assistant Engineer is also responsible. Hence, in my opinion disciplinary action might have taken against the Assistant Engineer also. Hence, the charge is held as **proved**.



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### **Charge No.3**

“that you are not paying the personal attention to provide the water supply to the public during the summer season on war foot basis”.

### **Findings of the enquiry officer for Charge No.3:**

Pudukottai district also shows that during April 2014, the water supplied through different sources and the frequency of water supply is 100 LPCD once in daily. Hence the charge that the delinquent officer has not paid personal attention to provide water supply to the public during summer does not hold good. Hence, this charge is held as **not proved**.

### **Charge No.4**

“that as you are holding the higher responsible post for the public service, you are responsible for neglecting and ignoring the instructions of the higher officials”.

### **Findings of the Enquiry Officer for Charge No.4**

The records produced shows that the Delinquent Officer has taken action to comply with the instructions of higher officials. Hence, it is clear that he has not neglected or ignored the instructions of the higher officials. Hence,



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the charge is held as **not proved**.

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**Charge No.5**

“that you are derelicted from the integrity and devotion to duty, as per Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973”.

**Findings of the Enquiry officer for Charge No.5**

The delinquent officer has taken action to start the work by issuing memos to the Assistant Engineer and notices to the contractor. He informed the Commissioner of Municipal Administration and District Collector about the lethargic attitude of the Assistant Engineer towards her duties and requested to transfer her from Aranthangi Municipality on 30.04.2014 and 09.05.2014 respectively. From the defence statement and action taken by the Delinquent Officer, it is concluded that he has not derelicted from the integrity and devotion to duty. Hence, this charge is held as **not proved**.

10. It is clear and evident from the order passed by the respondents dated 12.09.2018 that the charges 1 & 2 only are proved and other charges 3, 4 & 5 were not proved. In regard to Charge No.1, **it is pertinent to mention here that a copy of the work order was served to Tmt.K.Seema, Assistant Engineer so as to oversee and complete the execution of the works**



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**expeditiously and as Municipal Engineer the petitioner's responsibility is inspecting and check measuring all the works being carried out in the Municipality with the assistance of the Assistant Engineer. The petitioner was the Municipal Commissioner (i/c) and he was overall incharge of the administration of the Municipality. It is also stated that the Assistant Engineer is responsible for originating the works in close coordination with the contractor and Tmt.K.Seema, Assistant Engineer miserably failed to execute the work and on several occasions he had orally instructed the Assistant Engineer to execute the works expeditiously and to report any lacuna noticed in any work. From the findings of the enquiry officer in regard to Charge No.1 it is crystal clear and evident that the petitioner was entrusted with the responsibility of Municipal Commissioner incharge in addition to the work of Municipal Engineer. As stated in the charge the work order was issued on 08.04.2014 to Thiru.Sathyaseelan for drilling of 27 bore wells & erection of mini power pumps and a copy of the same was served to Tmt.K.Seema, Assistant Engineer so as to oversee and complete the execution of the works quickly. As Municipal Engineer, his responsibility is inspecting and check measuring all the works being carried out in Municipality. It is pertinent to mention that the specific**



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**finding of the Enquiry officer was that the Assistant Engineer Tmt.K.Seema has been let off in this matter and made scot-free.** Even though the Assistant Engineer is solely responsible for non execution of work, as a supervising officer, the delinquent officer is also responsible for the delay in execution of the work.

11. In regard to Charge No.2 the work order for replacing the water supply distribution main pipeline for 6.00 km was issued to the contractor Thiru.Sathiyaseelan on 08.04.2014 duly marking a copy to the Assistant Engineer Tmt.K.Seema for necessary follow up. **The petitioner has also stated that non-commencement of the work was noticed during his routine inspection, even though the entrusted office, Tmt.K.Seema not reported the fact to him and issued necessary notice to the contractor. It is pertinent to mention the specific finding of the enquiry officer that from the report received from the Municipal Commissioner (i/c), it is ascertained that the works have been completed only after 4 months of the due date (23.04.2014) i.e., on 12.08.2014. However, the delay is not only on the part of Municipal Engineer and the Assistant Engineer is also responsible. Since the Assistant Engineer has failed to monitor the work and failed to**



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**complete the work within the due date due to her lethargic attitude in duties and as a supervising authority the delinquent officer has the responsibility to extract the work from the contractor if the contractor had failed to do so. The Field Officer i.e., Tmt.K.Seema Assistant Engineer has not taken any action to commence the work and she is solely responsible to extract the work from the contractor. In view of the above findings of the enquiry officer which is mentioned in the proceedings of the respondent dated 12.09.2018 it is proved beyond doubt that it is Tmt.K.Seema, Assistant Engineer who is solely responsible for the delay in execution of the work who is solely responsible for the execution of the work allotted to her and the delay caused in completion of work and the petitioner who is an Assistant Engineer and Commissioner incharge is only a supervising authority.**

**12. It is pertinent to note that Tmt.K.Seema who is the concerned officer responsible for all activities i.e., for the commencement of the work, for the delay in completion of the work and she was allowed to scot free and no action was taken against her but the petitioner was imposed with a punishment of Censure which deprived the chance of getting promoted in**



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the two panels approved on 17.02.2020 i.e., for 2018-2019 & 2019-20. The learned counsel appearing for the petitioner has relied upon the judgment of the Hon'ble Supreme Court of India in the case of *M.Raghavelu Vs Governemnt of Andhara Pradesh and another* reported in (1997) 10 SCC 779, wherein at para 2, 3 & 4 held thus:-

*“2. The enquiry officer has found that the charge has been proved and he has also specifically stated in para 42 of his report as follows:*

*“But taking into consideration the fact that he is not actually in charge of the building construction, but only overall in-charge being the Exectuvie Engineer of the Panchayat Raj, it is hereby recommended to the Government that two increments may be stopped with cumulative effect as far as this charged officer is concerned.”*

*3. Accepting the recommendation of the enquiry officer, the disciplinary authority imposed the penalty as recommended. Against that, the appellant preferred a representation petition before the Tribunal without success. Hence the present appeal by special leave.*

*4. Mr.A.V.Rangam, learned counsel for the appellant, submits that the appellant was not factually in charge of the building construction, as admitted by the enquiry officer and as a matter of fact the persons, namely the Deputy Executive Engineer and the Supervisor, who were directly in charge of the building construction, were similarly charged for identical misconduct and on the same set of evidence, though in different proceedings, they were exonerated of the charge. The Government who is the punishing authority, accepting the recommendation, exonerated them of the charge”.*



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13. In view of the findings of the enquiry officer in regard to charge No.1 & 2 and the ration laid down by the Honble Supreme Court in the case of ***M.Raghavelu Vs Governemnt of Andhara Pradesh and another*** reported in (1997) 10 SCC 779, the petitioner is not actually incharge of the work but over all incharge as the Commissioner (i/c). Hence this Court is of the considered view that the punishment of censure imposed by the respondent vide proceedings dated 12.09.2018 in ROC.No.14625/2014/F1 is liable to be quashed and the same is hereby quashed.

14. In the result the writ petition stands allowed and the respondent is directed to add the petitioner's name in the list of approved panel for the promotion to the post of Assistant Executive Engineer for the year 2019-20 afresh and and consider his promotion in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs.

19.09.2023

Internet : Yes  
Index : Yes/No  
Speaking order/Non-speaking order  
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**J. SATHYA NARAYANA PRASAD, J.**

dpq

To  
The Commissioner of Municipal Administration  
M.R.C.Nagar,  
Chennai.

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19.09.2023