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W.P.No.10346 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.10346 of 2023
and W.M.P.No.10315 of 2023

P.Duraisamy

... Petitioner

Versus

1. The Principal Secretary to Government
Rural Development & Panchayat Raj
(E2) Department
Secretariat, Chennai – 600 009

2.The Director of Rural Development & Panchayat Raj
Panagal Maligai
Saidapet, Chennai – 600 015

3.The District Collector
Salem – 636 001

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to promote the petitioner to the post of Assistant Executive Engineer with effect from 26.02.2019 and grant all consequential benefits thereof.

For Petitioner : Mr.T.Mohan, Senior Counsel
for Mr.Adithya Reddy

For Respondents : Mr.M.Alagu Goutham
Government Advocate



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ORDER

This writ petition has been filed seeking to direct the respondents to promote the petitioner to the post of Assistant Executive Engineer with effect from 26.02.2019 and grant all consequential benefits thereof.

2. The petitioner was recruited as Assistant Engineer in the Rural Development Department on 24.12.2007. As per the provisional seniority list of Assistant Engineers issued by the second respondent on 01.01.2016, he is placed in S.No.49 and his immediate junior is Mr.Joseph Reginald Serez. The crucial date for promotion is 01.03.2018 for the next promotion. Further, on 20.02.2018, the petitioner was issued with charges under the Tamil Nadu Government Servants Conduct Rules, 1973 with regard to selecting the wrong beneficiaries under the IAY Scheme during the year 2010.2011. The petitioner challenged the said charges in W.P.No.15405 of 2018, wherein, this Court quashed the charges, by order, dated 14.07.2021. Therefore, according to the petitioner, he should be given promotion, since, on the crucial date, there is no charge pending as against him, whereas, his junior has been promoted. Hence, this writ petition.

3. It is the contention of the respondents that this Court while quashing



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the charges has granted liberty to initiate the disciplinary proceedings by framing charges under Rule 17(a) or (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In fact, the entire counter finds fault with the learned Single Judge and it is also stated that they also taken a decision to file appeal as against the order of the learned Single Judge. However, it is admitted in para 4 of the counter, that crucial date is on 01.03.2015 for the preparation of Assistant Executive Engineer Panel for the year 2018-2019. since, the TDP Case No.8/2016 was pending as against the petitioner in the Tribunal for Disciplinary Proceedings, his junior was promoted as Assistant Executive Engineer vide Order dated 26.02.2019 and the petitioner has not been promoted.

4. Heard both sides and perused the materials placed on record. The learned Senior Counsel for the petitioner submitted that there is no charge pending as against the petitioner on the crucial date and the petitioner is certainly entitled for promotion as per Clause II (19) of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service Act), 2016, whereas, the learned Government Advocate appearing for the respondents submitted that while quashing the charges, this Court has granted liberty to initiate the disciplinary proceedings. Therefore, it is the contention that the competent



authority can suo motu review as per Clause II (19) of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service Act), 2016. Hence, it is the contention that let the matter be delegated to the authorities to decide the case of the petitioner.

5. It is relevant to note Clause II (1) & (19) of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service Act), 2016, which would read as follows:

"(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.

...

(19) The case of a member of service whose promotion or appointment has been deferred on account of any pending charges, shall be reopened after disposal of the charges and appropriate orders shall be passed on merits, either giving him promotion or appointment if he is exonerated or acquitted of the charges and if there is no other adverse factor to be reckoned or denying him



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promotion or appointment or giving promotion or appointment from a later date, depending upon the nature of punishment and other factors to be reckoned in other cases. In all such cases, the appointing authority shall take suo moto action within fifteen days from the date of issue of final orders in the departmental disciplinary case or criminal case."

On perusal of the above Rule, it would make it clear that 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. Further, it also makes it clear that on exoneration or acquittal of the charges and if there is no other adverse factor to be reckoned, the authorities shall take suo motu action within 15 days from the date of issue of final orders in the departmental disciplinary case or criminal case. Further, it is also further to be noted that as per Clause II (3) of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service Act), 2016, the name of a member of service shall not be considered for inclusion in the approved list, if any enquiry is pending before the Tribunal for disciplinary proceedings. Only when the enquiry is pending at the relevant point of time, the promotion can be deferred. Admittedly, no such enquiry is pending as against the petitioner at the relevant crucial date. Such view of the matter, the respondents cannot deny the promotion to the petitioner.



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6. Admittedly, the charges against the petitioner is quashed by this Court as early as on 14.07.2021, however, no further charges have been framed. Further, the authorities had also not considered the petitioner's promotion retrospectively as per Rules.

7. It is relevant to note that though this Court has granted liberty to the authorities to take any action as they intend, such action shall be taken within a period of 12 weeks, it appears that no action whatsoever has been taken. In fact, this Court had directed *de novo* charges be framed. Be that as it may, even, no such exercise has been done by the respondents. From the above, it is very clear that as on crucial date, i.e., on 01.03.2018, there was no charges and the charges are already been exonerated.

8. Such view of the matter, the petitioner is certainly entitled for promotion. In fact, it is brought to the notice of this Court that his immediate junior is also promoted on 26.02.2019. Such view of the matter, the respondents are directed to promote the petitioner and include his name in the above of his immediate junior. Such exercise shall be completed within a period of six weeks



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from the date of receipt of a copy of this Order.

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9. Hence, the writ petition is allowed with a directions to the respondents to promote the petitioner and place him above the name of his immediate junior.

No costs. Consequently, connected miscellaneous petition is closed.

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Internet: Yes/No

Index : Yes/No

Neutral Citation : Yes/No

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N. SATHISH KUMAR, J.



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