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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17..07..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.17040 of 2023
and
W.M.P.No.16225 of 2023

V.A.Anand

..... Petitioner

-Versus-

1.The Secretary to Government,
Commercial Taxes and Registration (H2) Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.

2.The Inspector General of Registrations,
Santhome High Road,
Chennai 600028.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to G.O.Ms.No.45, Commercial Taxes and Registration (H2) Department, dated 20.04.2023 including G.O.Ms.No.156, Commercial Taxes and Registration (H2) Department dated 27.10.2022 and quash the same and direct the respondents to process the promotion to the post of Additional Inspector General of Registration for the year 2022-2023 as per the approved list in G.O.Ms.NO.156, Commercial Taxes and Registration (H2) Department, dated 27.10.2022.

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For Petitioner : *Mr.A.Navaneethakrishnan, Senior Counsel for Mr.R.Naveen*

For Respondents : *Mr.R.Neelakandan, Additional Advocate General Assisted by Mr.P.Baladhandayutham, Special Government Pleader for RR 1 & 2*

ORDER

This writ petitioner challenges the Government Order in G.O.Ms.No.45, Commercial Taxes and Registration (H2) Department, dated 20.04.2023 whereunder the name of the petitioner has been deleted from the panel for promotion to the post of Additional Inspector General of Registration for the year 2022-2023 and seeks consequential relief of promotion as per the original panel.

2. The petitioner, who is a Deputy Inspector General of Registration and was working as such in Thanjavur, has been placed under suspension on the charges of corruption. The 1st respondent published an approved list for the year 2022-23 for promotion to the post of Additional Inspector General of Registration. There were three vacancies notified under the Government Order in G.O.Ms.No.156 dated 25.10.2022 and the name of the petitioner was found

at the second place. The crucial date for preparation of list for promotion for the year 2022-23 was on 01.04.2022. While so, according to the petitioner, on 01.11.2022 an FIR in Cr.No.8/AC/2020 came to registered against him for the alleged offence punishable u/s 7(a) & (b) of the Prevention of Corruption (Amendment) Act, 2018 by the Vigilance and Anti Corruption , Salem. Challenging the same, the petitioner approached this court by way of an original petition in Crl.O.P.No.5814 of 2022 and the same has been pending. In the mean time, the Government transferred the case against the petitioner to the Disciplinary Proceedings Tribunal, Coimbatore, and the same was taken as T.D.P.No.04/2023 and a charge memo was also issued to him on 10.02.2023*. According to the petitioner, the criminal case registered against him has been dropped. On arising a vacancy, M.Jagadeesan whose name was found at Sl.No.1 of the panel was promoted in September, 2022 as Additional Inspector General of Registration and the next name in the list is that of the petitioner. One Mrs.Ankayarkanni, Additional Inspector General of Registration retired on 31.12.2022 and as such a vacancy arose on 01.01.2023. As per list, the petitioner was entitled to be promoted as Additional Inspector General of Registration. But he was not considered for promotion. While so, to his shock and surprise, his name been deleted by the 1st respondent from the approved list

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for promotion by G.O.Ms.NO.45 dated 20.04.2023. The impugned Government Order is arbitrary and illegal as any charge subsequent to the crucial date for preparation of approved list for promotion is not a bar to operate the approved panel. Hence, this writ petition.

3. The 2nd respondent filed his counter affidavit inter alia contending that certain irregularities by the petitioner, traced out during the surprise check conducted by the officials of the Directorate of Vigilance and Anti-Corruption on 01.11.2020 at the residence of the petitioner, were found substantiated by the investigating agency and consequently, charges were framed against the petitioner in TDP Case No.04/2023 on 10.02.2023. Eligible candidate Mr.M.Jagadeesan whose name was included in Sl.No.1 in the panel was given promotion in the vacancy that arose on 01.0-9.2022. As the petitioner was found ineligible, he was not given promotion and as per Paragraph II (3) of Schedule XI, Part-A in Section 7(1) of The Tamil Nadu Government Servants (Conditions of Service) Act, 2016, his name has been deleted by Government Order dated 20.04.2023.

4. Heard both sides.

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5. Mr.A.Navaneethakrishnan, learned senior counsel appearing on behalf of Mr.R.Naveen, learned counsel on record for the petitioner would submit that the relevant date for considering the petitioner for promotion to the post of Additional Inspector General of Registration is the date of approved panel and the crucial date for promotion was 01.04.2022. The panel was prepared on 27.10.2022. At the time of publishing the approved panel, admittedly, there was no charge memo issued and no disciplinary proceeding was contemplated and whereas the charge memo was issued to the petitioner only on 10.02.2023. Therefore, the impugned order deleting the name of the petitioner from the approved list for promotion is not sustainable in the eye of law and the petitioner is entitled for promotion on 01.04.2022.

6. Mr.R.Neelakandan, learned Additional Advocate General appearing for the respondents would submit that as per Paragraph II (3) of Schedule XI, Part-A in Section 7(1) of The Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the name of the petitioner was deleted by Government Order dated 20.04.2023 as the petitioner was facing disciplinary proceedings and as there was no vacancy arisen at that point of time, the petitioner was not considered for promotion.

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7. I have considered the rival submissions and also perused the records carefully.

8. It is not disputed by the respondents that crucial date for promotion to the post of Additional Inspector General of Registration for the year 2022-2023 was 01.04.2022. The approved panel was published on 27.10.2022 vide G.O.Ms.156. The charge memo alleging certain irregularities came to be issued to the petitioner only on 10.02.2023. It is relevant to note that as per the approved list prepared by the respondents, Sl.No.1 was promoted in the vacancy arose on 01.09.2022. GO Ms.No.156 was issued for three vacancies. On the crucial date of promotion neither charges were framed against the petitioner nor a criminal case was pending. Therefore, the respondents cannot now contend that in view of the subsequent charge memo which was issued to the petitioner on 10.02.2023, his name was deleted from the approved list for promotion, when the right has already accrued to the petitioner on 01.04.2022, the same cannot be taken away by passing another Government Order. It is well-settled law that only the crucial date for promotion is relevant for preparing the panel. If only on the crucial date of promotion, an employee was facing any criminal prosecution or disciplinary proceedings, his name would

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not be considered to be included in the approved panel for promotion and such an employee could not as a matter of right seek to include his name in the panel for promotion. Even Paragraph II (3) of Schedule XI, Part-A in Section 7(1) of The Tamil Nadu Government Servants (Conditions of Service) Act, 2016, upon which reliance has been placed to pass the impugned order, makes it clear that the name of a member of service shall not be considered for inclusion in the approved list, if any enquiry is pending against him in the Tribunal for Disciplinary Proceedings. In the instant case, on the crucial date, admittedly, there was no disciplinary proceeding contemplated nor criminal case was registered against the petitioner. Therefore, deletion of the name of the petitioner from the approved list for promotion on the basis of the fact that he was issued with a charge memo on 10.02.2023 is non est in the eye of law.

9. A Division Bench of this court in **W.A.No.271 of 2020 and W.A.No.626 of 2021 [Government of Tamil Nadu v. M.Balamohana Murugan & Government of Tamil Nadu v. P.Manimegalai dated 02.09.2021]** after considering the various judgements of the Supreme Court has held that as per Paragraph II (iv) (5) of Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, if only specific

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charges are framed and charge sheet is filed in the criminal case, the employee concerned shall not be promoted,though his name has been included in the panel. In the instant case admittedly on the crucial date for preparation of panel, there was no criminal case registered against the petitioner nor disciplinary proceeding was contemplated. Now, it is stated that further action has been dropped in the criminal case registered against the petitioner. Whereas the charge memo was issued to the petitioner only on 10.02.2023.

10. In **Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762],** in para 14 of the judgement, the Supreme Court has held that when there was no departmental enquiry initiated on the relevant date, the sealed cover procedure could not have been resorted nor could the promotion in the year 1986-87 be withheld for DE proceedings initiated at the fag end of the year 1991.

11. In the light of the above legal position and considering the facts and circumstances of the instant case, this court is of the view that the impugned Government Order in G.O.Ms.45, Commercial Taxes and Registration (H2) Department, dated 20.04.2023 is liable to be quashed and the petitioner is entitled for promotion as per the approved list prepared for the year 2022-23.

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In the result, the writ petition is allowed. The impugned Government Order is quashed. The respondents are directed to process the promotion to the post of Additional Inspector General of Registration for the year 2022-23 as per the approved list published in G.O.Ms.No.156, Commercial Taxes and Registration (H2) Department, dated 27.10.2022 and promote the petitioner as Additional Inspector General of Registration. The above said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently connected MPs closed.

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Index : yes / no
Neutral Citation : yes.
Speaking / Non Speaking Order
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To

1.The Secretary to Government,
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Secretariat, Chennai 600 009.

2.The Inspector General of Registrations,
Santhome High Road,
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