



WEB COPY

W.A.No.2986



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2986 of 2023
and
CMP.No.24746 of 2023

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.

.. Appellants

Versus

V. Ramakrishnan

.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 14.06.2023 passed by the learned Judge in WP.No.5036 of 2023.

For Appellants : Mr.R.Neelakandan,
Additional Advocate General assisted by
Mr. P. Ganesan, Government Advocate

For Respondent : Mr.K.S.Viswanathan, Senior Counsel
for Mr.Prem Narayanan



JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

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This writ appeal arises from the order passed by the learned Judge in W.P.No.5036 of 2023, on 14.06.2023.

2. According to the appellants / Department, the respondent was initially appointed as Junior Electrical Inspector in the Electrical Inspectorate, Government of Tamil Nadu on 16.08.1991; and his probation was declared and his services were also regularised. Thereafter, he was promoted as Assistant Electrical Inspector on 15.11.2000 and further promoted as Electrical Inspector on 06.10.2006. As per Section 7 of the Tamil Nadu Government Servant (Condition of Service) Act 2016, he was eligible to be included in the panel for promotion to the post of Senior Electrical Inspector for the year 2018-2019. While so, one G.Joseph Arokia Doss was temporarily promoted as Senior Electrical Inspector on 13.01.2022 and was further promoted as Chief Electrical Inspector to Government on 17.03.2022. In such circumstances, the respondent was issued with a charge memo dated 13.06.2022 containing 2 charges, which was challenged by him, in WP.No. 27417 of 2022. During the pendency of the same, the first appellant sent a communication dated 30.01.2023, in which, it was stated that the respondent's name was omitted to be included in the promotional panel for the post of Senior Electrical Inspector for the year 2018-2019 on the ground that the charge under Rule 17(b) of Tamil Nadu Civil



Services (Discipline and Appeal) Rules 1955 dated 13.06.2022 is pending against the respondent. Challenging the same, the respondent preferred WP.No.5036 of 2023.

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The learned Judge, after hearing both sides, has allowed the writ petition by directing the appellants to include the respondent's name in the promotion panel to the post of Senior Electrical Inspector for the year 2018-19 and pass an order of promotion on par with his immediate juniors. Aggrieved by the order so passed by the learned Judge, the appellants / Department are before this Court with the present writ appeal.

3. The learned Additional Advocate General appearing for the appellants submitted that the respondent's name was not included in the panel for promotion to the post of Senior Electrical Inspector for the year 2018-2019 in view of the pendency of the disciplinary proceedings against him. Elaborating further, the learned Additional Advocate General submitted that the promotion of persons against whom charge has been framed in the disciplinary proceedings or charge sheet has been filed in criminal case, may be deferred till the proceedings are concluded. Accordingly, the name of the respondent, against whom, charges have been framed and the disciplinary proceedings are pending, was not included in the promotion panel for the year 2018-19 to the post of Senior Electrical Inspector. The learned Additional Advocate General also submitted that the respondent has adverse remarks in the confidential report for the year 01.04.2013 to 31.12.2013, which is a bar for inclusion of his name in the said panel, as per clause (18) in para II of the said



Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 1966. Without considering all the aspects, the learned Judge erred in allowing the writ petition and directing the appellants to include the respondent's name in the promotional panel on par with his immediate juniors, by the order impugned herein. Therefore, the learned Additional Advocate General prayed to set aside the order of the writ court and allow this writ appeal.

4. On the other hand, the learned senior counsel for the respondent submitted that at the time of preparation of panel for promotion, no charge was pending against the writ petitioner, however, his name was not included, citing subsequent charge memo dated 13.06.2022. Taking note of the same as well as case laws, the learned Judge has rightly allowed the writ petition, by the order impugned herein, which does not require any interference at the hands of this court.

5. Heard both sides and perused the records.

6. The reason stated by the learned Additional Advocate General for non-inclusion of the respondent's name in the panel for promotion to the post of Senior Electrical Inspector for the year 2018-19 is that charges have been framed and the disciplinary proceedings are pending against him. But, it is the admitted position that charge memo was issued only on 13.06.2022 and the crucial date for promotion



panel was 01.11.2018 and hence, there was no charge pending at the time of preparation of the panel for promotion. The law is well settled that the issuance of subsequent charges to a Government servant cannot be a bar for inclusion in the promotion panel, which was prepared earlier based on the crucial date. The Hon'ble Supreme Court in *Bank of India and others v. Degala Suryanarayana [(1999) 5 SCC 762]*, has held as follows:

“14.However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well-established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment,etc., but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over [see: Union of India v. K.V.Jankiraman, AIR 1991 SC 2010 at p.2013]. As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986.”

7. In similar circumstances, a Division Bench of this court in WA(MD)No.846 of 2019 by judgment dated 22.06.2021, referring to section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, has allowed the writ appeal and directed the authorities to consider the candidature of the appellant for inclusion in the panel for promotion.



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8. In the light of the decisions and admitted position as referred to above, the stand so taken on the side of the appellants cannot be countenanced by this court; and citing the charge memo for not including the name of the respondent in the panel for promotion to the post of Senior Electrical Inspector for the year 2018-19, is not sustainable, as rightly observed by the learned Judge. Therefore, this court does not find any reason to interfere with the order of the learned Judge.

9. In fine, this writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]

02.11.2023

Index : Yes / No
Internet : Yes / No
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