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W.P.No.28786 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.28786 of 2018
and W.M.P.No.33627 of 2018

B. Rengabashyam

... Petitioner

Vs.

The Managing Director,
Tamil Nadu Warehouse Corporation,
No.82, Anna Salai, Guindy,
Chennai – 600 032.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records to the impugned order issued by the respondent in Rc.No.47645/14/E4, dated 19.03.2015 and subsequent order passed in the Appeal Petition vide Order of respondent in Rc.No.2710/2017/E4, dated 26.12.2017 and to quash the same and consequently direct the respondent to include the name of the petitioner in 2014 Panel and promote the petitioner to the post of Warehouse Manager Grade-I/Deputy Manager in the Pay Band of Rs.9300-34800 plus Rs.5100 Grade Pay with effect from 13.08.2014 with monetary benefits arising



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out of such fixation within a time frame.

[Prayer amended vide order dated 18.08.2022 made in WMP.No.27370 of 2019 in WP.No.28786 of 2018 by RSKJ]

For Petitioner : Mr.G. Sankaran,
Senior Counsel
for Mr.M. Suresh Kumar

For Respondents : M/s. Ramyamani [R1]

ORDER

This Court has reserved the orders in this Writ Petition on 23.02.2023. As some clarifications were required, the matter is listed today under the caption "for being spoken to" and clarified.

2. Heard the learned senior counsel appearing for the petitioner and the learned counsel for the respondent/Corporation.

3. Based on certain levelled charges under the Charge Memo dated 04.09.2014 framed under Rule 14(2) of the Tamil Nadu Warehousing Corporation General and Staff Regulations, 1965, the petitioner was imposed with a punishment of Censure on 19.03.2015



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by the respondent herein. The appeal against the said order was also rejected on 26.12.2017 based on the resolution of the Executive Committee of the Board. These orders are put under challenge with consequential prayer, seeking for notional promotion to the post of Warehouse Manager Grade-I/Deputy Manager for 2014 promotional panel.

4. The learned senior counsel appearing for the petitioner submitted that though the petitioner had challenged the punishment of Censure, he is not pressing on the grounds and that he would be satisfied if his promotion to the post of Warehouse Manager Grade-I/Deputy Manager for the year 2014 panel, is considered. According to the learned senior counsel, as on the crucial date of the promotional panel for the year 2014, no charges were pending against the petitioner and therefore, non-consideration of his candidature is illegal.

5. Per contra, the learned standing counsel for the respondent/Corporation, would submit that, in view of the pendency



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of the disciplinary proceedings against the petitioner, his name for the promotional panel was deferred for the year 2014, as well as 2015. She would further submit that after the currency of the punishment was over, his name was considered for the year 2016 panel and he was also promoted to the said post with effect from 30.11.2016.

6. In view of the submission of the learned senior counsel appearing for the petitioner that he is not pressing for the grounds challenging the order of Censure dated 19.03.2015 and 26.12.2017, the punishment of Censure, is hereby confirmed.

7. With regard to his claim for entitlement for promotion in the panel year 2014 is concerned, the objections raised is that, there were pendency of disciplinary proceedings as on the crucial date. In service jurisprudence, the term 'pendency' has been time and again dealt with by the Hon'ble Supreme Court, as well as this Court, wherein it has been repeatedly held that such 'pendency' would commence from the date on which the charges are framed against the Delinquent Officer and not before that. In other words, contemplation



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of initiation of the departmental proceedings or sanction for initiating departmental proceedings etc., would not amount to pendency of disciplinary proceedings.

8. In '*Union of India & others Vs. K.V. Jankiraman & others*' reported in '*(1991) 4 SCC 109*', the Hon'ble Supreme Court had dealt with this aspect by holding that the pendency of disciplinary proceedings would commence from the framing of charges. The relevant portion of the order reads as follows:-

“17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

9. Likewise, the Hon'ble Division Bench of this Court in the



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case of ***'The Principal Secretary, Department of Municipal Administration and Water Supply & another Vs. S. Parthasarathy & another'*** passed in ***W.A.(MD).No.591 of 2020 dated 19.08.2020***, had placed reliance in the case of ***'Union of India & others Vs. Anil Kumar Sarkar'*** reported in ***'(2013) 4 SCC 161'*** and reiterated the same proposition in the following manner:-

“12. In (2013) 4 SCC 161 (cited supra), the issue as to the right to consideration for promotion has been considered. The Hon'ble Supreme Court has referred to its earlier decision reported in 1991 4 SCC 109 (cited supra), and held as follows:-

“ 6. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of



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preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the



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sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)

(3).....

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before"

13. In the light of the ratio laid down in the said decision, mere preparation of charge memo is not sufficient and unless the charge memo is issued to the concerned employee, the disciplinary proceedings cannot be said to have commenced or pending....."

10. The aforesaid extracts are self-explanatory. Thus, the pendency of the disciplinary proceedings would commence only from



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the date of which, the charges are framed against the Delinquent Officer.

11. In the instant case, the respondent/Corporation seems to have misconstrued this position by taking into account that they were contemplating disciplinary proceedings against the petitioner herein and therefore, had deferred his name for the promotional panel 2014.

12. On 13.08.2014, the promotional panel for the Warehouse Manager Grade-I/Deputy Manager, was drawn with crucial date of 01.05.2014, in which the petitioner's name was found place in Serial No.10. The actual charges against the petitioner under Rule 14(2) of the Tamil Nadu Warehousing Corporation General and Staff Regulations, 1965, came to be framed only on 04.09.2014, that is after the crucial date for 2014 panel. Thus, there was no disciplinary proceedings pending against the petitioner as on 01.05.2014 when the promotional panel was drawn for the year 2014. If that be so, non-consideration of the petitioner's candidature during that panel when there was absolutely no charges pending against him on the crucial



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date, would be illegal. Consequently, the petitioner would be entitled for notional promotion in 2014 promotional panel, on par with his immediate junior. In this background, the objections raised by the respondent herein, stands rejected.

13. In the light of the above findings, no interference is required to the impugned orders of punishment dated 19.03.2015 and 26.12.2017. However, since this Court has held that the petitioner's name was illegally rejected for consideration in 2014 panel, there shall be a direction to the respondent herein, to forthwith pass orders, notionally promoting the petitioner to the post of Warehouse Manager Grade-I/Deputy Manager, in the 2014 promotional panel dated 13.08.2014, drawn with a crucial date of 01.05.2014, on par with his immediate junior, together with all service and monetary benefits. Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

14. With the above directions, the Writ Petition stands partly



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allowed. No costs. Connected miscellaneous petition is closed.

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Speaking/Non-speaking Order

Internet: Yes/No

Index: Yes/No

Neutral Citation: Yes/No

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To

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M.S.RAMESH, J.

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