



W.P(MD)No.6374 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6374 of 2023

and

W.M.P.(MD)Nos.6031, 6032 and 6033 of 2023

K.Saravana Perumal

... Petitioner

Vs.

1.The Additional Chief Secretary /
Commissioner of Revenue Administration,
Secretariat, Chennai.

2.The District Collector,
O/o.Collectorate,
Thoothukudi District,
Thoothukudi.

3.S.Sivakumar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent vide his proceedings A6/PdI.30/2022(Tah) dated 15.03.2023 and consequential impugned posting order passed by the 2nd respondent vide his proceedings in Na.Ka.No.6/4095/2022 dated



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15.03.2023 insofar as 3rd respondent is concerned and quash the same as illegal and consequently to direct the respondents to include the name of the petitioner in the impugned panel for promotion to the post of Thasildar and consequentially to promote the petitioner as Thasildar within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmalkhan, Senior Counsel,
For Mr.H.Mohammed Imran.

For Respondents : Mr.Veerakathiravan,
Addl. Advocate General,
Asst. by Mr.T.Villavankotahi,
Addl. Government Pleader for R1 & R2.
Mr.G.Prabhu Rajadurai,
For Mr.I.Robert Chandrakuma for R3.

ORDER

Heard the learned senior counsel for the writ petitioner, the learned Additional Advocate General assisted by the learned Additional Government Pleader for the respondents 1 and 2 and the learned counsel for the third respondent.

2.The writ petitioner joined service as Revenue Assistant on 24.12.2009. He was promoted as Deputy Thasildar on 21.01.2016. The next promotional avenue for the petitioner is the post of Thasildar. The



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crucial date is 14th March, 2022. In the case on hand, 13 vacancies had been approved for the drawal of list of Thasildar for the year 2022. On the crucial date ie., 14.03.2022, the petitioner was not under any cloud. The revised list of Deputy Thasildar who were appointed in the year 2015 was drawn on 14.03.2023. The petitioner figured at Serial No.8. However, his name was omitted when the approved list of Thasildar for Thoothukudi District for the year 2022 was notified on 15.03.2023. Challenging his exclusion, this writ petition came to be filed.

3.The learned senior counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned proceeding insofar as the petitioner is concerned. The consequential relief of directing the respondents 1 and 2 to include his name in the impugned panel has also been sought.

4.The respondents 1 and 2 have filed counter affidavit and the learned Additional Advocate General took me through its contents. The stand of the department is that even though on the crucial date the



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petitioner was not suffering from disqualification, by the time the approved list was prepared, charges had been framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and therefore, Part A(II) of Schedule 11 of Tamil Government Servants Conditions of Service Act, 2016 kicked in. The categorical stand of the department is that in view of the framing of charges for initiating major penalty proceedings against the petitioner, his name could not be included in the approved list of Thasildar. The learned Additional Advocate General pressed for dismissal of the writ petition. The stand taken by the department has been strongly endorsed by the learned counsel for the third respondent.

5.I carefully considered the rival contentions and went through the materials on record. The only question that calls for consideration is whether framing of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 against the petitioner would operate as bar for inclusion of his name in the approved list of Tahsildar. Schedule-XI – Part A – II (8) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is as follows:-



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“(8) Pendency of charges framed under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list.”

6.It true that the approved list was notified on 15.03.2023 whereas the charge memo was framed on 14.03.2023. It is beyond dispute that the charge memo was served on the petitioner only on 20.03.2023. It is not the case of the respondents 1 and 2 that the petitioner deliberately avoided service of the charge memo framed under Rule 17(b). The fact remains that the charge memo was served on the petitioner only on 20.03.2023. Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 sets out that the procedure to be followed to impose major penalty. Rule 17(b)(i) states that in every case where it is proposed to impose major penalty on a member of service, the grounds on which it is proposed to take action shall be reduced in the form of definite charge or charges which shall be communicated to the person charged together with a statement of allegation on which each charge is based and on any other circumstances which it is proposed to take into consideration in passing orders on the case. The expression employed in the aforesaid



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Sub Clause 8 is 'pendency of charges framed under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules'. If the expression employed is 'if charges had been framed under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules,' then it would be a different matter altogether. The statutory provision contemplates 'pendency of charges framed under 17(b)'. It has been held time and again by the Hon'ble Apex Court that an order that has been made ready and kept in the file and not communicated to the party concerned will not have any legal consequence whatsoever. Only if the proceeding is communicated to the noticee, then alone it will have legal consequence. Charges framed under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules can be said to be pending only when they have been communicated to the delinquent official (vide **(2001) 8 SCC 443 [State of West Bengal Vs. M.R.Mondal and Another]**). Inasmuch as the charge memo had only framed and it was served on the petitioner only 20.03.2023, it cannot be stated that the charges were pending on 15.03.2023. I would make a distinction between “framing of charges under Rule 17(b) and pendency of charges framed under Rule 17(b).” I hold that the aforesaid Schedule-XI – Part A – II (8) of Tamil Nadu Government Servants (Conditions of



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Service) Act, 2016 will not come in the way. The exclusion of the petitioner in the approved list is clearly bad in law. The respondents 1 and 2 are directed to include the petitioner in the approved list. This shall be done forthwith and without delay. I am not quashing the approved list as such. I am only holding that the exclusion of the petitioner at the appropriate place is bad.

7.The writ petition is allowed accordingly. No costs.
Consequently, connected miscellaneous petitions are closed.

20.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Additional Chief Secretary /
Commissioner of Revenue Administration,
Secretariat, Chennai.

2.The District Collector,
O/o.Collectorate,
Thoothukudi District,
Thoothukudi.

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G.R.SWAMINATHAN, J.

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