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W.P.(MD)No.16028 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)No.16028 of 2019**  
**and**  
**W.M.P.(MD)No.12737 of 2019**

S.Muthuraman . ... Petitioner

vs.

1.The Secretary to Government,  
Religious Endowment and Tourism  
Department,  
Fort St. George, Chennai-600 009.

2.The Commissioner,  
Hindu Religious and Charitable  
Endowment Department,  
Nungambakkam High Road,  
Chennai.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent, vide proceeding Se.MU.Na.Ka.No.55570/2017/L2, dated 19.09.2018 and to



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quash the same and consequently, to direct the second respondent herein to issue posting order to the writ petitioner as Executive Officer of grade I on the basis of promotion order, dated 14.08.2015, vide reference Sae.Mu.Na.Ka.No.24601/2015-1/L1 and to fix the seniority to the writ petitioner on the basis of the seniority panel prepared for the period 2015-2016, vide reference Se.Mu.Na.Ka.No.11748/2015/L2, dated 15.07.2015 and to give all the service benefits to the writ petitioner.

For Petitioner : Mrs.Krishnaveni  
Senior Counsel  
for Mr.P.Thiyagarajan  
For Respondents : Mr.M.Senthil Ayyanal  
Government Advocate

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### **ORDER**

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 19.09.2018 passed by the second respondent and consequently, to direct the second respondent herein to issue posting order to the writ petitioner as Executive Officer of Grade I on the basis of promotion order, dated 14.08.2015 and to fix the seniority

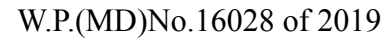


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to the writ petitioner on the basis of the seniority panel prepared for the period 2015-2016, vide reference, dated 15.07.2015 and to give all the service benefits to the writ petitioner.

2.The petitioner joined the Hindu Religious and Charitable Endowment Department as Executive Officer Grade III in the year 2000 and was promoted as Executive Officer Grade II in the year 2008. Through communication, dated 24.03.2015, the eligible persons for promotion to the post of Executive Officer Grade I for the year 2015-2016 was prepared. The petitioner was in Serial No.5 and the crucial date for promotion is 15.03.2015. Subsequently another communication, dated 15.07.2015, was released in which the petitioner's name is in serial no.3. The respondents have prepared the list of candidates for promotion in communication, dated 14.08.2015, which was the approved list of candidates for promotion to the post of



3. The contention of petitioner is that he is entitled to promotion based on the revised panel. As on the date of revised panel, there was no suspension order and the petitioner was not facing any charge memo. After the promotion order on 14.08.2015, the petitioner was suspended on 15.09.2015. However, through the impugned order dated 19.09.2018, the respondents have cancelled the promotion order. Aggrieved over the



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same, the present writ petition is filed.

4. The 2<sup>nd</sup> respondent has filed a counter affidavit stating that the promotion order was issued on 14.08.2015 but the petitioner did not take charge on the said promoted post. In the meanwhile, the petitioner was suspended from service on 15.09.2015. Since the petitioner did not take charge, the petitioner is not entitled to promotion. Moreover, as per the Subordinate Service Rules and Conditions of Service Act the petitioner is not entitled to promotion and therefore, the 2<sup>nd</sup> respondent prayed to dismiss the writ petition.

5. Heard Mrs.Krishnaveni, learned Senior Counsel appearing for the petitioner and Mr.M.Senthil Ayyanal, learned Government Advocate appearing for the respondents and perused the records.



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6. After hearing the rival submissions on both sides, this Court has given its anxious consideration. It is seen that the crucial date for considering for promotion is 15.03.2015 and the date of consideration for promotion as per the revised list is 15.07.2015. Under paragraph 11(15) in Part A under Annexure XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 states as under:

*“No member of service shall be promoted or appointed to a post, if the member is undergoing any punishment imposed under rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, either on the crucial date or on the date of consideration for actual promotion.”*

The said provision states that the employee should not be undergoing punishment on the crucial date or on the date of consideration for actual promotion. In the present case, the crucial date is 15.03.2015 and the date of actual consideration for promotion is 15.07.2015 and the actual promotion is 14.08.2015. The suspension is on 15.09.2015. From this it would be evident as on 14.08.2015 there is no suspension, no charge



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memo and no punishment. Hence the petitioner is entitled to be considered as on 14.08.2015. Hence the paragraph 11(15) in Part A under Annexure XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is not intervening to grant promotion to the petitioner.

7. The respondents relied on the Rule 14, paragraph II in part A in schedule VII issued to the General Rules for the Tamil Nadu State and Subordinate Service issued in G.O.Ms.No.22 Personnel and Administrative Department dated 24.02.2014, wherein it states as under:

*“The name of a member of service placed under suspension on the crucial date or on the date of consideration for actual promotion shall not be considered for inclusion in the approved list or for actual promotion, as the case may be and his name shall be deferred till finalisation of disciplinary proceedings.”*

After passing the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the respondents cannot rely on the Tamil Nadu State and Subordinate Service Rules. However, the said rule is incorporated in under paragraph 11(10) in Part A under Annexure XI of the Tamil Nadu



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Government Servants (Conditions of Service) Act, 2016 and it is Pari  
Materia same and the relevant portion is extracted hereunder:

*“(10) The name of a member of service placed under suspension on the crucial date or on the date of consideration for actual promotion shall not be considered for inclusion in the approved list or for actual promotion, as the case may be and his name shall be deferred till finalisation of disciplinary proceedings.”*

The provision states if the employee is suspended on the crucial date or on the date of consideration for actual promotion, then the name shall not be included in the approved list or for actual promotion. In the present case, the crucial date is 15.03.2015 and the date of actual consideration for promotion is 15.07.2015 and the actual promotion is 14.08.2015. The suspension is on 15.09.2015. From this it would be evident as on 14.08.2015 there is no suspension. Hence the petitioner is entitled to be considered as on 14.08.2015. It is an admitted fact that the suspension and charge memo was issued on 15.09.2015, which is six months after the date of crucial date and two months after the date of consideration,



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one month after the actual promotion. Hence paragraph 11(10) in Part A under Annexure XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is not intervening to grant promotion to the petitioner. In such circumstances, the petitioner is entitled to promotion.

8. The reason cited by the respondents for depriving promotion is that the petitioner has not joined the promoted post and by the time suspension order was issued. There is no provision where it states if the employee has not joined in the promoted post, by the time suspension was issued and the employee is not entitled to promotion. This Court is of the considered opinion that, even if the petitioner has not joined the promoted post, the petitioner cannot be deprived of the promotion by citing subsequent disciplinary proceedings. Therefore, the impugned order is absolutely illegal.



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9. Therefore, this Court is inclined to allow to writ petition and hence the writ petition is allowed. The respondents are directed to grant promotion as per the promotion order, dated 14.08.2015 and confer all monetary and other benefits attached to the said promoted post. The respondents shall fix the seniority based on the seniority panel for the period 2015-2016, vide reference, dated 15.07.2015. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

10. For the reasons stated supra, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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To

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Department,  
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- 2.The Commissioner,  
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**S.SRIMATHY, J**

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