



W.P.(MD).No.18503 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 21.08.2023**

**PRONOUNCED ON : 04.09.2023**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD)No.18503 of 2023**

**and**

**W.M.P(MD)No.15334 of 2023**

M.Diravium

... Petitioner

**Vs.**

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

2.The District Collector,  
Thoothukudi District,  
Thoothukudi.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to promote the petitioner to the post of Tahsildar in the available vacancies strictly in conformity with approved list of Tahsildars for Thoothukudi District for the year 2022 within the year stipulated by this Court.



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For Petitioner : Mr.M.Ajmal Khan  
Senior Counsel  
for M/s.Ajmal Associates

For Respondents : Mr.M.Prakash  
Additional Government Pleader

**ORDER**

The present Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents to promote the petitioner to the post of Tahsildar in the available vacancies strictly in conformity with approved list of Tahsildars for Thoothukudi District for the year 2022 within the year stipulated by this Court.

2.Heard Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioner and Mr.M.Prakash, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

3.The petitioner was initially appointed as an Assistant on 24.12.2009 at Ettayapuram, Thoothukudi District by direct recruitment. After various promotions, presently the petitioner is working in the cadre of Taluk Supply Officer, Kayathar, Thoothukudi

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District. The petitioner's further avenue of promotion is to the post of Tahsildar. A promotion panel was prepared in which the petitioner's name was also included and the same was approved by the second respondent in the year 2022. The crucial date for the petitioner's promotion falls on 01.07.2022. While so, the second respondent vide proceedings dated 15.03.2023 published the approved list in which the petitioner's name was placed at Serial No.8. However, on account of want of vacancies, the petitioner was not given promotion. In the meanwhile, a charge memo dated 21.06.2023 came to be issued against the petitioner on the allegation that the petitioner mutated the patta of few lands standing in the name of the Government in favour of a few third parties. Though the petitioner's name was included in the promotion panel for the year 2022, his name was not considered and hence, the petitioner made a representation on 28.06.2023 to the respondents. But no action was forthcoming from the respondents. Hence, this Writ Petition came to be filed.

4.The respondents filed a counter-affidavit and the learned Additional Government Pleader appearing for the respondents vehemently submitted that during the pendency of the disciplinary proceedings, the petitioner has sent a representation praying to



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promote him as Tahsildar in the existing vacancy of Tahsildar post at present. Due to the pendency of charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, the petitioner was not promoted. As per the instructions laid down in the Government Letter No.248, Personal and Administrative Department, dated 20.10.1997 and the Government Letter No.67652/5/2002-6, Personal and Administrative (3) Department, dated 27.08.2003, an amendment was issued to the earlier Government Letter No.248, Personal and Administrative Department, dated 20.10.1997 and the same is as follows:-

*"(11) in paragraph 4 in sub-paragraph 11 for clause (4) the following clause shall be substituted, namely:-*

*(4) It is further clarified that the charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and any of the punishments awarded after the crucial date but before the actual promotion shall be held against the officer."*



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5. In view of the same, the learned Additional Government Pleader appearing for the respondents submitted that the petitioner could not be promoted as Tahsildar due to the pendency of grave charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and pressed for dismissal of the Writ Petition.

6. Per contra, the learned Senior Counsel appearing for the petitioner submitted that having included the petitioner's name in the promotion panel for the year 2022, the subsequent charge memo cannot be an impediment to exclude the petitioner's name. The consideration occurs on two occasions, namely either on the crucial date or on the date of approval of the promotion panel. In this case, the crucial date for the promotion of the petitioner was 01.07.2022, and the promotion panel was finalized on 15.03.2023. Either on 01.07.2022 or on 15.03.2023, there was neither any disciplinary proceeding nor any show-cause notice pending as against the petitioner. The date of charge-memo being 21.06.2023 ie., very well after the crucial date and the date of the promotion panel, the petitioner's right to be considered for promotion being a fundamental right cannot be done away by the respondents without any authority of



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law. The respondents cannot deny the petitioner's right to consider his promotion as Tahsildar as per Schedule XI Part – A (II)(5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, with respect to the filing of the charge sheet and the relevant portion of which is extracted as follows:-

*"(5) Mere filing of cases in Courts by the appropriate Investigating Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or a charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list."*

7.Thus, as on the crucial date ie., as on 01.07.2022, the petitioner was not issued with any charge memo. As on the date of the promotion panel for the year 2022 ie., on 15.03.2023 also the petitioner was not issued with any charge memo. The charges framed as against the petitioner were only on 21.06.2023 and as such there will not be any infirmity if the petitioner is promoted as a Tahsildar and hence, the petitioner's representation, dated 28.06.2023 to the respondents seeking to promote him to the post of Tahsildar in the



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available vacancy in conformity with the approved list of Tahsildars for Thoothukudi District for the year 2022 has to be positively considered and pressed for allowing the Writ Petition.

8.No doubt, as on the crucial date ie., on 01.07.2022 or on the date of the promotion panel, dated 15.03.2023, the petitioner was not issued with any charge-memo. Schedule XI Part A(II)(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 mandates that the pendency of charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, against a member of service, shall be a bar for inclusion of his name in the approved list. However, no charges were pending against the petitioner as on the crucial date and on the date of finalizing the promotion panel for the year 2022. Moreover, the argument made by the learned Additional Government Pleader appearing for the respondents that on the basis of a Government Letter, dated 27.08.2003, wherein it was clarified that charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 after the crucial date but before the actual promotion shall also be held against the officer is not sustainable for the simple reason that an Executive Letter, cannot supplant the mandates of the statute.



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When the statute is clear that there is no bar for a candidate to be considered for promotion if no charges were pending either on the crucial date or on the date of promotion panel cannot be superseded by the letter of the authorities.

9.In a Full Bench decision of this Court in the ***Deputy Inspector General of Police, Thanjavur Vs. V.Rani*** reported in ***2011(3) CTC 129***, in a similar matter of promotion with respect to the Government Letter of the Personal and Administrative Reforms, this Court has observed as follows:-

*"4. The Government letter No. 18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules."*



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10.This Court in another case in **W.P(MD)No.19525 of 2018, dated 15.02.2019 [M.Chandran Vs. the Director of School Education and others]**, while dealing with a similar matter of promotion, has passed a favourable order to the petitioner and the relevant portion of which is extracted as follows:-

*8.On reading the said judgment as cited supra, this Court is of the view that as already decided, when there was no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. In view of the said legal proposition, as has been propounded by the Hon'ble Apex Court in Bank of India and A.Kalaiselvan, cases referred to supra, this Court is of the considered view that in the present case also, the subsequent charge has been framed during the month of May' 2018, whereas the crucial date for the panel for the year 2018 was 01.01.2018 and on that date, if the petitioner was otherwise eligible and qualified, there can be no impediment for considering his name for promotion.*



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11.In **W.P.No.17040 of 2023, dated 17.07.2023**

**[V.A.Anand Vs. The Commercial Taxes and Registration (H2)**

**Department and another]**, in a similar case of promotion, this Court has held as follows:-

*"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*



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*panel. If only on the crucial date of promotion, an employee was facing any criminal prosecution or disciplinary proceedings, his name would 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.*

12. On reading the aforesaid Judgments as cited supra, this Court is of the view that as already decided, when there was no currency of punishment on the crucial date or when there were no pending charges either on the date of the crucial date or on the date of



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promotion panel, the subsequent charge-memo cannot be a bar for promotion.

13. Under such facts and circumstances of the case and in view of the decisions cited supra, the following directions are issued in this Writ Petition:-

(i) The name of the petitioner shall be included in the panel based on the crucial date 01.07.2022, fit for promotion to the post of Tahsildar and the said panel for the year 2022 shall be acted upon.

(ii) If vacancy is not available as of now, the petitioner should be accommodated in the next arising vacancy, giving effect to the promotion panel for the year 2022.

(iii) If the name of the petitioner is considered as directed and any promotion is given to him, that will be subject to the result of the departmental proceedings initiated against the petitioner vide charge memo, dated 21.06.2023.



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14. With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**04.09.2023**

NCC : Yes  
Index : Yes  
Internet : Yes  
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To

1. The Additional Chief Secretary /  
Commissioner of Revenue Administration,  
Secretariat,  
Fort St. George,  
Chennai.
2. The District Collector,  
Thoothukudi District,  
Thoothukudi.



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**L.VICTORIA GOWRI, J.**

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