



W.P(MD)No.24695 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.24695 of 2023

and

W.M.P(MD)Nos.20873, 20874 & 24697 of 2023

R.Ganapathi Murugan

... Petitioner

Vs.

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

2.The Secretary to Government,
Human Resources Management Department,
Fort St. George,
Chennai-600 009.

3.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Chennai-600 034.

... 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 proceedings of the third respondent in Na.Ka.No.72168/2023/B1, dated 28.09.2023 and quash the same and consequently direct the respondents to include the name of the petitioner in the



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Approved list 2023 - 2024 for the promotion to the post of Assistant Commissioner, HR and CE Department and promote him as Assistant Commissioner, HR and CE.

For Petitioner : Mr.VR.Shanmuganathan

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

The present writ petition has been filed by an Executive Officer Grade-I of the HR&CE Department challenging the order passed by the third respondent herein, wherein the request of the petitioner for inclusion of his name in the panel for promotion to the post of Assistant Commissioner has been rejected.

2. The petitioner was issued with a charge memo on 08.07.2021. A perusal of the charge memo indicates that a period of delinquency is between 01.06.2014 and 22.07.2016. After enquiry an order of censure was passed as against the writ petitioner on 26.07.2023.



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3. The petitioner wanted his name to be included in the panel for promotion to the post of Assistant Commissioner, HR&CE Department for the year 2023-2024. The crucial date for inclusion in the panel is 01.10.2023. He made a request to the third respondent for inclusion of his name in the panel. The said request has been rejected on the ground that the order of censure, dated 26.07.2023 is in operation and therefore, his name cannot be considered for inclusion in the promotion panel. This order is under challenge in the present writ petition.

4. According to the learned Counsel appearing for the writ petitioner, as far as the order of censure is concerned, the date of order should not be taken into consideration for operation of check period but only the date / period of delinquency alone should be considered for fixing the check period. Therefore, according to the learned Counsel appearing for the writ petitioner, the alleged delinquency is between 2014 and 2016. It is certainly 5 years prior to the crucial date, namely, 01.10.2023. Hence, he prayed for setting aside the order.



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5. Per contra, the learned Special Government Pleader appearing for the respondents had contended that the order of censure has been passed on 26.07.2023 and the censure order is in operation on the crucial date, namely, 01.10.2023 and hence, the order impugned in the writ petition may be sustained.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. The petitioner has been issued with a charge memo on 08.07.2021 for the delinquency committed by him during the period between 01.06.2014 and 22.07.2016. After enquiry, an order of censure has been passed on 26.07.2023. The crucial date for considering the name of the petitioner for inclusion in the panel for promotion as Assistant Commissioner is 01.10.2023. These facts are not in dispute.

8. Clause 14 of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is extracted as follows:



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"14. The punishment of 'Censure' imposed on a member of service within a period of one year preceding the crucial date shall not be held against a member of service, if the delinquency in respect of which such punishment is imposed had occurred prior to five years preceding the crucial date. In such cases the name of the member of service shall be considered for inclusion in the approved list."

9. A perusal of the said Rule will clearly indicate that incase of punishment of censure, the same will not operate as a disqualification, if the delinquency had happened 5 years preceding the crucial date. In the present case, admittedly, the delinquency has happened 5 years preceding the crucial date. Therefore, the order impugned in the writ petition is not legally sustainable and the same is set aside. This writ petition stands allowed with a direction to the authorities to include the name of the petitioner in the approved list for the year 2023-2024 for promotion to the post of Assistant Commissioner, HR&CE Department and pass further orders, if he is found otherwise eligible. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

07.12.2023



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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