



W.P.No.2497 of 2020
& W.M.P.No.2896 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2024

Coram:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.2497 of 2020
& W.M.P.No.2896 of 2020

K.Kumar (51 Years),
S/o.V.Kamadevan,
Senior Deputy Materials Manager,
(under suspension), Chennai Port Trust,
Flat No.A-5, Maitri Apartments,
New No.10, Jubilee Road,
West Mambalam, Chennai-33.

... Petitioner

-VS-

1. The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 600 001.

2. The Secretary,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 600 001.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the promotion of the petitioner for the post of Materials Manager in



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Chennai Port Trust without taking into account the pendency of both criminal prosecution in C.C.No. 5 of 2019 on the file of XIV Addl. Special Judge for CBI Cases, Madras and Disciplinary Proceedings vide No.V4/264/2017/Vig, dated 23.10.2019 as well as the order of suspension dated 17.07.2019 extended for a further period of 6 months vide order dated 10.10.2019 and keep the name of the petitioner in a sealed cover for the above post if he is otherwise found eligible for such promotion within time frame.

For Petitioner : Mr.K.Ravi Anantha Padmanaban,
Senior Counsel for
Mr.N.Santhosh Kumar.

For R1 & R2 : Mr.Aiyaluravi

ORDER

This Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents to consider the promotion of the petitioner for the post of Materials Manager in Chennai Port Trust without taking into account the pendency of both criminal prosecution in C.C.No.5 of 2019 on the file of XIV Additional Special Judge for CBI Cases, Madras and Disciplinary Proceedings vide No.V4/264/2017/Vig, dated 23.10.2019 as well as the order of suspension dated 17.07.2019 extended for a further



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period of 6 months vide order dated 10.10.2019 and keep the name of the petitioner in a sealed cover for the above post, if he is otherwise found eligible for promotion.

2. Heard Mr.K.Ravi Anantha Padmanaban, the learned Senior Counsel appearing for the petitioner and Mr.Aiyaluravi, the learned counsel appearing for the respondents.

3. The grievance of the petitioner is that his name has not been considered for promotion in view of the pending criminal case against him in C.C.No.5 of 2019 on the file of the Additional Sub Court, CBI Case, Madras. The petitioner has also filed a litigation, challenging the disciplinary proceedings initiated against him and the same has been disposed by directing the petitioner to face criminal proceedings.

4. The only contention of the petitioner is that as per the Official Memorandum dated 02.11.2012 in F.No.22034/4/2012-Estt.(D), Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), if there is any serious complaint



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against the officer and the matter is still under investigation, the officer's case for promotion would automatically be required to be placed in the sealed cover.

5. It is obviously for the reason that if the criminal proceedings ends in favour of the employee, the promotional possibility can be immediately considered and his services under suspension can also be regularized. The petitioner has not filed a writ petition seeking any promotion but he wants only compliance of para No.5 of the Memorandum dated 02.11.2012, which reads as below:-

5.The O.M.No.22012/1/99-Estt.(D) dated 25th October, 2004 further provides that a DPC shall assess the suitability of the Government servant coming within the purview of the circumstances mentioned in Para 2 of the Official Memorandum No.22011/4/91-Estt.(A) dated 14.09.1992, along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. No promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. if in the matter of corruption/derelection of duty etc., there is a serious complaint and the matter is still under investigation, the



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Government is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover.”

6. He has explained that when the Government servant comes under a cloud, he may pass through three stages namely, investigation, issue of charge sheet in Departmental Proceedings and/or prosecution for a criminal charge followed by either penalty/conviction or exoneration/acquittal. During the stage of investigation prior to issue of charge sheet in disciplinary proceedings or prosecution, if the Government is of the view that the charges are serious and the officials should not be promoted, it is open to the Government to suspend the officer which will lead to the DPC recommendation to be kept in a sealed cover. However, the sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued or the officer is placed under suspension. The pendency of preliminary investigation prior to that stage is not sufficient to adopt the sealed cover procedure.

7. In the case in hand, the officer has already been given with a charge sheet for the criminal proceedings and hence, he is also placed under



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suspension. In such case, it is appropriate for the respondents to adopt the sealed cover procedure for keeping the recommendation of Department of Personnel and Training as per the above guidelines. Since the same has not been adopted, I feel it is appropriate to issue suitable direction.

8. In the result, the Writ Petition is allowed with a direction to the respondents to consider the promotion of the petitioner for the post of Materials Manager in Chennai Port Trust without taking into account the pendency of both criminal prosecution in C.C.No. 5 of 2019 on the file of XIV Additional Special Judge for CBI Cases, Madras and Disciplinary Proceedings vide No.V4/264/2017/Vig, dated 23.10.2019 as well as the order of suspension dated 17.07.2019 extended for a further period of 6 months vide order dated 10.10.2019 and keep the name of the petitioner in a sealed cover for the above post, if he is otherwise found eligible for such promotion. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:yes/no
Neutral Citation:yes/no
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To:

1. The Chairman,
Chennai Port Trust, No.1, Rajaji Salai, Chennai – 600 001.
2. The Secretary, Chennai Port Trust, No.1, Rajaji Salai,
Chennai – 600 001.
3. The XIV Additional Special Judge for CBI Cases, Madras.



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R.N.MANJULA,J.
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