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W.P.No.5018 of 2024 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.5018, 5020, 5021, 5026 to 5029, 5586,
5590, 5602, 5607, 5610, 5614, 6061, 6063 & 6065 of 2024
and
W.M.P.Nos.5509, 5513, 5514, 5517, 5520, 5525,
5526, 6177, 6181, 6196, 6198, 6206, 6209, 6706,
6707, 6711, 6713, 6718 & 6719 of 2024

W.P.No.5018 of 2024 :-

S.Ganesan

... Petitioner

Vs

The Transport Commissioner,
Chepauk, Chennai – 5.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent herein passed in his Proc.No.11361/RA2/2016 (E.O.No.87/2024) dated 19.02.2024 insofar as deferring petitioner's name for promotion as superintendent for the year 2016-2017 is concerned and quash the same and consequently direct the respondent herein to include the petitioner's name in the panel of fully qualified Assistant fit for promotion as Superintendent for the year 2016-2017 in appropriate place with due seniority and all other consequential benefits.



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In all W.Ps.

For Petitioner : Mr.Ravi Shanmugam
Senior Counsel
For Mr.R.Naresh Kumar

For Respondent : Mr.S.Arumugam
Government Advocate

COMMON ORDER

All these writ petitions have been filed challenging the order dated 19.02.2024 passed by the respondent, thereby deferred the petitioners' name for promotion as Superintendent for the year 2016-2017.

2. The petitioners were initially selected for appointment as Typist through Tamil Nadu Public Service Commission in the year 2009. After passing all departmental examinations, their probations have been declared satisfactorily. Subsequently, they were promoted to the post of Assistant in the year 2012. As per the Tamil Nadu Transport Subordinate Service Rules, an Assistant to be promoted as Superintendent should be completed the service qualification of accountant for a period of one year and as Assistant for a period of two years in the office of the State Transport Authority/State Transport Appellate Tribunal/Deputy



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Transport Commissioner/Joint Transport Commissioner/Assistant

Accounts Officer. Accordingly, they were completed all training and qualified to be promoted as Superintendent. On the crucial date viz., 15.03.2016, 15.03.2018 & 15.03.2020 respectively, to include the name in the panel for promotion to the post of Superintendent, they were all eligible to be included in the panel for the year 2016-2017, 2018-19 & 2020-21 respectively.

3. However, the respondent did not publish the panel for promotion to the post of Superintendent as required under Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act. 2016 (hereinafter referred to as “the Act”). However, they were granted temporary promotion to the post of Superintendent in the year 2020 under Section 47(1) of the Act. There were batch of writ petitions have been filed before this Court by the Typists appointed along with the petitioners for relaxation of Rule 30(c) of the Special Rules for the Tamil Nadu Ministerial Service, insofar as the non completion of one year service as Junior Assistant, this Court by an order dated 13.03.2019 allowed the writ petitions and the Hon'ble Division Bench of this Court



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also confirmed the order passed by the learned Single Judge in W.A.No.1565 of 2019 by an order dated 19.06.2023. Therefore, there was a delay in drawing the regular panel of Superintendent for the year 2016-2017. From the year 2020, the petitioners were promoted and they were working as Superintendent.

4. As per the order passed the Hon'ble Supreme Court of India, the seniority list to be revised based on merits. The respondent by his communication dated 19.02.2024, had published a panel of fully qualified Assistants fit for promotion as Superintendents for the years 2016-17, 2018-19 & 2020-21. Though the petitioners' juniors name were included, their names have been deferred for inclusion, on the ground that some of the petitioners were issued charge under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and they were not fit for the post of Superintendent. Aggrieved by the same, the petitioners filed the present writ petitions.

5. The learned counsel appearing for the petitioners submitted that the charge memo is nothing to do with the crucial date for the



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preparation for the panel of promotion to the post of Superintendent for the year 2016-2017, 2018-19 & 2020-21, since the charge memo was issued later. At the time of preparing panel there was no charge and no currency of punishment was pending. He further submitted that as per the panel now the respondent is taking steps to revert the petitioner from the post of Superintendent to the post of Assistant without issuance of any show cause notice.

6. Heard the learned counsel appearing on the either side and perused the materials placed before this Court.

7. On perusal of records revealed that the petitioners were initially appointed as Typist and thereafter promoted to the post of Assistant. They were completed all trainings and qualified for the promotion to the post of Superintendent. Further, the petitioners were promoted to the post of Superintendent temporarily during the year 2020 and they are working as Superintendent. However, their names were not included in the panel for the promotion to the post of Superintendent and now the respondent is taking steps to revert the petitioners from the post



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of superintendent to the post of Junior Assistants without issuance of any notice to the petitioners.

8. The similar issue already dealt with by the Madurai Bench of this Court in the case of ***S.Rajadurai Vs. the Transport Commissioner*** in ***W.P.(MD).No.8507 of 2024*** dated ***07.06.2024***, and allowed the writ petition. The relevant portion of the order reads as follows :-

“12. In the instant case, on the crucial date, the petitioner did not have any charges pending against him either in the disciplinary proceedings or in the criminal case. It is found that the petitioner has been given with charge under Section 17(b) of the Tamil Nadu Government Servants (Conditions and Services) Rules, only on 23.05.2023 for the occurrence that had happened when the surprise inspection was conducted on 29.10.2021. So, the crucial date for considering the promotion falls out of the date when the surprise inspection was conducted, FIR was filed and the charge memo was issued against the petitioner.

13. Since the above fact was omitted to be considered by the authority concerned while drawing the promotional panel for the year 2021~2022 and the



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petitioner is kept under the deferred list in contrary to the Rules governing the inclusion in the approved list.

14. In this regard, it is relevant to cite the earlier judgment of this Court held in W.A.No.846 of 2019 which arose on a similar facts and circumstances, wherein the Hon-ble Division Bench of this Court has held as under:

“3.The only issue which falls for consideration in this appeal is whether the appellant-s name can be passed over and not included in the panel for promotion to the post of Handloom officer on the ground that a charge memo was issued much after the crucial date. In this regard, it is relevant to note Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service Act), 2016 which reads as follows:

“Mere filing of cases in Courts by the appropriate investigation 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 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”

4.In terms of the above provisions, what would be relevant is whether charge proceedings is pending as on the crucial date. According to the appellant, on the



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crucial date ie., 01.03.2014, there was no charge proceedings pending and charge memo was issued only on 12.01.2015. In the light of Section 7 of the conditions of Service Act, the competent authority who draws the panel for promotion has to consider the case of the candidate based on the said provisions namely, Section 7(1). Therefore, we are not agreeable with the findings rendered by the learned Single Bench in paragraph No.5, by laying down the broad proposition that pendency of charge even after the crucial date would be a bar. In fact, we find that there are no adequate reasons to support such a conclusion apart from the statutory provisions having not been taken note of. Therefore, we are of the view that the decision rendered in the writ petition cannot be taken to be laying down a general legal principal.”

15. The above reasoning given for the above case is applicable to the case on hand as well. Since the Rules for including the petitioner-s name in the approved promotion panel list have not been considered properly, the impugned orders are liable to be set aside.”

9. That apart, the Human Resources Management Department has given instructions by the communication dated 14.09.2023 as follows:-



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“1. The estimate of vacancy already arrived at in the particular year shall be maintained while redrawing the panel.

2. The suitability of the candidates as on the crucial date of the panel year has to be assessed as per Section 7, Schedule XI Part A of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 i.e., pendency of charges, currency of punishments etc., with reference to the crucial date. While carrying out this exercise, if any of the above impediments as to the suitability of the candidate is found to exist arising after the crucial date, such impediments need not be considered, as a bar while revising the panel.

Example: The panel for the post of Assistant Section Officer for the year 2006-2007 has to be redrawn. The crucial date of the panel was 01.08.2006. Due to revised seniority at the entry level, the name of XX has to be considered for inclusion in the above panel. Then the suitability of XX on 01.08.2006 has to be assessed as per Section 7, Schedule XI Part A of the Tamil Nadu Government Servants (Condition of Service) Act, 2016. Suppose if 17(b) charge or he had undergone punishment of stoppage of increment etc., on 01.08.2006, his name need not be included in the panel for the year 2006-2007.



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In the above example, if 17(b) charge is pending against XX or he is undergoing the punishment of stoppage of increment, etc., as on the date of re-drawal of the panel, that need not be held against him for inclusion in the panel for the year 2006-2007.”

The above instructions issued for redrawal of panel and accordingly the pendency of charges, currency of punishment cannot be impediments for the inclusion in the panel. Further, the petitioners are working as Superintendent for the past 3½ years.

10. In view of the above discussions, the impugned order passed by the respondent thereby deferring the petitioners' name from the panel for the promotion to the post of Superintendent cannot be sustained and liable to be quashed. Accordingly, all the impugned orders dated 19.02.2024, passed by the respondent are hereby quashed. The respondent is directed to include the petitioners' name in the panel of Assistants for the promotion to the post of Superintendent for the year 2016-17, 2018-19 and 2020-21 respectively, in the appropriate place as per their seniority and they are eligible for all consequential benefits.



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11. With the above directions, all the Writ Petitions are allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

rts

To

The Transport Commissioner,
Chepauk, Chennai – 5.



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G.K.ILANTHIRAIYAN. J,

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