IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.29127 and 29196 of 2019
and
W.M.P.Nos.28910 and 29001 of 2019

V.Mahendhiran ... Petitioner in both W.Ps

Vs.

1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
Chepauk,
Chennai – 600 005. ... Respondents in both W.Ps

Prayer in W.P.No.29127 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the letter No.2459/E2/2019-3 dated 03.09.2019 issued by the 1st respondent and quash the same as illegal and contrary to law and direct the 1st respondent to promote the petitioner to the post of Joint Commissioner (CT) with all other monetary and attendant benefits from the date of promotion of the junior.

Prayer in W.P.No.29196 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the memorandum issued by 2nd respondent dated 10.01.2019 Ref.No.CP3/27311/18 and quash the same as illegal and contrary to law and direct the 1st respondent to promote the petitioner to the post of Joint Commissioner (CT) with all other monetary and attendant benefits from the date of promotion of the junior.

For Petitioner (in both W.Ps)	:	Mr.V.Jayakumar
For Respondents (in both W.Ps)	:	M/s.Vasanthamala Government Advocate (Tax)

COMMON ORDER

The brief facts are as follows:-

While the petitioner herein was working as Assistant Commissioner (CT), he was subjected to disciplinary proceedings by issuing a charge memo dated 22.08.2008. Aggrieved by the same, the petitioner had approached this Court by filing W.P.(MD).No.7135 of 2009 to quash the charge memo and consequently to direct the respondent to promote the petitioner as Deputy Commissioner (CT) from the date of promotion of his junior with all other monetary and attendant benefits. The said writ petition was allowed by the Madurai Bench of this Court by an order dated 24.02.2017 duly setting aside the charge memo and further directed the respondent to promote the petitioner to the post of Deputy Commissioner (CT) from the date of promotion of the junior with all other monetary and attendant benefits.

2. Accordingly, the case of the petitioner was considered for promotion through G.O.Ms.No.63 Commercial Taxes and Registration (E2) Department dated 11.06.2020 and the petitioner was promoted to the post of Deputy Commissioner (CT). There is no dispute in that regard.

3. However, the petitioner had made a further claim for promotion to the post of Joint Commissioner (CT) on par with his junior namely Tmt.D.Ramadevi. The said claim made by the petitioner is negatived by the respondent, by passing the impugned order on the ground that the petitioner was facing charges under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and therefore his case cannot be considered for promotion. Aggrieved by the said proceedings dated 10.01.2019, the petitioner approached this Court by filing the present writ petitions.

4. It is not in dispute that the case of the petitioner was not considered for promotion to the post of Deputy Commissioner (CT) on the ground that the charge memo was issued against the petitioner on 22.08.2008 and the writ petitions filed there against by the petitioner is pending before this Court. As already noted above, the said writ petition was allowed by an order dated 24.02.2017 consequently the case of the petitioner was considered for promotion to the post of Deputy Commissioner (CT) with effect from the year 2010.

5. The respondents have filed their counter affidavit contending that the case of the petitioner cannot be considered for promotion to the post of Deputy Commissioner (CT), as the petitioner was facing charges under 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules under charge memo dated 28.01.2014 and hence he is not entitled to be considered for the promotion to the post of Joint Commissioner (CT). Paragraph No.15 of the counter affidavit reads as under:-

"15.It is respectfully submitted that the aforesaid immediate junior of the petitioner, Tmt.D.Ramadevi was included in the panel for promotion to the next higher category of Joint Commissioner (Commercial Taxes) drawn for the year 2013 vide G.O.(Ms).No.83, Commercial Taxes and Registration (E2) Department, dated 27.06.2013 and posting orders were issued in G.O.(Rt.) No.606, Commercial Taxes and Registration (E2) Department, dated 29.06.2013. The crucial date for drawal of the panel for the year 2013 is 01.01.2013. The petitioner's name is coming up for consideration after his elevation to the post of Deputy Commissioner (Commercial Taxes) as per this Court's orders in W.P.(MD).No.7135 of 2009, dated 24.02.2017. As on the date of consideration of his name for further promotion to the post of Joint Commissioner (Commercial Taxes), the petitioner is found to be facing two disciplinary proceedings under Rule 17 (b). A regular appointment to any category in a service, including by promotion, has to be made in terms of Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The said section specifically mandates the appointing authority to prepare the list of approved candidates in the manner specified in Schedule XI of the said Act."

6. From the above, it is evident that Tmt.D.Ramadevi was considered as junior to the petitioner and the benefit of promotion to the post of Deputy Commissioner (CT) was extended to the petitioner on par with the said Tmt.D.Ramadevi and the said Tmt.D.Ramadevi was admittedly promoted to the post of Joint Commissioner (CT) through G.O.(Ms).No.83, Commercial Taxes and Registration (E2) Department, dated 27.06.2013. But, the case of the

petitioner was not considered only on the ground that the charge memo dated 28.01.2014 issued against the petitioner under Rule 17 (b) is pending and other disciplinary proceedings initiated in the year 2017 are pending against the petitioner. From the above, it is evident that the petitioner is denied promotion to the post of Deputy Commissioner (CT) as well as Joint Commissioner (CT) on par with his junior namely Tmt.D.Ramadevi only on the ground that the petitioner was facing charges under charge Memo dated 22.08.2008 and W.P.(MD).No.7135 of 2009 was pending before the Madurai Bench of this Court as consequent upon allowing the writ petition on 24.02.2017, the petitioner is automatically entitled for the benefit on par with his junior. Pursuant to the said order dated 24.02.2017 passed by this Court the petitioner was admittedly extended the benefit of promotion to the post of Deputy Commissioner (CT). But further promotion to the post of Joint Commissioner (CT) is denied on the ground that the charges framed against the petitioner under Rule 17 (b) through charge memo dated 28.01.2014 and consequential disciplinary proceedings are pending against the petitioner. If the junior of the petitioner was promoted to the post of Joint Commissioner (CT) prior to 28.01.2014, on which date, the proceedings under section 17 (b) Rules were initiated against the petitioner, the petitioner cannot be denied the benefit of such promotion to the post of Joint Commissioner (CT). Therefore, the contentions of the respondents as stated in the impugned order stating that the case of the petitioner cannot be considered for promotion to the post of Joint Commissioner (CT) cannot be sustained.

7. In case, if any of the junior of the petitioner was promoted to the post of Joint Commissioner (CT) prior to 28.01.2014, the petitioner is also entitled for such promotion on par with his junior.

8. However, during the course of arguments, the learned Government Advocate (Tax) submitted that the entire seniority in the cadre of Assistant Commissioner and Deputy Commissioner was revised by the Government pursuant to the order passed by the Hon'ble Supreme Court by issuing G.O.(Ms).No.53, Commercial Taxes and Registration (E2) Department, dated 09.02.2024 and the objections were called from all the affected parties.

9. According to the learned Government Advocate appearing for the respondents, in terms of provisional seniority list published under the above Government order, the petitioner was pushed down and according to her the

said Tmt.D.Ramadevi is at Sl.No.16 of the panel year 2010, whereas, the petitioner is at Sl.No.56. Therefore, there cannot be any positive direction to promote the petitioner to the post of Joint Commissioner (CT) on par with the said Tmt.D.Ramadevi. No doubt, if the seniority in the cadre of Deputy Commissioner (CT) is revised as submitted by the learned SGP the benefit of promotion to the post of Joint Commissioner (CT) on par with the said Tmt.D.Ramadevi can't be claimed. But, certainly the claim of the petitioner for promotion to the post of Joint Commissioner (CT) on par with the junior cannot be denied. If any of such junior is promoted to the post of Joint Commissioner (CT) prior to 28.01.2014.

10. It is also brought to the notice of this Court, the petitioner was already compulsory retired from service as a measure of punishment and challenging the said punishment, the petitioner has also approached the Madurai Bench of this Court by filing a separate Writ Petition and the same is pending. The said Act of imposing punishment on the petitioner with effect from the subsequent date is not an impediment for the relief sought for by the petitioner in these writ petitions. Accordingly, the impugned orders in both writ petitions are set aside and the matter is remitted back to the respondents and the respondents are

directed to consider the case of the petitioner for promotion to the post of Joint Commissioner (CT) and in case if any of the junior of the petitioner is promoted the post of Joint Commissioner (CT) prior to 28.01.2014, the petitioner shall also be extended the benefit of such promotion with effect from the date of promotion of such junior.

11. Accordingly, these writ petitions are allowed as indicated herein above. The respondents are directed to comply with the above said direction as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected writ miscellaneous petitions are closed.

30.07.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

1. The Principal Secretary to Government,
   Commercial Taxes and Registration Department,
   Secretariat, Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
   Chepauk,
   Chennai – 600 005.

MUMMINENI SUDHEER KUMAR, J.

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