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W.P.No.32923 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

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

W.P.No.32923 of 2023
and W.M.P.No.32560 of 2023

D.Ganesh

...Petitioner

-Vs -

1. The Director of Municipal Administration
MRC Nagar, Chennai – 28.

2. The Commissioner,
Thiruverkadu Special Grade Municipality,
Tiruvallur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings Na.Ka.No.38164/2023/K2 dated 14.11.2023, and quash the same and consequently direct the respondents to promote the petitioner as Class-V cadre (Revenue Inspector) based on the first respondent's promotion order dated 11.10.2023, with effect from 12.10.2023 with all monetary and other attendant benefits.

For Petitioner : Mr.N.Kolandaivelu

For Respondents

For R1 : Mr.S.Arumugam
Government Advocate

For R2 : Mr.P.Srinivas



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ORDER

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This writ petition has been challenging the order passed by the first respondent dated 14.11.2023, thereby de-promoted the petitioner from the post of Revenue Inspector Class V category to VII/VIIA category viz., Junior Assistant.

2. The petitioner was appointed as Junior Assistant on compassionate ground in the second respondent municipality. The service of the petitioner was regularized from the date of his initial appointment by the communication dated 02.01.2014. Thereafter, the second respondent declared his probation with effect from 19.09.2014. The petitioner had passed all departmental examinations during the year 2014. Further, the second respondent recommended as if the petitioner was fit for promotion to the post of Revenue Inspector for the panel year 2023-24. There was 29 Junior Assistants were included in the said panel for the promotion to the cadre of Revenue Inspector Class V. The petitioner's name was found as serial number 2. Accordingly, the petitioner was promoted as Revenue Inspector by an order dated 11.10.2023. However the petitioner was not allowed to join in the



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promoted post as Revenue Inspector in Tiruverkadu Special Grade Municipality for the reason that charge memo under Rule 8(2) of the Tamil Nadu Municipal Service (Discipline and Appeal) Rule is pending as against the petitioner. Aggrieved by the same the petitioner filed the present writ petition.

3. The learned counsel appearing for the petitioner submitted that the impugned order stated that the charge memo is pending with effect from 24.01.2020. However, the petitioner was not served with any charge memo so far. In support of his contention, he also relied upon the judgment of the Hon'ble Supreme Court of India reported in **(1991) 4 SCC 109** in the case of **Union of India and ors Vs. K.V.Jankiraman and ors.**, which held as follows :-

“44. The order impugned in this appeal is an interim one whereby the Tribunal has directed the appellant-Union of India to open the sealed cover and if the result shows that the DPC has found the respondent employee fit for promotion to the post of Commissioner of Income tax, to give effect to the said recommendations. The admitted facts are that the DPC which met in 1988 had considered the respondent employee's case for promotion to the post of



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Commissioner of Income-tax. However, since some departmental proceedings were pending against him, he was not given the ,said promotion. It was for the first time in 1990, that the appellants served on him a memorandum asking his explanation in respect of certain alleged acts of misconduct to which he sent a reply on May 18, 1990. Till the date of the 'impugned order of the Tribunal, i.e., January 1, 1991, no charge-sheet was served upon the re- spondent-employee. However, 12 persons. junior to him were promoted by an order dated April 16, 1990. The Tribunal has, as stated above, therefore, made the impugned order. There is .no direction in the order to pay him the arrears of salary for the interregnum. In the circumstances of the case, we do not think it necessary to interfere with the impugned order. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no Order as to costs."

Hence, he prays to allow the writ petition.

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

5. On perusal of the counter filed by the respondents and on the submissions made by the learned Government Advocate revealed that



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on the basis of the complaint, the the second respondent inspected all the files and records in the office and found that disciplinary action was already initiated as against the petitioner under Rule 8(2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970. The charge memo was duly served on the petitioner on 24.01.2020. Therefore the said information was duly informed to the first respondent who is the competent authority for promotion. After examination of the reports, the first respondent passed order thereby cancelled the petitioner's promotion to the post of Revenue Inspector.

6. It is also seen that one R.Valarmathi has applied for building plan permission to construct a building in the land comprised in survey No.88/3, new survey No.121/2, Dhanalakshmi Avenue, Noombal Village, Thiruverkadu Municipality. In the said application, a fake document for regularisation order dated 04.09.2019 was attached stating that the above said plot had been regularized by the municipality and signed by one Senthilkumaran, who joined as Municipal Commissioner only on 15.11.2019. The petitioner was working as F1 Clerk and he along with one Kavitha tried to obtain approval by concealing the fake



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document and submitted building plan file to the Municipal Commissioner. Therefore, they were facing disciplinary proceedings under Rule 8(2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970.

7. Further the petitioner has been working in the second respondent municipality for more than 12 years. Except the petitioner, all other employees were transferred to other placed. The petitioner was duly served with charge memo on 24.01.2020. The petitioner was also working as C1 seat clerk which handles disciplinary proceedings from 01.04.2021 to 31.03.2022. Therefore, the contention of the petitioner that the petitioner was not served with charge memo cannot be considered. That apart, the petitioner also removed the acknowledgment in the disciplinary proceedings file and now raised the ground that he was not served with charge memo. Therefore, the judgment cited by the learned counsel appearing for the petitioner is not helpful to the case on hand.

8. As per the government orders in G.O.Ms.No.368 Personnel and Administrative Reforms Department dated 18.10.1993 and



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G.O.Ms.No.22 Personal and Administrative Reforms (S) Department, dated 24.02.2014, pending of charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list. As per amendment issued under Rule 4(a) of General Rules of Tamil Nadu State and Subordinate Services, the employee shall not be eligible for inclusion in the panel and the said employee should be deferred till the final orders are passed in the departmental disciplinary proceedings. Therefore, the petitioner is not entitled for any promotion and the first respondent rightly revert the petitioner by an order dated 14.11.2023. This Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits and liable to be dismissed.

9. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Director of Municipal Administration,
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Thiruverkadu Special Grade Municipality,
Tiruvallur District.

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