



W.P.(MD).No.909 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.909 of 2024

and

W.M.P.(MD)Nos.930, 932 and 933 of 2024

G.Sam Robust

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary
to Government,
Finance Department,
Secretariat,
Chennai-600 009.

2.The Principal Director of Audit,
O/o, Local Fund Audit,
Chennai-600 035.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the impugned proceeding issued in Se.Mu.Order Na.Ka.No.Pa & Ni 1(2) / 34534 /2019, dated 28.12.2023 and quash the same as illegal and arbitrary and consequently direct



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the respondents to promote the petitioner as Deputy Inspector on par with his junior for the year 2016-2017 thereby grant all service and monetary benefits within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimuthurasu

For Respondent : Mr.S.Shaji Bino,
Special Government Pleader

ORDER

The present writ petition has been filed seeking to quash the impugned proceeding, dated 28.12.2023 and consequently direct the respondents to promote the petitioner as Deputy Inspector on par with his junior for the year 2016-2017 thereby grant all service and monetary benefits.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i) The petitioner was appointed to the post of Assistant Inspector on 13.07.2013, through direct recruitment and was initially posted at Thoothukudi Corporation after completing three months training conducted at Madurai. While so, on 20.09.2021 vide proceedings of the 2nd respondent, the petitioner



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was visited with 17(b) charges on 2 counts of charges that he had allowed pension to ineligible persons. On receipt of the said charge memo, the petitioner has submitted his explanation in detail. Without being satisfied by his explanation, the 2nd respondent appointed an enquiry officer who conducted the enquiry proceedings and has drawn a proven minute as 1st charge is proved. The petitioner submitted further explanation on the proven minutes as to the first charge and the same was submitted by him on 11.09.2023. Though the petitioner has submitted his explanation, the 2nd respondent has not passed any final order till date. Since the departments / 2nd respondent did not proceed and conclude with the disciplinary proceedings, out of the frustration due to the prolonged enquiry, the petitioner demonstrated in house agitation on 16.05.2023.

(ii) Following which, the Assistant Director lodged a complaint against the petitioner and a crime in FIR No.91 of 2023 came to be registered as against the petitioner on the file of the Thoothukudi Central Police Station, Thoothukudi U/s 353,506(i) IPC and Section 101 of the Mental Health Act. Later, he was enlarged on bail by the Learned Judicial Magistrate, Thoothukudi



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on the ground of non commission of offence. Subsequently on 16.06.2023, a show cause notice was further issued by the Director of State Government Audit Department, Chennai regarding the petitioner's in house agitation demonstrated in the office. On receipt of the same, the petitioner submitted his explanation on 07.07.2023. But without being satisfied by his explanation, on 10.11.2023, he was again visited with 17(b) charge memo for six counts of charge and the same is pending. In the meanwhile, on 28.12.2023, the 2nd respondent has issued a panel of promotion list among the Assistant Inspectors for the year 2016 to 2017, vide his impugned proceedings, dated 28.12.2023, in which the petitioner's name was not proposed for promotion on the ground of pendency of 17(b) disciplinary proceedings. Thereafter, immediately on 29.12.2023, the 2nd respondent has given effect to the panel and promoted the Assistant Inspector whose name were included in the promotion panel. Challenging the same, the present writ petition came to be filed.

3. Mr.G.Thalaimuthurasu, the learned Counsel for the petitioner vehemently submitted that the crucial date for the panel of promotion for the year 2016 -2017 is 15.03.2016. As on the crucial date, no charge memo or



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disciplinary proceedings were pending as against the petitioner. The date of the 1st charge memo as against the petitioner being 20.09.2021 and the 2nd charge memo being 10.11.2023. The attitude of the 2nd respondent of not having included the name of the petitioner in the panel of promotion list among the Assistant Inspector for the post of the Deputy Inspector for the year 2016-2017 is per se illegal and pressed for allowing the writ petition.

4. Per contra, Mr. Shaji Bino, learned Special Government Pleader submitted that on the date of the issuance of the panel of promotion list among the Assistant Inspector for the year 2016 -2017, vide impugned proceedings dated 28.12.2023 two charge memos were pending against the petitioner and both the charge memos are framed under 17(b). As far as the 1st charge memo is concerned, already an enquiry officer has been appointed and the enquiry officer has drawn a proven minute as first charge proved and the same is yet pending and the 2nd charge memo is for grave charges was also issued under rule 17(b) for having conducted a demonstration in the work place disturbing the entire serenity and discipline among the cadres in the office. Hence, the petitioner cannot press his right to be included in the panel for promotion list



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due to the pendency of the two charge memos and on that basis pressed for dismissal of the writ petition. It is pertinent to mention here that the respondents did not file any counter affidavit.

5. Heard, the learned Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents. Carefully perused the materials available on record.

6. This Court has clarified umpteen times that the pendency of disciplinary proceedings will not be a bar for inclusion of name of a government servant in the promotion panel and in cases where the charges have been framed after the crucial date, the same cannot be a bar for inclusion. The Hon'ble Division Bench of this Court in W.A(MD)No.846 of 2019 by its order dated 22.06.2021 in the case of ***V.Visweswaran .vs. The Director of Handloom and Textiles and another*** has dealt with the similar case and the proposition discussed supra has been upheld in the following manner.

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



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According to the appellant, on the crucial date i.e., 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.”

7. In the same line, the learned Single Judge of this Court in the case of ***M.Chandran Vs. The Director of School Education and others passed in W.P.(MD)No.19525 of 2018 dated 15.02.2019*** has also taken a similar view as follows:

*“ 8. On reading the said judgment as cited supra, this Court is of the view that as already decided, when there was no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. In view of the said legal proposition, as has been propounded by the Hon'ble Apex Court in **Bank of India and A.Kalaiselvan**, cases referred to supra, this Court is of the considered view that in the present case also,*



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the subsequent charge has been framed during the month of May' 2018, whereas the crucial date for the panel for the year 2018 was 01.01.2018 and on that date, if the petitioner was otherwise eligible and qualified, there can be no impediment for considering his name for promotion."

8. In the instant case, the promotion panel was prepared by the 2nd respondent for the year 2016-2017 with the crucial date of 15.03.2016. On the said crucial date, the petitioner was neither issued with the charge memo nor a currency of the punishment pending against him. Hence, the petitioner is fully eligible to hold the post of Deputy Inspector on par with his juniors who has found place in the promotion list in serial No.48. It is also pertinent to mention that the petitioner has completed all the departmental examinations well before 2015, which were mandatory for the post of Deputy Inspector. Hence, the exculsion of the petitioner's name in the promotioin panel dated 28.12.2023 is nothing but arbitrary and colourable exercise of power. The 2nd respondent has also without giving an opportunity to the aggrieved persons to submit their objections on the promotion panel dated 28.12.2023 has given effect to the panel immediately after a day of issuance of promotion panel, that is, on



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29.12.2023. Therefore, the entire promotion process is clouded with irregularity.

9. The issuance of subsequent charges to a government servant certainly cannot be a bar for inclusion in the promotion panel which was prepared based on a crucial date which lies earlier to the date of the promotion panel. The petitioner has to face charges framed subsequently after the crucial date, the petitioner's chance of getting included in the panel and further consideration of his candidature of promotion should not be denied. Under such facts and circumstances of the case and in view of the decisions cited supra, the following directions are issued in the writ petition:

(i) The name of the petitioner shall be included in the panel based on the crucial date 15.03.2016, fit for promotion to the post of Deputy Inspector;

(ii) The said panel shall be acted upon where the name of the petitioner is appropriately found and he can be considered for further promotion of Deputy Inspector, unmindful of the subsequently framed charges against the petitioner on 20.09.2021 and 10.11.2023;



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(iii) If the name of the petitioner is considered for promotion and if he is promoted, that will be subject to the result of the departmental proceedings initiated against the petitioner on 20.09.2021 and 10.11.2023.

10. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

01.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1.The State of Tamil Nadu,
Represented by its Secretary
to Government,
Finance Department,
Secretariat,
Chennai-600 009.

2.The Principal Director of Audit,
O/o, Local Fund Audit,
Chennai-600 035.



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L.VICTORIA GOWRI, J.

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