



WP(MD) No.6061 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.6061 of 2024

and

W.M.P(MD)No.5699 & 5700 of 2024

I.Mohamed Rafeek

... Petitioner

Vs.

1.The Transport Commissioner,
Chepauk,
Chennai-5.

2. The Joint Transport Commissioner (Admn),
Chepauk,
Chennai-5.

... 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 relating to the Impugned Deferred List published by



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the 1st respondent in his Proc.No.11361/RA2/2016 (E.O.No.91/2024) dated 19.02.2024 in so far as Petitioner (Sr. No.48) is concerned and quash the same as illegal and consequentially to direct the respondents to promote the petitioner as Superintendent on par with his batch-mates for the panel year 2018-2019 taking into account of crucial date i.e., on 15.03.2018 there is no pending charge memo and currency of punishment and without reference to the subsequent charge memo issued in TDP.No.04/2018 dated 17.11.2020 in terms of Section 7, Schedule XI Part A of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016.

For Petitioner : Mr.A.Nawazkhan
for M/s.Ajmal Associates,
For Respondents : Mr.S.Shanmugavel
Additional Government pleader

ORDER

Heard Mr.A.Nawazkhan, learned counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Additional Government pleader appearing for the respondents.



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2. The learned counsel for the petitioner submitted that on the crucial date i.e., 15.03.2018, there is no charge pending against the petitioner and hence, rejecting the petitioner's name to be included in the promotional panel for the year 2018-2019, is illegal. The petitioner has been issued with a charge memo dated 17.11.2020. On account of the same, the petitioner's name has not been included in the promotional panel. However, it is claimed that the petitioner, on the crucial date which has been taken into consideration for preparing the promotional panel 2018-2019, is 15.03.2018 and on which date, no charge was pending.

3. In this regard, the attention of this Court was drawn to the earlier order of this Court made in W.P.(MD)No.8507 of 2024, dated 10.06.2024, wherein, a similar issue had surfaced. The relevant portion of the order reads as follows:

“11. But in the case on hand, the alleged charges that might arise in the criminal case, would arise only subsequent to the date on which the promotion is due to the individual. But even in the impugned order, while deferring the petitioner's



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inclusion in the promotional panel, there is nothing stated about the stage of the criminal proceedings and filing of the charge sheet. On the contrary, it is mentioned that 17(b) charges have been issued against the petitioner. In this regard, it is relevant to refer to Section 7(1) of the Tamil Nadu Government Servants (Conditions and Services) Rules, which would state that mere filing of cases in Courts against a member of the service shall not be a bar for inclusion of his name in the approved list and it further states that if specific charges are framed and 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.

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



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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 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



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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 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



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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.”

4. In the instance case, the promotional panel was due for the year 2018-2019. The crucial date for the preparation of the said panel is 15.03.2018. The petitioner has been issued with a charge memo on 17.11.2020. The deferred list for inclusion in the panel for the year 2018-2019 was prepared on 19.02.2024.

5. From the impugned order, dated 19.02.2024, it is seen



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that the promotional panel has been prepared on the same date. In the deferred list, the reason assigned for rejecting the name of the petitioner has been stated as the pending criminal charges which have been issued in the year 2020.

6. As on the day when the promotional panel is due, there was no charge pending against the petitioner and just because the delay occurred on the part of the respondent in preparing the promotional panel for the year 2018-2019, after several years, it will not take away the right of the petitioner to be included in the promotional panel, in view of the fact that the petitioner did not have any charges during the relevant point of time.

7. The learned Government Advocate submitted that the petitioner did not challenge the promotional panel which was released on 19.02.2024 but only the deferred list which was issued on the same day. The petitioner's grievance is to include him in the promotional panel on par with his junior. In that case nothing would serve if the petitioner intends to quash the promotional panel. Once the deferred list



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as against the petitioner is quashed, that would go without saying that the petitioner is no more disqualified to be included in the promotional panel for the year 2018-2019 and that he should be included in the promotional panel for the said year.

8. Even though the audit objections on the allegation made in the charge is relating to the year 2018-2019, admittedly, no charges have been issued in this regard during the relevant point of time.

9. In view of the above stated reasons, the writ petition is **allowed** and the impugned order of the first respondent dated 19.02.2024 is set aside. The respondents are directed to include the petitioner's name in the promotional panel for the year 2018-2019 for the post of Superintendent. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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R.N.MANJULA, J.

RM

Order made in
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