



W.P(MD).No.8507 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 07.06.2024

Pronounced on : 10.07.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P(MD).No.8507 of 2024

and

WMP(MD)No.7729 of 2024

S.Rajadurai

... Petitioner

Vs.

The Transport Commissioner,
Chepauk,
Chennai-5.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, calling for the records of the impugned orders of the respondent in Proc.R.No.185/RBI/2022 (E.O.No. 110/2024) dated 26.02.2024 and also in Prcdgs.No.6592/RA2/2024 dated 04.03.2024 and quash the same as illegal and thereby direct the respondent to fix the petitioner's seniority by placing the petitioner's name between V.Sivaranjani and T.Gopinath in the seniority list and include the petitioner's name in the promotion list to the post of Assistant



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for the panel year 2021-2022 and consequently direct the respondent to promote the petitioner by considering the petitioner's representation dated 07.03.2024 within the time frame that may be stipulated by this Court.

For Petitioner : Mr.A.Robnison

For Respondent : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned orders of the respondent dated 26.02.2024 and dated 04.03.2024 and a consequential direction to the respondent to include the petitioner's name in the promotion list to the post of Assistant for the panel year 2021-2022 and direct the respondent to promote the petitioner by considering the petitioner's representation dated 07.03.2024 within the time frame to be fixed by this Court.

2. Heard Mr.A.Robinson, learned counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondent.



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3. The petitioner has been recruited as Junior Assistant on 27.02.2019 and his services have been regularised on completion of his probation with effect from 02.03.2021. On 29.10.2021, a surprise inspection was made by the Vigilance and Anti-Corruption Department at RTO Office, Marthandam and also at the shops near the RTO office. Consequently, an FIR has been registered by the Vigilance and Anti-Corruption Department, Nagercoil in Crime No.8 of 2021. The petitioner has not been included as an accused in the FIR. The petitioner was issued with a charge memo on 23.05.2023 under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, on the ground that touts were found to be in possession of the official documents and seals.

4. The respondent deferred the name of the petitioner and issued the impugned proceedings on 26.02.2024 for the panel year 2021-2022 for the promotion to the post of Assistant. The petitioner's name was not included as he did not pass the departmental examination as on the crucial date for preparing the promotion panel. The petitioner has not



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been given with any charge memo neither was he punished before the crucial date, ie., on 15.03.2021.

5. The learned counsel for the petitioner submitted that the petitioner's name has been deferred without adhering to the consolidated instructions given in the Govt. Letter No.5230612/S.Spl/2023-11 dated 14.09.2023. The respondent issued another impugned order of promotion in Procdgs.No.6592/RA2/2024 dated 04.03.2024 without considering the petitioner and his name was not found in the impugned order of promotion. So, it is prayed by the petitioner that deferring the name of the petitioner for the promotional panel dated 26.02.2024 and the subsequent promotion proceedings dated 04.03.2024, which excludes the name of the petitioner, have to be quashed.

6. The facts that the petitioner was appointed on 27.02.2019 and that his services have been regularised with effect from 02.03.2021 after his completion of probation are not in dispute. The fact that the crucial date for preparing the promotional panel for the year 2021-2022 was



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15.03.2021, is also not denied. The alleged surprise inspection was held on 29.10.2021 which was much later to the crucial date for preparing the promotion panel. An FIR came to be registered by the Vigilance and Anti-Corruption Department, Nagercoil. Even at that point, when the FIR was registered, the petitioner's name was not included. Even though the promotion panel was due on 15.03.2021 for the year 2021-2022, it appears to have got prepared/approved in respect of 26 individuals on 26.02.2024. The deferred list was released on the same day, in which, the petitioner's name had been included. The reason for deferring the petitioner's name as it found from the above list is that he did not pass the departmental examination on the crucial date and that charges framed under Section 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules was also pending in 35421/VA2/2021.

7. So far as the petitioner's pass in the departmental examination is concerned, it is seen from the records that he had cleared the departmental examination during the 'Departmental Examinations December 2020'. Though the results have been published at a later point



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of time, the fact remains that the petitioner's probation has been declared through the proceedings dated 12.12.2023 with effect from 02.03.2021 by taking into account of his pass in the departmental examination. Pass in the departmental examination is a mandatory requirement for declaring the completion of probation. Accordingly, the petitioner has got his probation declared subsequent to his pass in the departmental examination, however, with effect from two years of completion of his service. So, the want of pass in the departmental examination did not obstruct the declaration of probation with effect from two years of his completion of service.

8. Though the due date for the promotion panel was 15.03.2021, the list was prepared on 26.02.2024 on which date the petitioner was very much qualified and has passed the departmental examination and got his probation declared. So far as the criminal charges are concerned, the cause of action for the said charges had arisen on and from 29.10.2021 when the surprise inspection was conducted. It is reiterated that the crucial date for preparing the promotion panel due to the year



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2021-2022 is 15.03.2021 which is much earlier than the date of surprise inspection.

9. The learned Additional Government Pleader for the respondent submitted that as per the Schedule XI, Part-A, under Rule II(1) of the Tamil Nadu Government Servants (Conditions & Services) Act, 2016, when specific charges have been framed or the charge sheet has been filed in a criminal case against a member of service, promotion or appointment of such member, shall be deferred till such proceedings are concluded. The member shall be considered for promotion only after the acquittal from the charges with retrospective effect when the date on which his immediate junior is promoted, if he is otherwise found to be suitable for said post.

10. Reliance are also placed on the judgment of the Supreme Court held in *C.O.Arumugam And Ors. vs State Of Tamil Nadu And Ors* reported in **1991 SUPP (2) SCC 199** in which it has been held as under:

"5. As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case



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considered for promotion according to his turn and it is a guarantee flowing from [Article 14](#) and [16\(1\)](#) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

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 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



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date, his name shall not be considered for inclusion in the approved list.

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



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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 crucial date



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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.

16. In the result, this writ petition is **allowed** and the impugned order dated 26.02.2024 and the subsequent promotion proceedings dated



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04.03.2024 are quashed insofar as it relates to the inclusion of the petitioner's name in the promotion panel list. The respondent is directed to issue fresh orders by including the name of the petitioner in the promotional panel for the year 2021-2022 and promote him on par with his juniors and give notional effect from the date during which his juniors have been promoted and monetary effect from the date on which the petitioner joins in the promotional post. The said exercise shall be completed and orders shall be issued in this regard within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

10.07.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
PJJ

To
The Transport Commissioner,
Chepauk,
Chennai-5.



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R.N.MANJULA ,J.

PJL

Pre-delivery Order in

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