



W.A.(MD)No.1094 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.07.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.1094 of 2024
and
C.M.P.(MD)No.8262 of 2024**

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai -9.

2.The Director of Rural Development and Panchayat Raj,
Rural Development and Panchayat Raj Department,
Panagal Buildign, Saidapet, Chennai – 15.

3.The District Collector,
Office of the Collectorate Campus,
Sivagangai, Sivagangai District.

... Appellants

VS

K.Sivanandam

...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside
the order of this Court dated 13.12.2023 passed in W.P(MD)No.18344 of
2021.



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For Appellants : Mr.N.Satheesh Kumar
Additional Government Pleader
For Respondent : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This intra-Court appeal is preferred as against the order, dated 13.12.2023 made in W.P.(MD)No.18344 of 2021, whereby, the appellants herein were directed to promote the Writ Petitioner as Assistant Director of Panchayat with effect from the date on which his juniors were promoted with all consequential benefits.

2.Whether the name of the employee, who had been deferred for consideration for promotion by citing the pendency of a charge, which was dropped, could be considered for promotion for the relevant panel period, when a second charge memo is pending, is the question, posed before this Court.



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3.The respondent, while he was working as Block Development Officer, was issued with a charge memo, dated 16.12.2005. The appellants not being satisfied with the reply, appointed an Enquiry Officer and the Enquiry Officer submitted his report on 06.01.2007 by which, the respondent was exonerated from the charges. A panel was prepared for the year 2005-06 for promotion from the post of Block Development Officer to the post of Assistant Director of Panchayat and citing the pendency of the charge memo, the respondent's name was not included in the panel. Based on the representation of the respondent to include his name in the panel for the year 2005-06, the first appellant issued G.O.(D)No.442, Rural Development and Panchayat Raj Department, dated 08.08.2007, wherein, the seniority of the respondent was re-fixed and his salary was also revised on par with his junior.

4.Since no action was taken to promote the respondent as Assistant Director of Panchayat, he had preferred a Writ Petition in W.P(MD)No. 29324 of 2007 seeking to direct the first appellant to implement the G.O. (D)No.442, dated 08.08.2007, wherein, the Writ Court, by order, dated 07.09.2007, had directed the first appellant to accord promotion. However,



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a fresh disciplinary proceedings was initiated as against the respondent by framing charges under Rule 17B of Tamil Nadu Civil Service (Discipline and Appeal) Rules, on 23.08.2007.

5. Based on the pendency of the charges, even though the respondent attained superannuation on 31.05.2012, he was placed under suspension and was not permitted to retire. Ultimately, the disciplinary proceedings ended in favour of the respondent on 30.04.2017 and thereafter, he was permitted to retire on 16.07.2017. Pursuant to which, the respondent again made a representation on 12.03.2020 seeking to grant promotion to the post of Assistant Director of Panchayat in the panel year 2005-06. But, however, by the impugned order in the Writ Petition, dated 13.09.2021, the claim was rejected on the ground that even though the first charge was dropped on 06.01.2007, however, since the second charge was pending as against the respondent, which was issued on 23.08.2007, in which final orders were passed only on 30.04.2017, but since the respondent got superannuated on 31.05.2012 itself, he is not entitled to seek to get his name included in the panel for the year 2005-06 for promotion.



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6.Challenging the impugned order of rejection, the respondent had preferred the Writ Petition and the Writ Court after relying on the decisions of the Hon'ble Supreme Court as well as the Division Bench of this Court, allowed the Writ Petition by observing that once the charge, as against the delinquent, is dropped, then the employee would automatically get back his lost opportunity of promotion on par with his junior and the second charge memo cannot be cited, as a reason to deny the benefits. Assailing the impugned order of the Writ Court, the State has preferred the above appeal.

7.Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the appellants vehemently contended that the name of the respondent was not included in the year 2005-06 panel fit for promotion to the post of Assistant Director of Panchayat only in view of the pendency of the charge and even though the first charge was dropped, but however, a second charge memo was issued on 23.08.2007 and since the same was pending as against the respondent, his name could not be included in the 2005-06 panel. The learned Additional Government Pleader further contended that, in fact, after the first charge was dropped, the name of the



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respondent was included in the panel on 08.08.2007 and also a temporary promotion was given on 11.09.2007, but however, in view of the fresh charges issued as against the respondent on 23.08.2007, the temporary promotion granted on 11.09.2007 was cancelled on 03.10.2007 and the respondent has not challenged the order cancelling the promotion.

8.The learned Additional Government Pleader further submitted that even though the second charge memo ultimately ended in favour of the respondent on 30.04.2017, but however, since the respondent got superannuated as early as on 31.05.2012, the claim made by him cannot be granted. However, the learned Judge had erroneously without appreciating these details, allowed the Writ Petition, which is un-sustainable, he contended and sought for interference of this Court.

9.Mr.C.Venkatesh Kumar, learned Counsel for the respondent submitted that when once the charge memo issued as against the respondent, dated 16.12.2005, was dropped, the respondent automatically will be entitled to get his benefits and the appellants are not justified to deny the same by citing the pendency of the second charge memo. The learned



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Counsel further submitted that the second charge memo also issued as against the respondent ultimately ended in his favour and pursuant to which, he was allowed to retire from service and therefore, in any event, the appellants are bound to restore the lost benefits of the respondent by including the name of the respondent in the 2005-06 panel and grant the benefits from the date on which, the junior of the respondent was promoted to the post of Assistant Director of Panchayat. The learned Counsel further submitted that pursuant to the panel prepared, the respondent's junior was promoted to the post of Assistant Director of Panchayat on 26.04.2007 and the respondent is entitled for getting the benefits from the date of the promotion effected to the junior and subsequently, notional benefits has to be worked out and granted to him and as the learned Judge having rightly arrived at a decision by considering the above aspects, the order of the Writ Court needs no interference and sought for dismissal of the appeal.

10. Heard the learned Counsel on rival side and perused the materials available on record.



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11.The respondent, who had been working as Block Development Officer, was issued with a charge memo, dated 16.12.2005. The respondent had submitted his reply and not being satisfied with the same, an Enquiry Officer was appointed and pursuant to the enquiry, the enquiry report was submitted on 06.01.2007, whereby, the respondent was exonerated from all the charges. The promotion panel for the post of Assistant Director of Panchayat for the panel year 2005-06 was prepared and the crucial date for the 2005-06 panel is 01.03.2007. As such, even though a charge memo was issued as against the respondent on 16.12.2005, the enquiry has been conducted and the respondent was exonerated from all the charges, as early as on 06.01.2007 and the charges were dropped at least two months prior to the crucial date of 01.03.2007. In other words, as on the crucial date on 01.03.2007, for considering the name to be included in the panel for the year 2005-06 for promotion to the post of Assistant Director of Panchayat, admittedly, no charges were pending as against the respondent.

12.It is the submission of the learned Additional Government Pleader that however, the respondent's name was considered for temporary promotion on 08.08.2007 and he was also given a temporary promotion as



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Assistant Director of Panchayat on 11.09.2007. But, a fresh set of charges under Rule 17B of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, was issued on 23.08.2007 and in view of the charge memo issued and since it was only a temporary promotion, by order, dated 03.10.2007, the promotion was cancelled, which was not challenged by the respondent. It is the further contention of the appellants that in view of the second charge memo issued on 23.08.2007, the respondent is not entitled to be included in the panel and since he attained superannuation on 31.05.2012, he was suspended from the service and not allowed to retire, but the final orders in the second charge memo was passed only on 30.04.2017 and before that, since the respondent got superannuated, he cannot claim the benefits to be included in the panel for the year 2005-06.

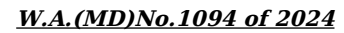
13.The submissions and the stand taken by the appellants are liable to be rejected for the simple reason that on the crucial date of 01.03.2007 for the name to be considered in the 2005-06 panel, there was no charge pending as against the respondent, since the enquiry in respect of the charge memo, dated 16.12.2005, ended in his favour and he was exonerated from the charges as early as on 06.01.2007 itself. However, the issuance of a



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second charge memo for some other charges on 23.08.2007 will not in any way alter the position and if at all, a second charge memo is pending, it is for the appellants to promote the respondent to the post of Assistant Director of Panchayat by including his name in the panel and thereafter, proceed with the enquiry in the second charge memo in the promoted post.

14.In fact, even the enquiry conducted in the second charge memo, dated 23.08.2007 had ultimately ended in favour of the respondent and the second charge also came to be dropped. In effect, both the charges issued as against the respondent, first on 16.12.2005 and the second on 23.08.2007, had, ultimately, been dropped and the respondent was also exonerated from the charges levelled against him. The charges issued on 16.12.2005 came to be dropped on 06.01.2007 and as referred earlier, on the crucial date of 01.03.2007, no charges were pending as against the respondent. Even the second charge memo was issued only on 23.08.2007 and there was no impediment for the appellants for having included the name of the respondent in the year 2005-06 panel fit for promotion to the post of Assistant Director of Panchayat.



15.As it is brought to the notice that based on the panel prepared for

16.The learned Judge by taking note of all the above facts,



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to the post of Assistant Director of Panchayat with effect from the date on which his junior was promoted and confer all attendant and monetary benefits within a period of twelve weeks.

17. In our considered opinion, there is no error or infirmity in the order passed by the learned Judge, which requires interference of this Court. Accordingly, the order passed by the learned Judge is sustained and the Writ Appeal stands dismissed. The appellants shall comply with the order passed in the Writ Petition by calculating and extending the notional benefits to the respondent within a period of six weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
12.07.2024

Internet : Yes/No
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AND

G.ARUL MURUGAN, J.

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