



WP(MD)No.11496 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP (MD)No.11496 of 2014

P.Samy

... Petitioner

Vs

1.The Secretary to the Government,
Animal Husbandry, Dairying and
Fisheries (AH-7) Department,
Secretariat, Chennai - 9.

2.The Commissioner of Animal Husbandry and
Veterinary Service,
Central Office Building, Block -2,
DMS Compound, Teynampet,
Chennai - 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the impugned order in Letter No. 14651/AH7/2023 dated 29.05.2014 passed by the respondent and quash the same and consequently directing the respondents to consider the claim of the petitioner for the promotion as Deputy Director and Joint Director by including the name of the petitioner in the appropriate place as



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Deputy Director in 2011 - 2012 panel and Joint Director in 2011-2012 panel and consequently grant notional promotion with corresponding retirement benefits.

For Petitioner : Mr.J.Barathan for
Mr.Johnny Basha

For Respondents : Mr.P.T.Thiraviyam
Government Advocate

ORDER

The petitioner a retired Assistant Director of Animal Husbandry, Dairying and Fisheries Department has filed this writ petition as against the communication of the 1st respondent / Secretary to the Government, Animal Husbandry, Dairying and Fisheries Department, dated 29.05.2014.

2.The petitioner with a grievance that he was eligible for promotion to the post of Deputy Director in the year 2011-2012 has submitted



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representations dated 25.07.2013, 30.09.2013 and 29.04.2014 to the Director of the Animal Husbandry, Dairying and Fisheries Department requesting to give him notional promotion as Deputy Director with effect from 2011 - 2012. Subsequently a proposal has been made by the Director to the Secretary vide letter dated 20.09.2013. The Secretary has replied to the Director vide letter dated 29.05.2014 as under:

"2.I am directed to inform you that as per the Government Order 3rd cited the request of the petitioner for inclusion of his name for the panel year 2011-2012 for promotion to the post of Deputy Director of Animal Husbandry could not be accepted, since the charges framed under Rule 17(b) of Tamil Nadu Civil Service Discipline and Appeal) Rules were pending on the crucial date 01.07.2011 and a minor punishment of "Censure" was also awarded to the individual in the end."



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The above reply letter is challenged in this writ petition.

3.The learned Counsel for the petitioner submits that the petitioner was eligible for promotion to the post of Deputy Director in the panel prepared on 01.07.2011. However his name was omitted in the said panel list. Subsequently the panel for the post of Joint Director from the eligible Deputy Directors was prepared on 27.01.2012 and in this panel list also his name was omitted, in view of the disciplinary proceedings contemplated as against this petitioner.

4.According to the petitioner, based on the false allegations levelled as against him by the women employees, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules as against this



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petitioner. The petitioner has challenged the same before this Court in WP(MD)No.8782 of 2009 and this Court by order dated 30.06.2001 has deferred the charge memo and directed the internal complaints committee of the department to look into the allegations made against the petitioner and to take further action based on the report of the internal complaints committee. Since the disciplinary proceedings initiated as against this petitioner was deferred by this Court by order dated 30.06.2011, there is no impediment for inclusion of this petitioner in the panel list dated 01.07.2011.

5. According to the learned Counsel for the petitioner, the panel list for the post of Deputy Director from the Assistant Director for the year 2011-2012 was approved vide government order in GO(2D)No.40 Animal Husbandry Dairying and Fisheries (AH7) Department dated 19.08.2011 and



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the crucial date for the preparation of panel to the post of Deputy Director is 01.07.2011, on that day the charge memo issued against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was deferred by the order of this Court dated 30.06.2011. Therefore his name was wrongly omitted in the panel prepared on 01.07.2011 for promotion to the post of Deputy Director and consequently he was also not included in panel prepared on 27.01.2012 for promotion to the post of Joint Director. Since he was denied actual promotion, he is entitled for the notional promotion, monetary benefits and other retirement benefits. Therefore, the petitioner has submitted several representations in this regard, but they were not considered properly.

6.The learned Government Advocate appearing for the respondents submits that the petitioner



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while was in service, a complaint was received as against him from the women doctors and assistants working under him that he had sexually and mentally harassed them. Based on this complaint, a charge memo was issued as against him under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, contemplating grave charges on 11.08.2009. The petitioner instead of submitting his explanation, had filed a writ petition in WP(MD)No.8782 of 2009, challenging the charge memo on the ground that no enquiry was conducted by the internal complaints committee / Vishaka committee as per the dictum of the Hon'ble Supreme Court in Vishaka and Others Vs State Of Rajasthan & Others, reported in AIR 1997 SC 3011. This Court accepting this ground of the petitioner had deferred the charge memo by order dated 30.06.2011 with a direction to conduct a preliminary enquiry by the internal complaints committee and to take further action



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based on the report of the internal complaints committee. Accordingly enquiry was conducted, based on the report of the internal complaints committee, a fresh charges were framed as against this petitioner and finally he was imposed with a punishment of censure on 29.01.2013.

7.The learned Government Advocate further submits that apart from this charge, the petitioner has been issued with a charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 02.08.2011 and in this departmental proceedings, he was issued with a punishment of stoppage of increment for three months without cumulative effect. Therefore, according to the learned Government Advocate, two departmental proceedings were pending as against the petitioner on the crucial date for preparation of panel list for promotion and therefore, the petitioner's name was not



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included in the panel list for promotion.

The departmental proceedings initiated against this petitioner also ended in punishment. Therefore, the petitioner cannot claim promotion as a matter of right that he is eligible for promotion as on 01.07.2011. The learned Government Advocate has also relied on the government order in GO.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department, dated 18.10.1993 and submits that if specific charges are framed or charge sheet is filed in a criminal case before actual promotion, the person concerned shall not be promoted, even if his name is included in the panel. If the petitioner had been exonerated from the charges, he would have been considered for promotion on par with his juniors. However, the petitioner was imposed with punishment in both departmental proceedings.



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8.This Court considered the rival submissions and perused the materials placed on record.

9.The petitioner retired from service on 30.06.2013. Thereafter he submitted representations that he is entitled for notional promotion as Deputy Director from 01.07.2011 and also as Joint Director from 27.01.2012. The said request of the petitioner was rejected by the impugned order.

10.It is relevant to refer to Rule 4 of the Tamil Nadu State and Subordinate Service Rules, which deals with the preparation of panel for promotion. For promotion of panel, the authority is expected to consider the following aspects:

(i) Seniority in the feeder category
(ii) Eligibility ; (iii) Suitability: (iv) Merit and Ability, which are considered by taking into account the following aspects:



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a. Seniority: Seniority would be considered where merit and ability are approximately equal;

b. Eligibility: Educational qualifications, age, physical qualification, experience, departmental test and training if any prescribed are the criteria for consideration of eligibility;

c. Suitability: Merit and Ability with reference to the personal files for a period of five years prior to the crucial date are to be taken note of for consideration of suitability;

11. Further, it also prescribes the procedures to be followed, when the charges are pending, as pendency of charges framed under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of service shall be bar for inclusion of his name in the approved list. If the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and



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Appeal) Rules pending as against a member of service are merely stayed by the Court, it shall be deferred till the judicial proceedings are concluded, unless a contrary order is passed by the Court and it is decided not to challenge the same. If the Court quashes the charge memo, then the name of the member of service concerned shall be considered for inclusion in the approved list for promotion.

12.In this case, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to the petitioner on 11.08.2009 and the same was deferred by this Court by order dated 30.06.2011, however with a permission to the department to take further action based on the report of the internal complaints committee. Subsequently, the petitioner was found guilty and was imposed with a punishment of censure. Therefore on the crucial



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date of 01.07.2011, the charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was pending as against this petitioner and therefore, as per the guidelines issued in the Tamil Nadu State and Subordinate Service Rules, the respondents are justified in not including the petitioner's name for promotion in the panel list as on 01.07.2011 and therefore the petitioner cannot claim any notional promotion. Therefore, this Court is not inclined to grant any such relief as sought for by the petitioner in the writ petition.

13.In the result, this writ petition is dismissed. No costs.

02.12.2024

Internet : Yes / No

DSK



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To

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