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W.A.(MD).No.935 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

W.A.(MD).No.935 of 2016
and
C.M.P.(MD).No.5563 of 2016

The Chief Engineer (Agricultural Engineering),
Nandanam,
Chennai – 600 035.

.. Appellant/Respondent

Vs.

M.Selvaraj,
Drill Supervisor,
O/o. the Assistant Executive Engineer,
Agricultural Engineering Department,
Krishna Nagar, Manojpatti Road,
Thanjavur,
Thanjavur District.

.. Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 13.10.2015 made against W.P.(MD).No.18365 of 2015 and allow the Writ Appeal.



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For Appellant : Mr.A.K.Manikkam
Special Government Pleader

For Respondent : Mr.Thalaimutharasu

JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

This Writ Appeal is preferred by the State being aggrieved by the order passed in W.P.(MD).No.18365 of 2015 dated 13.10.2015.

2. Brief facts involved in this case are that the first respondent is the writ petitioner. While he was serving as Drill Supervisor, he caused an accident causing death of a person, whose family has claimed compensation and succeeded in M.C.O.P.No.483 of 2012. 5% of the award amount was sought to be recovered from the respondent/petitioner herein. The writ petitioner was given liberty to pay the amount in 18 installments. When this process was pending, the panel for promotion to the post of Diesel Mechanic cum Fitter for the year 2014-2015 was prepared and the name of the respondent was not included in the panel, though he was fully eligible,



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for the reason that the disciplinary proceedings under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was pending against him.

3. When this order came to be challenged, this Court disposed of the Writ Petition by directing the appellant to include the name of the respondent and promote him as Diesel Mechanic cum Fitter from the year 2014 without reference to the departmental proceedings initiated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. This order was passed for the reason that on the crucial date, i.e., 01.04.2014, there was no departmental proceedings pending against the writ petitioner or there was no currency of punishment in the form of recovery of loss and therefore, the name of the respondent/writ petitioner ought not to have been withheld by not including his name in the panel for promotion to the post of Diesel Mechanic cum Fitter for the year 2014-2015.

4. The said order is impugned in the present Writ Appeal by the State on the ground that any loss caused to the Government is subject matter of



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recovery and such recovery process is deemed to be a pendency of disciplinary proceedings.

5. The Secretary to Government, Personnel and Administrative Reforms (S) Department, vide communication dated 03.03.2003, had clarified the position stating that currency of punishment imposed in the form of recovery of loss will continue till the loss so caused is recovered in full and the name of the individual, who suffers punishment of recovery of loss, should not be included in the panel until the entire recovery of loss is effected. Subsequently, Personnel and Administrative Reforms (S) Department issued G.O.Ms.No.22, dated 24.02.2014, wherein, Rule 4(a) of the General Rules for the Tamil Nadu State and Subordinate Services was clarified and a notification was issued to the effect that the procedure for preparation of approved list and consideration of members for inclusion in the approved list should take note of the pendency of recovery proceedings as currency of punishment.



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6. Relying upon the above proceedings, the learned Special Government Pleader appearing for the appellant submits that the accident involving a death of a person occurred on 05.07.2011 and FIR was registered at Gandarvakottai Police Station on the same day. Thereafter, a memo was issued to the respondent on 20.12.2012. The delinquent/respondent replied to the same on 10.01.2013. Thereafter, award in the Motor Accident Claim Petition was passed by the Motor Accident Claims Tribunal, Pudukkottai on 10.06.2014. Pursuant to that, recovery proceedings was initiated on 14.11.2014. Therefore, it is contended by the learned Special Government Pleader that the observation of the learned Single Judge in the impugned order is incorrect. The proceedings was initiated even before the preparation of panel and as per G.O.Ms.No.22 dated 24.02.2014 and the earlier clarification of the Government, the name of the respondent/writ petitioner was withheld and now the writ petitioner has already retired from service. Hence, there is no reason or justification to include his name in the panel for promotion to the post of Diesel Mechanic cum Fitter for the year 2014-2015.



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7. On consideration of the rival submissions and the facts involved in this case, though on plain reading of the Service Rules, it appears that pendency of recovery of loss to the Government till the entire amount is recovered, would disentitle the delinquent seeking inclusion of his name in the promotional panel, when we look into the facts of the case and the reason for recovery, we find that the recovery proceedings was initiated pursuant to the award passed by the Motor Accident Claims Tribunal for the accident caused by the writ petitioner and the department itself has directed him to pay the 5% of the award amount in 18 installments and the recovery process has also commenced. If strict interpretation of the Rule and the submission of the learned Special Government Pleader is accepted, then for 1 ½ years, the name of the respondent/writ petitioner cannot be included in the promotional panel. In fact, for two years, his name will not be included in the promotional panel and he will be deprived of his career prospects. If the loss is incurred due to some misconduct or breach of trust, the pendency of recovery process could have been viewed strictly by this Court. Since the recovery process is only due to the alleged negligence and accident, the respondent/writ petitioner, who is already subjected to punishment of



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recovery of 5% of the award amount, shall not be further punished by way of being deprived of his promotion. At the same time, the State cannot be mulcted with financial burden and provide backwages on notional promotion to the writ petitioner for service, which he has not rendered.

8. In view of the above, the impugned order passed in W.P.(MD). No.18365 of 2015 dated 13.10.2015 is set aside. Accordingly, the Writ Appeal is partly allowed directing the appellant herein to give notional promotion to the respondent as Diesel Mechanic cum Fitter just above his immediate junior and re-fix his pensionary benefits and pay the difference of his pension in 18 installments, preferably within a period of nine (9) months. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(G.J.,J.) (C.K.,J.)
04.01.2024

NCC : Yes / No
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