



W.P.(MD).No.28547 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.28547 of 2023

and

W.M.P.(MD).Nos.24609 & 24610 of 2023

K.Eswaran

... Petitioner

VS

1.State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai-600 009.

2.The Inspector General of Registration,
O/o.The Inspector General of Registration,
Chennai-600 028.

3. G.K.Senthil Kumaran

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the second respondent in his proceedings No.13856/A5/2023 dated 05.09.2023 to set aside the same and further direct the second respondent to promote the petitioner as Sub-Registrar Grade-II by placing him in Sl.No.29(a) i.e., over and above his Junior G.K.Senthil Kumaran, Sub-Registrar Gr.II, Manaparai, Trichy in the promotion panel 2016-17 in proceedings No.33404/A2/2022 dated 29.09.2022 and to grant all service and monetary benefits.



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For Petitioner	: Mr.T.Sakthi Kumaran
For Respondent Nos.1 & 2	: Mr.Veera Kathiravan Addl. Advocate General Assisted by Mr.D.Sadiq Raja
For Respondent No.3	: No appearance

ORDER

The instant writ petition has been filed by a Assistant working in the Registration Department, challenging the order passed by the second respondent dated 05.09.2023, wherein, an objection raised by the writ petitioner for the promotion panel dated 11.08.2022 has been rejected.

2. The petitioner herein was originally appointed in the Registration Department as an Assistant and due for his promotion for the post of Sub-Registrar Grade-II in the year 2017. The crucial date for getting promotion in the year 2016-2017 is 01.04.2016. The petitioner was promoted on 26.02.2021, later the promotion of the petitioner and others were cancelled and they were reverted back to the post of Assistant. This reversion order has not been challenged by the petitioner.



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3. On 11.08.2022, again a revised panel was prepared for the year 1997-1998 to 2022-2023. The petitioners name was not included in the said panel on the ground that DVAC proceedings are pending as against him. A charge memo was issued to the writ petitioner on 13.08.2022. Promotion orders were issued to other employees on 29.09.2022, whose names were found in the said promotion panel.

4. The petitioner has given objection to the second respondent on 30.08.2022, challenging the non-inclusion of his name in the panel dated 11.08.2022. Since, the objection was not considered, the petitioner has filed a writ petition in W.P.(MD).No.8420 of 2023 to dispose of his objection. This Court by an order dated 12.06.2023, had directed the 2nd respondent herein to dispose of the objection within a period of twelve weeks on merits and in accordance with law. In compliance of the order of this Court, the present impugned order has been passed by the second respondent herein on 05.09.2023, rejecting the request of the petitioner for inclusion of his name in the panel and for subsequent promotion for the panel year 2016-2017. This order is put to challenge in the present writ petition.



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5. According to the learned Counsel appearing for the writ petitioner, the petitioner is eligible for inclusion of his name in the panel year 2016-2017, for which crucial date is fixed as 01.04.2016. On the said date, no charge memo was pending as against the writ petitioner. Therefore, when the panel was prepared on 11.08.2022, his name should have been included. However, his name was left out on the ground that Directorate Vigilance and Anti-Corruption proceedings were pending against him. The charge memo was issued to the writ petitioner only on 13.08.2022, that is, after the panel was prepared on 11.08.2022.

6. According to the learned Counsel appearing for the writ petitioner, when no charge memo was pending as against the writ petitioner on the date of preparation of panel, any charge memo issued to an employee subsequent to the preparation of the panel would not be a legal impediment for considering him to the promotional post. The learned Counsel appearing for the writ petitioner had relied upon the judgements of this Court namely W.P.(MD).No.3305 of 2017 dated 24.02.2017, W.A.(MD).No.132 of 2021 dated 09.02.2021, W.A(MD).No.846 of 2019 dated 22.06.2021 and W.P.(MD).No.



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5036 of 2023 dated 14.06.2023, to impress upon the Court that when there was no order of punishment on crucial date, the subsequent charge memo cannot be a bar for promotion and the concerned employee's name cannot be excluded from the promotion panel.

7. Per contra, the learned Additional Advocate General appearing for the Respondent Nos.1 & 2 had contended that the Directorate Vigilance and Anti-Corruption proceedings were initiated as against the petitioner as early as on 29.05.2019 itself. Since, the Directorate Vigilance and Anti-Corruption found that they do not have any materials to proceed with the criminal case, they had given instructions for continuation of departmental proceedings before the tribunal. Therefore, the charge memo was issued by the tribunal on 13.08.2022. He further contended that even after the names are included in the panel, if any charge memo is issued, the employee is not entitled to get promotion in view of the service rules in TamilNadu Government Servants (Conditions of Service) Act, 2016. He prayed for dismissal of the writ petition.



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8. I have carefully considered the submissions made on either side and perused the materials available on record.

9. It is not a dispute that no charge memo was pending as against writ petitioner on 11.08.2022, when a panel was prepared for promotion to the post of Sub-Registrar, Grade II from the post of Assistant. However, a charge memo has been issued to the writ petitioner on 13.08.2022, by the Commissioner for Disciplinary proceedings. As per Schedule 11 Clause II(3) of TamilNadu Government Servants (Conditions of Service) Act, 2016, the name of a member of service shall not be considered for inclusion in the approved list, if any enquiry is pending against him in the Tribunal for Disciplinary Proceedings. If specific charges are framed or charge sheet is filed before the date of actual promotion, the employee concerned shall not be promoted, notwithstanding the fact that the name was included in the panel. Even assuming that the petitioner was fully eligible and found suitable for inclusion of his name in the promotion panel dated 11.08.2022, in view of the charge memo dated 13.08.2022, he would not be eligible for promotion in view of the above said service regulations.



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10. In view of the above said facts, the order impugned in this writ petition does not suffer from any legal infirmity. There are no merits in this writ petition, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR,J.

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To

1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai-600 009.

2.The Inspector General of Registration,
O/o.The Inspector General of Registration,
Chennai-600 028.

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