



W.P.(MD)No.30358 of 2023

W.P.(MD)No.30358 of 2023

WEB COPY **R.N.MANJULA, J.**

This matter is listed today under the caption “For being mentioned”.

2. Heard both sides.

3. Considering the submissions, this Court modifies the earlier order dated 28.08.2024 made in W.P.(MD) No.30358/2023 to the following extent:

*“ In paragraph Nos.31 & 32, the words “**partly allowed**” are altered to “**allowed**”.”*

4. The remaining portions of the said order remains unaltered.

5. Registry is directed to carry out the necessary amendment in the order dated 28.08.2024 made in W.P.(MD) No.30358 of 2023 and issue fresh order copy.

05.09.2024

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R.N.MANJULA, J.

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W.P.(MD)No.30358 of 2023

05.09.2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **11.07.2024**
DELIVERD ON : **28.08.2024**



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CORAM:

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.30358 of 2023
and WMP(MD)Nos.26135 & 26137 of 2023

S.Arasu

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary,
Department of Municipal Administration
and Water Supply,
Fort St.George, Chennai-600 009.

2.The Director of Municipal Administration,
MRC Nagar, No.75, Santhom Highway,
Raja Annamalaipuram,
Chennai-600 028.

3.The Commissioner,
Madurai Municipal Corporation,
Madurai, Madurai District.

4.The Commissioner,
Disciplinary Proceedings,
Tribunal for Disciplinary Proceedings,
5/1-B, Vinayaga Nagar,
Madurai-625 020.

..Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari, to call for the



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records relating to the impugned proceedings issued by the fourth respondent in R.O.C.No.A1/83/2023 (TDP.04/2023) dated 27.09.2023, quash the same.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for Mr.K.Ragatheesh Kumar

For R1, R2 & R4 : Mr.Veera Kathiravan
Additional Advocate General
assisted by
Mr.N.Ramesh Arumugam
Government Advocate

For R3 : Ms.S.Devasena

ORDER

This writ petition has been filed challenging the charge memo dated 27.09.2023 issued by the fourth respondent against the petitioner.

2. Heard Mr.Isaac Mohanlal, learned Senior Counsel for the petitioner, Mr.VeeraKathiravan, learned Additional Advocate General assisted by Mr.N.Ramesh Arumugam, learned Government Advocate for the respondents 1, 2 and 4 and Ms.Devasena, learned counsel for the third respondent.



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3. When the petitioner was working as an Executive Engineer, on 02.11.2018, on a surprise inspection, some gold, silver materials and cash were recovered from the petitioner. However, after a detailed enquiry, the petitioner was not found guilty and the other delinquent, namely Balagurunathan, was found guilty for the same. Despite the same, a case in Crime No.7 of 2021 dated 30.04.2021 came to be registered on the very same set of allegations on the file of the Vigilance and Anti Corruption Police Station, Madurai.

4. In view of the above pending criminal case against the petitioner, the petitioner was not considered to his next level promotion as Superintending Engineer. Hence, he filed a writ petition in W.P. (MD)No.10219 of 2021 before this Court seeking to promote him as City Engineer. This Court by order dated 04.08.2022 directed the officials to consider the petitioner for promotion as City Engineer. In the meanwhile, the post of City Engineer was re-designated as Superintendent Engineer. Accordingly, the petitioner was given with the promotion as Superintending Engineer and he was working as such since the date of his promotion. While the matter stood thus, the fourth respondent



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initiated the disciplinary proceedings against the petitioner vide proceedings in R.O.C.No.A1/83/2023 dated 27.02.2023. Challenging the same, the petitioner has filed this writ petition.

5. The learned Senior Counsel appearing for the petitioner submitted that during the enquiry that was conducted earlier, the petitioner was not found guilty and the same was closed. Subsequently, on the same set of allegations, an FIR came to be registered. A charge memo also was issued on the very same allegations.

6. The Vigilance and Anticorruption Department, after registering the criminal case has not chosen to file the charge sheet against the petitioner. Instead, it recommended for departmental action. Consequent to the said recommendation, the present charge memo came to be issued, but with a huge delay.

7. It is further submitted that the foundational materials i.e., Report of the Investigation Agency and consequential recommendation to the Government, were not furnished to the petitioner to make his effective defence on the allegations made against him. In fact, the petitioner had



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made an application seeking such materials under RTI. However, the said materials were not furnished to the petitioner citing the pendency of the proceedings before the Vigilance and Anticorruption.

8. It is the core contention of the petitioner that when the criminal proceedings are pending against the petitioner, the respondent without making any steps to file charge sheet before the criminal Court, had recommended for departmental action only in order to deny further promotion to the petitioner.

9. In support of his contention, the learned counsel for the petitioner had relied upon the following judgments:

1.State of Uttar Pradesh and others vs. Saroj Kumar Sinha [(2010) 2 SCC 772;

2.M.V.Bijlani vs. Union of India and others [(2006) 5 SCC 88];

3.Union of India vs. K.D.Pandey and another [(2002) 10 SCC 471];and

4.State of Punjab and others vs. Chaman Lal Goyal [(1995) 2 SCC 570]



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10. The learned Additional Advocate General for the respondents submitted that the petitioner has involved in a serious crime. At the time of surprise inspection, some silver and gold articles along with money were recovered from the petitioner. The delinquent by name Balagurunathan at the time of enquiry had not stated that the money recovered from the petitioner belonged to him. However, at a later point of time, he admitted that the seized money belonged to him. During the enquiry, the Vigilance and Anticorruption had collected necessary materials and then registered a case in Crime No.7 of 2021 in accordance with law.

11. It is further submitted that the petitioner was promoted to the post of Superintending Engineer. As further action on the recommendation of the Vigilance and Anticorruption Department are pending, the petitioner cannot be considered for the next level promotion.

12. The learned Additional Advocate General tried to make out a point that the explanation letter of the delinquent for the seized money



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15. The surprise inspection was conducted on 02.11.2018. One of the accused namely, Balagurunathan had given an initial statement that he did not know the source of article and cash recovered from the petitioner. However, after a period of six months, on 16.04.2019, he sent a letter to the Vigilance and Anticorruption Department that the money recovered from the petitioner's table belonged to him.

16. Attention was drawn to the letter of the Commissioner of Madurai Corporation dated 21.10.2021 vide proceedings in Vo2/029158/2018, which states that no disciplinary action has been initiated against the petitioner as they were not able to get any detailed report and that it is the Government, who has to decide about initiating any action against the petitioner. Again, vide letter dated 14.02.2022, the Commissioner has reiterated that no departmental action has been taken against the petitioner as he was appointed by the Government. As per the Vigilance and anti-corruption manual the Investigating Officer of the directorate has to send the materials connected to the case under investigation to the tribunal, if the delinquent has to be subjected to the jurisdiction of the tribunal for conducting disciplinary proceedings.



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17. In this regard, it is relevant to refer to clauses 97 and 99 of the Vigilance and Anticorruption Manual / G.O.(3D) No.2, Personnel and Administrative Reforms (Personnel-N) Department, dated 06.01.1993 hereunder:

“97.Functions of the Tribunal

(1) Enquiries by the Tribunal for Disciplinary Proceedings- as constituted by the Commissioner for Disciplinary Proceedings and the Deputy Commissioner for Disciplinary Proceedings - are governed by the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955. The Tribunal has dual functions-one as Enquiry Authority under the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, and the other as Enquiry Authority under Rule 17(b) (i) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1955 and under Rule 3 (b) (i) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. The types of cases that will be referred to the Tribunal by the Government will be in accordance with the statutory provisions under Rules 4 and 5 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955. The Tribunal, as constituted by the Commissioner for Disciplinary Proceedings, will enquire into the cases of Government Servants belonging to Groups A and B; while the Tribunal, as constituted by the Deputy Commissioner for Disciplinary Proceedings, will



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enquire into the cases of Groups C and D Officers. The Tribunals shall function under the administrative control of the Vigilance Commissioner who shall be responsible for reviewing and monitoring all enquiries pending before them.

(2) Under Rule 17-A of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, the Commissioner Deputy Commissioner for Disciplinary Proceedings, is declared as Enquiry Authority to enquire cases falling under Rule 17(b) (i) of the said Rules.

99.Duties of Directorate staff during Tribunal Enquiries:

Immediately on receipt of intimation that a particular case investigated by the Directorate of Vigilance and Anti Corruption has been remitted by the Government to the Tribunal for enquiry, the Investigating Officer concerned of the Directorate will promptly list out and hand over the connected case records including copies of statements of witnesses, explanation of the Accused Officer: and complaint made by the complainant, to the Commissioner/Deputy Commissioner for Disciplinary Proceedings under acknowledgement. Whenever a Detailed Enquiry or Regular, Case taken up on the basis of a genuine petition of a person, who is to be cited as a witness, comes up before the Tribunal for Disciplinary Proceedings, the original petition should be obtained by the Investigating Officer from Head Office and sent to the Tribunal so that it could be filed as an Exhibit, through the said witness. A copy of this list



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of records will simultaneously be handed over to the concerned Prosecutor for Disciplinary Proceedings so that he is made aware of the documents relied on by the prosecution. The Investigating Officer, along with the Prosecutor for Disciplinary Proceedings of the Directorate will assist the Commissioner / Deputy Commissioner for Disciplinary Proceedings in framing appropriate charges against the Accused Officer based on the Part-B of the enquiry /investigation report of the Directorate and the statements of witnesses. When the charges are served on the Accused Officer and the enquiry by the Tribunal commences, the Investigating Officer concerned will ensure that summonses issued by the Tribunal are served on the witnesses immediately on receipt. He will contact the prosecution witnesses sufficiently in advance of each hearing date and refresh their memory with regard to the facts of the case and their earlier deposition during enquiry or investigation. If the Investigating Officer, who actually handled the case in the Directorate earlier, happens to have been ”

18. The petitioner has succeeded in the earlier writ petition and got promoted. Now the petitioner has made an application on 07.04.2023 seeking next level promotion as a Chief Engineer. Immediately, after such application is made, the present disciplinary proceedings has been initiated against the petitioner. There is no document available in



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support of the charges levelled against the petitioner.

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19. The RTI petition of the petitioner was replied by the Public Information Officer through letter dated 20.11.2023 stating that as per Section 8(1)(h) of the RTI Act, the information sought by the petitioner could not be furnished, since the enquiry is still pending before the Vigilance and Anticorruption Department.

20. In fact the petitioner himself has written a letter to the Commissioner that he had perused the files before the Tribunal and got copies of the necessary documents. In this regard, the petitioner has sent a letter to the Commissioner of Disciplinary Authority on 30.10.2023. Further, in the affidavit filed in support of this petition at para No.22, the petitioner has stated that he has received some documents relating to the enquiry. However, he had not stated about the nature of documents.

21. Clause 84(3) of the Vigilance and Anticorruption Manual stipulates as follows:

“(3) On consideration of the Directorate's Final Report in December 1978. Detailed Enquiries and after gathering such



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further information as he may deem fit, the Vigilance Commissioner shall record his findings and forward the case to the Government with his advice whether the accused Public Servant should be criminally prosecuted or whether the case may be placed March before the Tribunal for Disciplinary Proceedings or whether the case may be dealt with departmentally by the appointing authority, or whether the matter should be dropped.”

22. Clause 111 (3) of the Vigilance and Anticorruption Manual is extracted hereunder for better appreciation:

“(3) Whenever departmental action is initiated by the Departmental Disciplinary Authority, the Investigating Officer concerned should obtain a copy of the charge framed against the Accused Officer, go through the same, with reference to the recommendations made in the Final Report and forward them to the Headquarters, along with his report, on the factual accuracy of the charges framed. In the case of Show Cause Notices also, the Investigating Officer should obtain a copy thereof and send it to the Headquarters, along with his remarks regarding the correctness of the same.”

23. The report of the Vigilance Commission sent on 05.09.2022 to the Government would state that the oral and documentary evidence



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available during investigation of the case registered by them against the petitioner and others are insufficient to stand the criminal case before the Court. As the standard of proof for the disciplinary proceedings is only preponderance of probabilities, it was thought fit to recommend departmental action. As the Vigilance and Anticorruption Manual prescribes such powers and functions of the Vigilance Commission, such recommendation has been made. Consequently, charges have been framed against the petitioner through the proceedings of the Tribunal dated 27.09.2023. The said proceedings is a matter under challenge. In fact before filing this writ petition, the petitioner has appeared before the Tribunal and sought copies of the documents. The petitioner's application seeking copies of documents have also been sent to the Government. Since the papers have been sent to the Tribunal, the petitioner was not able to get the copies of the same. However, in the letter of the petitioner addressed to the Tribunal itself it has been stated that he had availed copies of the documents. Hence, there is no question of violation of principles of natural justice.

24. On perusal of the list of witnesses, it is seen that all those



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witnesses have been examined by the Vigilance and Anticorruption Department during its investigation. Despite these many witnesses were enquired by the investigating officer of the Vigilance Anticorruption, they are not able to get convincing materials to file a case before the Court. Now the petitioner has been subjected to the disciplinary proceedings on the very same set of facts and with the very same materials available before the Vigilance Commission at the time of its enquiry.

25. The learned counsel for the petitioner submitted that the delay caused in initiating the disciplinary proceedings for an occurrence said to have been taken place in the year 2018 will frustrate the whole of the proceedings. In support of his above contention, he relied on the judgments of the Hon'ble Supreme Court reported in **2006 (5) SCC 88 (M.V.Bijlani v. Union of India and others)** and **1995 (2)SCC570 (State of Punjab and others v. Chaman Lal Goyal)**. Apart from the above judgments of the Hon'ble Supreme Court, in umpteen number of judgments of the Hon'ble Supreme Court, it has been repeatedly held that it would be unfair to initiate the disciplinary action after a considerable



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delay and that the dead end would make the task of proving the charges difficult and it will not be in the best interest of the administration as well. The essential part of the judgment held in ***State of Punjab and Others v. Chaman Lal Goyal***, is worth extracting below:

“9.Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the fact-, of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing. Now, let us see what are the factors in favour of the respondent. They are:

(a) That he was transferred from the post of Superintendent of Nabha Jail and had given charge of the post about six days prior to the incident. While the incident took place on the night intervening 1st/ 2nd of January, 1987, the respondent had relinquished the charge of the said office on 26-12-1986. He was not there at the time of incident.

.....

10.

11.The principles to be borne in mind in this behalf have been set out by a Constitution Bench of this Court



in *A.R.Antulay v. R.S.Nayak&Anr.* (1992 (1) S.C.C.225). Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. In paragraph 86 of the judgment, this court mentioned the propositions emerging from the several decisions considered therein and observed that "ultimately the court has to balance and weigh the several relevant factors - balancing test or balancing process - and determine in each case whether the right to speedy trial has been denied in a given case". It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of Justice.. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstance of the case.

12. Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the Rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to



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proceed ex-parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped.”

26. So, the spirit of above findings of the Supreme Court would only bestow a duty on the Courts to weigh the factors by taking into consideration of the totality of the circumstances. No doubt, the allegations are serious in nature. The money has been recovered from the office of the petitioner from an unattended jute bag lying on a teapoy there. The delinquent has given a statement that the money belonged to him and it was obtained by him as loan from a private person by name Balagurunathan and kept in the bag. The above statement of the petitioner was not spontaneous. Though the inspection was conducted on 02.11.2018, such statement of Balagurunathan came into existence only on 16.04.2019. However, the explanation was given by the said Balagurunathan that on seeing the inspection squad, he was terrified and hence he threw the money in the manner he thought it was fit. As he was frightened and not convinced to give the statement about the source of money, he could not give the immediate statement but had given it after a considerable delay. At the time of recovery of money in the office of the petitioner, the petitioner did not claim ownership or the responsibility for



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the money and for the reasons of availability of *prima facie* materials, an FIR came to be registered and investigation was also conducted. But the statement of one of the delinquent Balagurunathan was again changed during the investigation and that resulted in dropping of the criminal case.

27. The Vigilance and Anticorruption Department thought it fit to make a recommendation for departmental action on the belief that the standard of proof required for the action will be less stringent and hence basing on the materials collected by them, disciplinary action can be initiated. Before such a recommendation is emanated from the side of the Department of Vigilance and Anticorruption, the petitioner filed repeated writ petitions for getting his promotion and other monetary benefits. One convincing answer given by the respondents for not initiating immediate disciplinary action is that they did not obtain the report from the Vigilance Department. In fact the Department need not have awaited for the report of the Vigilance. Though the Vigilance and Anticorruption Manual empowers the Commissioner of disciplinary proceedings to make suggestions/recommendations for disciplinary action, that will not



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be construed as a pre-requisite or a mandate for the departmental proceedings against the delinquent. In other words, the Department always has the power to initiate disciplinary action irrespective of the report of the Commissioner of Vigilance and Anticorruption. A situation can be visualized where unaccounted money was found by an officer superior to the petitioner during his surprise check and not by the officers of the Vigilance and Anticorruption Department. During such occasions the departmental authority can not wait to take departmental action until the matter is reported to the officer of vigilance and anti-corruption and a report is obtained. Similar is the case when the departmental authority comes to know about the trap or recovery made by a vigilance authority. So a report or recommendation from the Vigilance and Anticorruption cannot be a mandatory prerequisite for initiating the departmental action. Even in the worst case, where the Commissioner of Vigilance and Anticorruption does not make any recommendation for departmental action, the department has got the power to initiate departmental action. So, it is not fair on the part of the respondents to seek excuse in the name of recommendation for the delay caused in initiating the departmental action. As to how the delinquent is accountable for the unauthorised



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money found at his place, the department is also answerable for the inordinate delay caused in initiating the departmental proceedings. As stated already, the case pending with the Vigilance and Anticorruption cannot be the reason for delaying the disciplinary proceedings.

28. One of the delinquent has given statement owning responsibility for the money found in the office of the petitioner, and he is also an accused in the criminal case. Even during the departmental proceedings initiated against the said person he has not stated anything contrary to his earlier statement. During the departmental proceedings he has not only given the statement holding responsibility for the amount recovered, but he has also produced the loan documents for the same. None of the witnesses examined by the Vigilance and Anticorruption Department seems to have given a different version stating that the statement of Balagurunathan is false and that they had seen him getting or arranging money for himself or on behalf of the petitioner through any illegal gratification. In such case even during the departmental proceedings, there is no possibility to get any materials sustaining preponderance of probabilities. No doubt the delay would also erase the memories of the



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witnesses and it would be difficult to recapture the right statement about the event that had taken place before five years. As the loan documents produced during the enquiry are going to be the same, they can not play any magic during the departmental proceedings for tilting the probabilities in favour of the department.

29. Had the departmental action been taken immediately after the inspection unmindful of the pending investigation, there could have been some possibility to get the testimony of some of the witnesses in the earliest point of time. So wasting the resources and time in the name of taking disciplinary action against the petitioner is not going to serve any purpose and no doubt the delay would frustrate the proceedings.

30. However, the delay alone cannot be a factor to disentitle the departmental action and it depends upon the facts and circumstances of each case. In the instant case, the delay coupled with the statement of one of the delinquent by name Balagurunathan would frustrate the whole proceedings.

31. The petitioner has sought the relief of quashing the impugned



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proceedings with a direction to the respondents to promote him to the post of Chief Engineer. Many times, it becomes difficult to seal the gap between what is true and the possibility of proving the same to be true during the departmental proceedings. Hence the negative scope for the departmental proceedings can not be considered as an automatic entitlement for promotion. Further, the promotion is not a matter of right. The merit and seniority plays a vital role in deciding the suitability for promotion. Even in the absence of any pending disciplinary action or currency of punishment, a person will be considered as unfit for promotion. It is for the authorities to evaluate the merit and suitability of an employee for the next level promotion. In view of the above stated reasons, I feel this writ petition can be partly allowed so far as it regards to quashing the impugned proceedings.

32. In the result, this Writ Petition is **partly allowed** and the impugned proceedings of the fourth respondent in R.O.C.No.A1/83/2023 (TDP.04/2023) dated 27.09.2023 is quashed. No Costs. Consequently, connected miscellaneous petitions are closed.



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28.08.2024

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

PJL/TA

To

- 1.The Secretary,
State of Tamil Nadu,
Department of Municipal Administration and Water Supply,
Fort St.George, Chennai-600 009.
- 2.The Director of Municipal Administration,
MRC Nagar,
No.75, Santhom Highway,
Raja Annamalaipuram,
Chennai-600 028.
- 3.The Commissioner,
Madurai Municipal Corporation,
Madurai,
Madurai District.
- 4.The Commissioner,
Disciplinary Proceedings,
Tribunal for Disciplinary Proceedings,
5/1-B, Vinayaga Nagar,
Madurai-625 020.



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R.N.MANJULA, J.

PJL

**Order made in
W.P.(MD)No.30358 of 2023
and
WMP(MD)Nos.26135 & 26137 of 2023**

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