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W.P.No.8109 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2025

Coram:

THE HONOURABLE Mrs.V.BHAVANI SUBBAROYAN

W.P.No. 8109 of 2020 &
W.M.P.Nos.9629 of 2020 & 19841 of 2023

M.Bhuvaneswari

...Petitioner

Versus

1. The State of Tamilnadu
rep. By Principal Secretary to Government,
Youth Welfare and Sports Development Department,
Fort St.George, Secretariat,
Chennai – 600 009
2. The Deputy Director General,
NCC Directorate (TB,P&AN)
4, Navel Technical Unit NCC
Fort St.George, Secretariat,
Chennai – 60 009
3. The Director,
NCC Directorate (TN,P&AN),
4 Navel Technical Unit NCC,
Fort St.George, Secretariat,
Chennai – 600 009
4. The Commanding Officer
4 TN Navel (T) Unit NCC
Guindy, Chennai - 600 025

...Respondents



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Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to grant promotion to the petitioner to the post of Assistant Director in NCC on inclusion of her name in the 2018-2019 panel based on the report of the Departmental Promotion committee meeting held on 24.01.2020 without reference to the subsequent charge memo issued by the 2nd respondent in Memorandum no.1332/SC/MB dated 05.03.2020 served on 16.03.2020 with all consequential and other benefits to the petitioner within a time frame to be fixed by this Court.

For Petitioner : Mr.Jayamalan

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

This Writ Petition has been filed to issue a Writ of Mandamus directing the respondents to grant promotion to the petitioner to the post of Assistant Director in NCC on inclusion of her name in the 2018-2019 panel based on the report of the Departmental Promotion Committee, [hereinafter referred to as DPC] meeting held on 24.01.2020 without reference to the subsequent charge memo issued by



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the 2nd respondent in Memorandum no.1332/SC/MB dated 05.03.2020 served on 16.03.2020 with all consequential and other benefits to the petitioner within a time frame to be fixed by this Court.

2. The brief facts of the case, as averred by the petitioner, are as follows:-

(i) The petitioner was initially appointed as Junior Assistant in Tamilnadu Ministerial Service through Tamilnadu Public Service Commission on 01.04.1987 and posted in National Cadet Corps (NCC) Department. Subsequently, based on her seniority and eligibility, she was promoted as Assistant on 23.03.1993 and further promoted as Superintendent on 16.05.2005, conferred as Selection Grade Superintendent in the year 2015. The next avenue of promotion is to the post of Assistant Director, since no person can be eligible for appointment to the post, unless he/she has put in not less than 5 years of service as Superintendent, the petitioner become eligible for promotion to the post of Assistant Director on completion of 5 years of service in the post of superintendent.

(ii) Even after completion of more than 33 years of service, the petitioner has been subjected to frequent transfer, while her juniors are being accommodated at the headquarters. Therefore, a representation has been forwarded to the Group Commander on 28.05.2019, however, the same was refused. The Departmental Promotion Committee held on 24.01.2020



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considered the petitioner's name and found fit for inclusion in the panel for the post of Assistant Director of NCC in the order of preference as No.1 based on merit and ability as per the provisions contained in Tamilnadu Government Servants (Conditions of Service) Act, 2016. Accordingly, her name was found fit for inclusion in the panel for the year 2018-2019 with crucial date as 01.09.2017. for the said post lying vacant from 31.07.2018, thereby the minutes of the meeting held on 24.01.2020 declared her fit.

(iii) While the matter stood thus, a show cause notice on 03.03.2020 was issued alleging certain lapses while discharging her duty and she submitted a detailed reply on 17.03.2020. Subsequently, the 2nd respondent issued a charge memo dated 05.03.2020 on different counts, served on 16.03.2020 on the premises that she had replied arrogantly. Further a detailed explanation to the said charge memo was submitted by the petitioner, the same was not considered, hence the petitioner has come up with the present petition.

3. The learned counsel for the petitioner would submit that it has been held in catena of decisions of Hon'ble Supreme Court as well as this Court that the panel has to be prepared every year for inclusion of names of the eligible persons as on the crucial date based on the estimated vacancy of the panel year, therefore, when the name of the petitioner is directed to be included in the panel



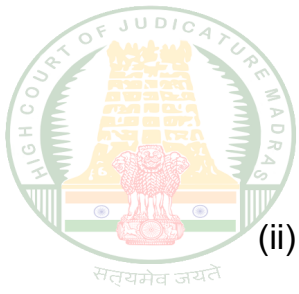
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for the year 2018-2019 for promotion to the post of Assistant Director, the right of promotion based on such inclusion of panel cannot be deprived by referring to the subsequent charge memo dated 05.03.2020 served on 16.03.2020 on filmsy charges.

4. The learned counsel for the petitioner in support of his contention has relied on the Judgment passed by this Court in W.A.No.1151 of 2018 dated 26.06.2018 and W.P.No.3536 of 2013 dated 14.10.2019. Hence the learned counsel for the petitioner submitted representation on 14.05.2020 to the 1st respondent to issue necessary posting orders as Assistant Director of NCC based on 2018-19 panel by referring the fact that there is a vacancy lying from 31.07.2018 and the DPC has already submitted reports for inclusion of petitioner's name in the panel, whereas, the 1st respondent has not passed orders for approval of panel and to give promotion based on 2018-2019 panel, thereby pleaded to allow the petition.

5. Apart from the above, the learned counsel for the petitioner relied on the following Judgments in support of the case:

(i) Union of India and Others Vs. N.R.Bannerjee and Others reported in (1997) 9 SCC 287.



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(ii) Judgment of the Hon'ble Division Bench of this Court in Government of Tamil Nadu rep. By its Secretary to Government and Another Vs. Balamohana Murugan [2021 SCC Online Mad 9672].

(iii) Judgment of the Hon'ble Division Bench of this Court in the Engineer in-chief, WRO., and the Chief Engineer (General), Public Works Department, Chepauk, Chennai and another Vs. C.L.Pasupathy.

6. Per contra, a detailed counter affidavit has been filed on behalf of the 1st respondent wherein it is averred as under:-

(i) After due scrutiny, the name of the petitioner was recommended by the DPC in a meeting held on 24.01.2020 for inclusion in the regular panel for the post of Assistant Director for the year 2018-2019, meanwhile the charges were framed under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules against the petitioner by proceedings dated 05.03.2020. As against the same, the petitioner has filed this Writ Petition. This Court vide order dated 09.06.2020 in W.M.P.No.9629 of 2020 has ordered that the "sole post of Assistant Director shall not be filled up". Subsequently, the petitioner has also been inflicted with a punishment of increment cut for one year without cumulative effect vide proceedings dated 29.06.2020. As per Clauses (8) and (15) in Item II in Part A of Schedule XI, 7(1) of the Tamilnadu Government Servants (Conditions



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of Service) Act, 2016, pendency of charges framed under Section 17(b) of the said Act against a member shall be a bar for inclusion of name in the approved list and no member of service shall be promoted or appointed to a post, if they are undergoing any punishment. Hence the petitioner is not entitled for appointment to the post of Assistant Director. Further, the orders relied on by the learned counsel for the petitioner is not applicable to the present case on hand.

7. The learned Additional Government Pleader appearing for the respondents would contend that the crucial date for preparation of the panel of eligible superintendents for promotion as Assistant Director for the year 2018-2019 is 01.09.2017. The DPC, which was convened on 24.01.2020 has recommended the name of the petitioner, as fit for inclusion in the said panel. Based on the same, the Government vide Letter No.2328/YW1/2019-7, Youth Welfare and Sports Development Department dated 30.01.2020 has requested the Head of Department for details of vacancies in the post of Director.

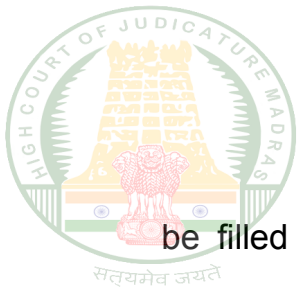
8. Further, the learned Additional Government Pleader appearing for the respondents would contend that only after drawal of panel, i.e., list of approved candidates, the petitioner's name would be considered for promotion based on her eligibility and merits as admissible by the Rules in force. Pending drawal of



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approved panel, based on the report of complaints and allegations dated 22.01.2020 submitted by the Head of office, the Disciplinary authority of the petitioner initiated disciplinary proceedings under Rule 17(b) of Tamilnadu Civil Service (Discipline and Appeal) Rules against the petitioner on 05.03.2020. The head of the department furnished recommendations to the Government on 11.05.2020 that the petitioner cannot be promoted / appointed to the post of Assistant Director, as the charges had been framed against her before the actual promotion. Pending drawal of approved panel, the petitioner was inflicted with the punishment of "Withholding of increment for a period of one year without cumulative effect" on account of proved lapses vide proceedings dated 29.06.2020.

9. Further, the learned Additional Government Pleader appearing for the respondents would also contend that the punishment was imposed on the petitioner after the crucial date of the panel, but before the actual promotion, therefore, the petitioner shall not be given promotion / appointment to the higher post, as per A(II) (11) of Schedule XI read with Section 7(1) of Tamilnadu Government Servants (Conditions of Service) Act, 2016. Hence the petitioner filed the present Writ Petition before this Court and this Court in W.M.P.No.9629 of 2020 on 09.06.2020 ordered that the "sole post of Assistant Director shall not



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be filled up". In view of the same, the NCC Department vide proposal dated 31.07.2020 requested the Government that one vacancy pertaining to the panel year 2018-2019 in the post of Assistant Director shall be kept vacant, pending receipt of final orders in this Writ petition. That apart, he would also submit that the petitioner was awarded with the punishment of "withholding of two annual increments falling due next with cumulative effect" vide NCC Directorate proceedings Memo No.1332/Estt/SC/MB dated 09.04.2021 on account of proven charges framed against the petitioner in Memo No.1332/SC/MB dated 05.03.2020, thereby pleaded to dismiss the petition.

10. Heard the learned counsel on either side and perused the documents placed on record carefully.

11. It is not out of place for this Court to mention here that in a catena of decisions, various Hon'ble Division Benches of this Court deprecated similar actions of the authorities and extended benefits to the employees/Government Servants, one such recent decision is the Judgment of the Hon'ble Division Bench of this Court in V.Visweswaran Vs. Director of Handloom and Textiles, (2021) 5 Mad LJ 97, wherein, it has been held as follows:-

"3. The only issue which falls for consideration in this appeal is



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whether the appellant's name can be passed over and not included in the panel for promotion to the post of Handloom officer on the ground that a charge memo was issued much after the crucial date. In this regard, it is relevant to note Section 7(1) of the Tamilnadu Government Servants (Conditions of Service Act), 2016 which reads as follows:-

“Mere filing of cases in Courts by the appropriate investigation Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list.”

12. It is pertinent to point out that crucial date for preparation of the panel of eligible superintendents for promotion as Assistant Director for the year 2018-2019 is 01.09.2017. The DPC recommended the name of the petitioner, who was Selection Grade Superintendent, at that point of time, as Fit, for inclusion in the panel of eligible Superintendents for promotion as Assistant Director for the year 2018-2019 during the meeting held on 24.01.2020. Further, the charges were framed under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rule against the petitioner on 05.03.2020 and served only on 16.3.2020. Thereafter, the petitioner approached this Court and obtained an order indicating that “the sole post of Assistant Director shall not be filled up”. It is relevant to note that as on the crucial date, there was no charge memo issued to the petitioner

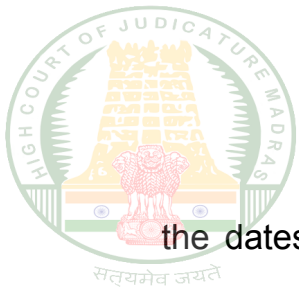


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and the charge memo, which was allegedly issued after the crucial date cannot be an impediment to promote the writ petitioner and she should have been considered for promotion for the panel year 2006-2007.

13. In the present case, the respondents have contended that punishment, viz., *“Withholding of Two Annual Increments falling due next with cumulative effect”* vide NCC Directorate Proceedings Memo No.1332/Estt/SC/MB dated 09.04.2021 on account of proven charges framed against the petitioner vide proceedings dated 05.03.2020, was later imposed on the petitioner. However, this Court finds that such punishment, imposed after the recommendation and after the charge memo served later, cannot retrospectively affect the petitioner’s rights. The promotion panel was for the year 2018–2019, and the vacancy arose as early as 31.07.2018. The inclusion of the petitioner’s name in the panel was prior to any punitive action, and she was clearly eligible as on the crucial date. The attempt of the respondents to deprive the right of the petitioner for promotion on the basis of later events is unjustified.

In view of the above, it has been categorically found that the DPC has recommended the name of the petitioner at the time when the meeting was convened on 24.01.2020, when the crucial date was on 01.09.2017 and on both



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the dates, there was no charge memo issued / pending against the petitioner.

Hence the Writ Petition is allowed and the respondents are directed to include the name of the petitioner in the 2018-2019 panel based on the report of the Departmental promotion committee meeting held on 24.01.2020 without reference to the subsequent charge memo. Consequently, connected miscellaneous petitions are closed. No costs.

25.04.2025

Index:Yes / No

Internet: Yes/no

Speaking / non speaking order

ssd

To

1. The State of Tamilnadu
rep. By Principal Secretary to Government,
Youth Welfare and Sports Development Department,
Fort St.George, Secretariat,
Chennai – 600 009
2. The Deputy Director General,
NCC Directorate (TB,P&AN)
4, Navel Technical Unit NCC
Fort St.George, Secretariat,
Chennai – 60 009
3. The Director,
NCC Directorate (TN,P&AN),
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Chennai – 600 009
4. The Commanding Officer
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V.BHAVANI SUBBAROYAN, J.

ssd

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