



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2025

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No. 23739 of 2018

and

WMP.Nos.27692 & 27693 of 2018

K. Edwin Santhoshkumar
S/o A.Kunju Pillai 88,
N.V. Street, Ganeshapuram
Nagercoil 629001
Kanyakumari District. ... Petitioner

Vs.

1.? ?The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment Department,
Fort, St. George, Chennai 600009.

2.? ?The Commissioner,
Department of Employment and Training
Guindy, Chennai 600032.

3.? ?The Joint Director CT,



Department of Employment and ,

Guindy, Chennai 600032.

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4.? ?The Principal,

Government Industrial Training

Institute (Men), Nagercoil,

Kanyakumari District. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents herein to promote the petitioner as Manager in any one of the Government ITI's on par with Ms.C.Gladwill, Manager, Government ITI, Pettai, who is the junior to the petitioner in the cadre of Accountant/Store Keeper.

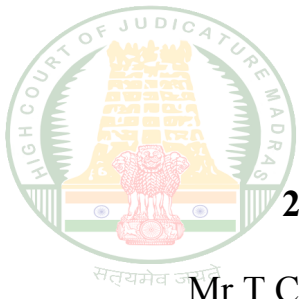
For Petitioner : Mr.S.Thirumavalavan

For Respondents :Mr.T.Chezhian, AGP for RR1 to 3

: No appearance for R4

ORDER

The writ petition has been filed seeking a writ of mandamus against the respondents to promote the petitioner to the post of Manager in any one of the Government ITI's on par with his immediate junior Ms.C.Gladwill, Manager, Government ITI, Pettai, and pass such further orders.



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2. Heard Mr.S.Thirumavalavan, learned counsel for the petitioner, Mr.T.Chezhan, learned Additional Government Pleader for the respondents 1 to 3 and perused the materials available on record.

3. The petitioner was working as an Accountant in Govt. ITI, Veerakeralampudur and his next level of promotion is Office Manager/Superintendent. The 2nd respondent is the competent authority to issue promotion. And for promotion to the post of Manager /Superintendent the 2nd respondent has prepared a panel among the feeder categories namely Assistants, Store Keeper and Accountants for the year 2015-2016. Since, the petitioner's name was not found to be placed in the panel, he made an objection to the 2nd respondent and the 2nd Respondent vide his communication dated 03-05-2017 stated that there was no pending enquiry or punishment on the crucial date 15.3.2014. At the time when the panel was prepared, the petitioner was imposed with two punishments and hence the petitioner's name was not included in the panel. Once again on 12.4.2014 another panel was prepared and published on 18.4.2018, even in that panel, the petitioner's name was not included. Hence the petitioner made an objection on 23.4.2018. But without considering the objection of the

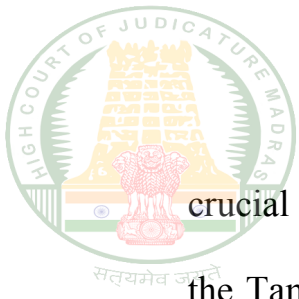


petitioner, the 2nd respondent has issued promotion order in an hurry. Hence the petitioner has filed this writ petition seeking suitable directions.

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4. The learned counsel for the petitioner submitted that while preparing the promotional panel to the post of Superintendent for the panel year 2014-2015, the service records between the period from 9.9.2014 to 13.09.2016 were called for. Unfortunately, the petitioner was issued with a charge memo on 29.8.2016. Hence his name has not been included in the panel finalised on 11.11.2016. As on 11.11.2016 the petitioner was not imposed with any punishment and even the charge memo issued against him was only on a minor lapse under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and hence there could not have been any impediment to consider the petitioner's name for promotion. But without including the name of the petitioner the promotion orders were issued.

5. The learned additional government pleader for the respondents submitted that the petitioner's name has not been included in the earlier panel in view of the show cause issued to him. As the petitioner has been issued with a punishment between the period from 1.10.2017 to 30.9.2018 and another punishment between the period from 1.10.2018 to 31.03.2019, his name has not been included in the panel year 2016-2017 and 2017-2018. The



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crucial dated for 2017-2018 panel year is 15.3.2017. As per Schedule 11 of the Tamil Nadu Government Servant (Conditions of Service) Act 2016 any punishment imposed on the member of service within a period of 5 years prior to the crucial date and punishment on censure imposed within a period of one year prior to the crucial date shall be held against the number of service and his name shall not be considered for the inclusion in the approved list. Clause 11 of Schedule 11 (Part -A) of the Tamil Nadu Government Servants (Conditions of Service) Rules, 2016, would reads as under:

“(11) Any punishment (other than ‘Censure’) imposed on a member of service within a period of five years prior to the crucial date and a punishment of ‘Censure’ imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including ‘Censure’ imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.”

6. According to the said rule, even Any punishment, including ‘Censure’ is imposed on a member of service after the crucial date, but

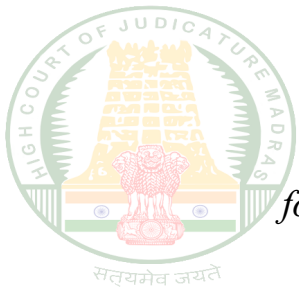


before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.

7. So far as this petitioner is concerned, he has not been imposed with any punishment on the crucial date of 15.3.2014 for preparing promotion panel for the year 2014-2015. Even though the petitioner was issued with the charge memo on 29.08.2016, i.e. before the actual promotional order dated 11.11.2016 that was only a charge against 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which states about the procedure to be followed to impose minor penalties and hence, Clause 4 of the Schedule 11 will come to the rescue of the petitioner. According to Clause 4 issue of the show cause notice or charges framed under Rule 17 (a) of the Tamil Nadu Government Servants (Conditions of Service) Rules, 2016 shall not be a bar for inclusion of the name of the individual in the approval list.

8. According to sub clause (a) only pendency of charges framed under Rule 17(b) shall be a bar for including a name in the approval list. For the sake of clarity both the clauses are extracted as under:

“(4) Issuance of a show cause notice or charges framed under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of service shall not be a bar



for inclusion of his name in the approved list.

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(8) Pendency of charges framed under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list”.

9. So it is not the contention of the respondent that the charge memo issued to the petitioner on 29.8.2016 was under Rule 17(b). Only if the petitioner was given with 17 (b) charges that will operate as a bar against the petitioner to be included in the promotional panel for the relevant period. Admittedly the charges issued against the petitioner was under rule 17(a) and hence the petitioner has to be treated under clause 4 and not under clause 8.

10. As stated already on the date when the promotion order was issued i.e. On 11.11.2016 the petitioner did not have any pending punishment or any previous punishment history and hence there is no reason to ignore the petitioner's name from the promotion panel year 2014-2015 which had the crucial date of 15.3.2014.

11. In view of the non-inclusion of the petitioner in the panel year

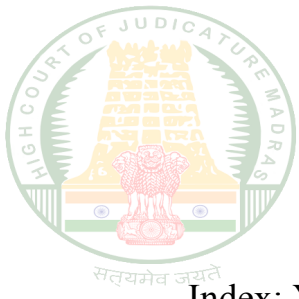


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2014-2015 the petitioner loses not only parity with that of his immediate junior, in view of the subsequent punishment imposed in the year 2017 he also loses the opportunity of being included in the subsequent promotional panel. As the petitioner did not have any pending punishment or 17 (b) charges as on the crucial date of 15.3.2014 corresponding to the panel year 2014-2015 and as the actual promotion was also issued on 11.11.2016, on which date he did not have any pending punishment, it is right for the petitioner to claim that the petitioner ought to have been promoted to the post of Manager on par with his immediate junior Ms.C.Gladwill, Manager, Government ITI, Pettai.

12. In view of the above discussion the writ petition is **allowed**. The respondent is directed to give notional promotion to the petitioner on par with his immediate junior Ms.C.Gladwill, Manager, Government ITI, Pettai, with effect from 11.11.2016 and with monetary effect from the actual date on which the petitioner has been given with the actual promotion and assumed charges in the promoted post and pass orders to that effect, within a period of four weeks from the date of receipt of a copy of this order.

21.04.2025



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Index: Yes/No

Internet: Yes/No

Speaking /Non-speaking order

jrs

To

1.The Secretary to Government,

Government of Tamil Nadu,

Labour and Employment Department,

Fort, St. George, Chennai 600009.

2.The Commissioner,

Department of Employment and Training

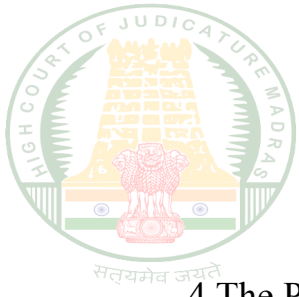
Guindy, Chennai 600032.

3.The Joint Director CT,

Department of Employment and ,

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R.N.MANJULA, J.

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