



W.A.(MD)No.527 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)No.527 of 2025
and
C.M.P.(MD)No.4056 of 2025**

1.The Transport Commissioner,
Chepauk, Chennai-5.

2.The Joint Transport Commissioner (Admin),
Chepauk, Chennai-5.

... Appellants

Vs.

R.Ravichandran

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.6058 of 2024, dated 30.07.2024.

For Appellants :Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.M.Sarangan
Additional Government Pleader
For Respondent :Mr.A.Nawaz Khan
for M/s.Ajmal Associates



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JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The writ appeal is filed by the respondents in the writ petition against the order, dated 30.07.2024, passed in W.P.(MD)No.6058 of 2024.

2. The writ petition was filed for issuance of Writ of Certiorarified Mandamus, to quash the deferred list published by the 1st respondent, dated 19.02.2024, in so far as the petitioner is concerned and consequently, to direct the respondents to promote the petitioner as Superintendent on par with his batch mates for the panel year 2016-2017 taking into account of the crucial date, i.e., on 15.03.2016 since there was no pending charge memo and currency of punishment and without reference to the subsequent charge memo issued under 17(b), dated 03.06.2020, in terms of Section 7, Schedule XI Part A of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

3. The brief facts as stated in the writ petition are that the writ petitioner was in the list as on the crucial date 15.03.2016 for promotion and there was no charge



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pending against the writ petitioner, but the respondents deferred the petitioner's name in the promotional panel for the year 2016-2017 by citing a charge memo, dated 03.06.2020, which is subsequent to the crucial date. Since the panel for 2016-2017 was belatedly prepared on 19.02.2024, the subsequent charge memo cannot be cited to decline promotion. In other words, even though the charge memo was issued in the year 2020, the respondents failed to include the petitioner's name for the panel 2016-2017, hence the writ petition was filed.

4. The contention of the appellants is that the charges were framed against the writ petitioner under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and the same is pending. The charges are grave and serious in nature. If the allegations in the charges are proved, the writ petitioner has no legitimate right to continue in the service. On assessment of the writ petitioner's service, the authority concerned found that the writ petitioner was not meritorious or fit for promotion. The non-drawal of regular panel for the post of Superintendent for the year 2016-2017 was due to the pendency of W.P.No.13520 of 2018 and W.A.No.1565 of 2019 and SLP before the Hon'ble Supreme Court. Hence, the department could not arrive at the decision in fixing seniority between promoted Assistants and direct



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Assistants for any promotion. The employee should have unblemished service to protect the public interest. Hence, promotion was denied on the reasonable ground of pendency of charge memo and disciplinary proceedings. The appellants acted as per the provisions in item 8 part II under Part A in Schedule XI read with Sec 7(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the writ petitioner was deferred in the panel to the post of Superintendent for the year 2016-2017. There are several judgments which granted promotion beyond the scope of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, but the same are stayed in the appeal. The appellants have deferred the promotion to the writ petitioner by following the judgment in the case of ***Union of India Vs. K.V.Janakiraman*** reported in ***AIR 1991 SC 2010***, hence, prayed to dismiss the writ petition. The relevant portion of the judgement is extracted hereunder:

"If the Tribunal's finding is accepted, it would mean that by giving him the selection Grade w.e.f. July 30, 1986 he would stand rewarded notwithstanding his misconduct for the earlier period for which the disciplinary proceedings were pending at the time of meeting of the DPC and for which he was visited with a penalty. We, therefore, allow the appeal and set aside the finding of the Tribunal".



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5. After considering the rival submissions, the Writ Court has held that even though the audit objections on the allegation made on the charge relating to the year 2016-2017, admittedly, no charges have been issued in this regard during the relevant point of time. The Writ Court relied on the order, dated 10.06.2020, passed in W.P.(MD)No.8507 of 2024 and allowed the writ petition and impugned order, dated 19.02.2024 as far as the petitioner is concerned, was quashed. The Writ Court directed the respondents in the writ petition to include the writ petitioner's name in the promotional panel for the year 2016-2017 for the post of Superintendent. Aggrieved over the writ order the present writ appeal is filed.

6. The primary contention of the appellants is that as per the provisions in guideline 8 Part II under Part A in Schedule XI read with Sec 7(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the writ petitioner was deferred in the panel to the post of Superintendent for the year 2016-2017. It is seen under Part II guidelines are issued for "Consideration of members for inclusion in the approved lists", wherein 21 guidelines are issued. Under guideline 8 it is stated as under:



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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.”

The Learned Additional Advocate General appearing for the appellants vehemently submitted that the pendency of charges as on the date of drawal of panel for actual promotion or on the actual date of promotion, would defer the member from promotion or appointment. This Court perused the said guideline, on plain reading of the guideline 8 it is seen the said guideline neither states that **“pendency of charges on the date of drawal of panel for actual promotion”** nor stating that **“pendency of charges on crucial date”**. Therefore, this Court is of the considered opinion guideline 8 is not clear whether the pendency of charges on crucial date would defer promotion or whether the pendency of charges on drawal of panel of actual promotion would defer promotion. In such circumstances if the contention of the appellant is accepted that pendency of charges on the date of drawal of panel for actual promotion would defer promotion, then the same would be hit by the principles of Casus Omissus. Whenever the word or phrase has not been stated in the statute, rules, notification, circular or guidelines, then the same cannot be supplied under the guise of interpretation. In short, the omissions in a statute cannot



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be supplied by construction. Therefore, the contention of the appellants ought to be rejected.

7. Now, on reading other guidelines some clarity could be arrived at. On reading the guideline 5, it is evident that it speaks of “crucial date” only and not drawal of panel of actual promotion the same is extracted hereunder:

*“(5) Mere filing of cases in Courts by the appropriate Investigating 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.”*

The guideline 5 specifically states that if specific charges are framed on the **crucial date** or if charge sheet has been filed in the criminal case on the **crucial date**, then the member cannot be included in the list for promotion. And it is not speaking of “date of drawal of actual promotion”.

8. The guideline 10 states if **suspended** on crucial date or on the date of actual promotion. The guideline 15 states if the member is **undergoing punishment** on crucial date or on the date of actual promotion.



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9. From the guidelines 5, 10, 15 and the discussion above, it is evident that for suspension and undergoing punishment alone the appellants are empowered to take both the crucial date and date of actual promotion. And for all other purposes the appellants are empowered to take only crucial date alone. And the appellants are not empowered to take date of actual promotion.

10. It is seen that based on the order passed in SLP regarding fixing of seniority, contempt petition was filed in C.P.(C)Diary No.6415 of 2021, wherein an order dated 18.04.2023 was passed. Based on the said order, the government had issued Letter No.5230612/S.Spl./2023-11 dated 14.09.2023 a consolidated instructions were issued, wherein under clause 2 the following instruction along with example is issued and the same is extracted hereunder:

*"2. The suitability of the candidates as on the crucial date of the panel year has to be assessed as per Section 7, Schedule XI Part A of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 i.e., pendency of charges, currency of punishments,. etc., with reference to the crucial date. While carrying out this exercise, if any of the above impediments as to the suitability of the candidate is found to exist **arising after the crucial date,***



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such impediments need not be considered, as a bar while revising the panel.

Example:

The panel for the post of Assistant Section Officer for the year 2006 2007 has to be redrawn. The crucial date of the panel was 01.08.2006. Due to revised seniority at the entry level, the name of XX has to be considered for inclusion in the above panel. Then the suitability of XX on 01.08.2006 has to be assessed as per Section 7, Schedule XI Part A of the Tamil Nadu Government Servants (Condition of Service) Act, 2016. Suppose if 17(b) charge or he had undergone punishment of stoppage of increment etc., on 01.08.2006, his name need not be included in the panel for the year 2006-2007.

In the above example, if 17(b) charge is pending against XX or he is undergoing the punishment of stoppage of increment, etc., as on the date of redrawing of the panel, that need not be held against him for inclusion in the panel for the year 2006-2007."

When the above instructions clearly states that only "crucial date" alone ought to be taken into consideration and not drawal of panel for actual promotion, then the contention of the appellants is against their own instructions, besides being against the Conditions of Service Act, 2016 itself.



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11. In the present case, it is seen that the petitioner was appointed as Direct Assistant through TNPSC on 24.12.2012. There was dispute in fixing the inter-se seniority between Direct Recruits Assistants and Promotee Assistants. And within the Promotee Assistants among Junior Assistants/ Typist/ Steno-typist. The Hon'ble Supreme Court had issued certain guidelines to fix seniority. Hence the panel was drawn on 20.12.2023 for the year 2012-2013 fixing the seniority for Junior Assistants/ Typist/ Steno-typist fit for promotion as Assistant. Thereafter, the panel for promotion **for the year 2016-2017** was considered and the crucial date is 15.03.2016. As on the crucial date 15.03.2016 for the year 2016-2017 there was no charge memo. Therefore, mere issuing charge memo dated 03.06.2020 subsequent to crucial date of 15.03.2016 would not defer the petitioner's right to include in the panel for 2016-2017 and the consequent promotion. Further as on date the petitioner is not undergoing punishment nor under suspension, therefore, the contention of "the date of actual promotion" has not legal stand at all.

12. Further, it is seen that the charge memo is issued in the year 2020 and the same is not concluded until 2025. Any charge memo if issued, it has to be concluded



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within reasonable time. For the alleged occurrence from 01.01.2016 to 30.04.2017, the appellants have issued memo in the year 2020. The panel was prepared for the year 2016-2017 in the year 2024. Therefore, the writ petitioner would lose promotion from 2016 to 2025. Further, if the punishment is imposed, then the delinquent ought to undergo “check period of five years”. Therefore, if the contention of the appellants is accepted, then the employee would be without any promotion from 2016 to 2030, thereby the right of the employee would be severely affected and the same cannot be permitted.

13. If the disciplinary proceedings are concluded at the earliest, then the employee would serve in the post without any tension. Therefore, any disciplinary proceedings except the misappropriation case where criminal case are filed, the disciplinary proceedings ought to be concluded at the earliest, at least within a period of one year, so that it coincide with one year panel period. If it is not concluded, the delinquent is entitled to be considered for promotion. In fact, in some cases, the higher authorities are using the same as a tool to decline promotion and keep the knife hanging on the employee endlessly. Therefore, in order to have a balance in the promotion as well as disciplinary proceedings, it is incumbent on the



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authorities to complete the disciplinary proceedings at least within a period of one year.

14. (*)"This Court had analysed the issue independently and had come to the conclusion that it is only crucial date and not the date of actual promotion. Hence the subsequent charge memo will not be an impediment to consider the petitioners' case for promotion. The Writ Court had rightly held it is only crucial date and not date of actual promotion. Therefore, this Court is not inclined to interfere with the impugned order. The writ petitioner's name may be included in the panel before his immediate junior and then the petitioner's name shall be considered for promotion. This exercise shall be completed within a period of eight [8] weeks from the date of receipt of a copy of this order."

15. At this juncture, the appellants sought liberty to complete the disciplinary proceedings within a time frame. This Court is of the considered opinion the appellants need no order or liberty to conclude the proceedings within time frame.



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16. With the above said directions, the writ appeal is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

Sd/-

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(*)Corrected order of this court dated 04.04.2025 in WA(MD).527/2025. Paragraph 14th insert above.

Sd/-

Assistant Registrar (C S II)

// True Copy //

/01/2025

Sub Assistant Registrar
(CS- I/ II / III / IV)

Tmg

To:-

(*)To be substituted to the order already despatched

To:

- 1.The Transport Commissioner,
Chepauk, Chennai-5.
- 2.The Joint Transport Commissioner (Admin),
Chepauk, Chennai-5.
- 3.The Additional Government Pleader,
Madurai Bench of Madras High Court,
Madurai.



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+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-15889[F] dated 12/03/2025)

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Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023