

W.P.(MD).No.18344 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 24.11.2023

ORDER PRONOUNCED ON : 13.12.2023

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.18344 of 2021
and WMP(MD).No.15152 of 2021**

K.Sivanandam

....Petitioner

Vs

1.The State of Tamil Nadu
Rep.by its Secretary to Government
Rural Development and Panchayat Raj Department
Secretariat
Chennai -9

2.The Director of Rural Development and Panchayat Raj
Rural Development and Panchayat Raj Department
Panagal Building
Saidapet
Chennai -15

3.The District Collector
Office of the Collectorate Campus
Sivagangai
Sivagangai District

...Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in his proceedings in Letter



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No.3050/E1/2021-3 dated 13.09.2021 and quash the same as illegal and consequentially to direct the respondents to promote the petitioner notionally to the post of Assistant Director (Panchayat) for the year 2005-2006 in the light of G.O(D).No.442, Rural Development and Panchayat Raj Department dated 08.08.2007 without reference to the subsequent charge memo issued in TDP No.11 dated 23.08.2007 with all attended monetary benefits within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkateshkumar
For M/s.Ajmal Associates

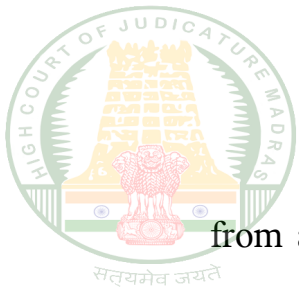
For Respondents : Mr.G.Sivaraja
Government Advocate

ORDER

The present writ petition has been filed by a retired Block Development Officer challenging the order of the first respondent, wherein the request of the writ petitioner for inclusion of his name in the panel for the year 2005-2006 for being promoted as Assistant Director of Panchayat has been rejected.

2(A).The admitted facts are as follows:

(i)The petitioner while working as a Block Development Officer was issued with a charge memo on 16.12.2005. Not being satisfied with the explanation offered by the writ petitioner, an enquiry officer was appointed. As per the enquiry report dated 06.01.2007, the petitioner was exonerated



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from all the charges. While the charge memo was pending, the petitioner's name was not included in the panel of the Assistant Director of Panchayat for the year 2005-2006.

(ii)The petitioner has made a representation to the first respondent to include his name in the panel for the year 2005-2006. Vide G.O(D).No.442, Rural Development and Panchayat Raj Department dated 08.08.2007, his seniority was refixed and his salary was also revised on par with his junior. However, no action was initiated to promote the petitioner as Assistant Director.

(iii)The petitioner had filed WP(MD).No.29324 of 2007 seeking to issue a writ of mandamus, directing the first respondent to implement G.O(D).No.442, Rural Development and Panchayat Raj Department dated 08.08.2007. The High Court was pleased to dispose of the writ petition on 07.09.2007 directing the first respondent to accord promotion. However, instead of promoting the writ petitioner, disciplinary proceedings were initiated as against the writ petitioner in TDP.No.11 dated 23.08.2007. The petitioner had attained superannuation on 31.05.2012 and he was placed under suspension and not permitted to retire from service. The disciplinary proceedings got terminated on 30.04.2017 and he was permitted to retire on 16.07.2017.



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(iv) Though the petitioner is eligible for promotion to the post of Assistant Director (Panchayat) in the year 2005-2006, his name was not included in the panel. Hence, the petitioner has again given a representation on 12.03.2020 seeking to grant promotion. However, the same was rejected under the order impugned in the writ petition dated 13.09.2021 primarily on the ground that after the charges were dropped on 06.01.2007, a second charge memo was issued to the writ petitioner on 23.08.2007 and the final orders were passed only on 30.07.2017 in the said second charge memo.

(v) The petitioner has got superannuated on 31.05.2012 and therefore, the petitioner is not entitled to include his name in the panel for the year 2005-2006. Hence, the present writ petition.

(B).Contentions of the Counsels:

3. According to the learned counsel for the writ petitioner, the crucial date for inclusion of his name in the promotion panel is 01.04.2006. A charge memo had been issued to him on 16.12.2005. Since a charge memo was pending, his name was not considered and it was overlooked. However, the charges were dropped on 06.01.2007. Therefore, the petitioner ought to have been promoted on par with his junior after the charges were dropped.



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4.The learned counsel had further contended that the pendency of a second charge memo, cannot be a legal impediment for considering the name of the writ petitioner for promotion if on the crucial date, there was no legal impediment or the charges have ended in favour of the writ petitioner subsequently.

5.The learned counsel for the writ petitioner had relied upon the judgment of the Hon'ble Supreme Court reported in **(2000) 7 SCC 210 (Delhi Jal Board Vs. Mahinder Singh)**; the judgment of our High Court reported in **(2013) 6 MLJ 305 (G.Anburaj Vs. Government of Tamil Nadu and another)** and the order of the Division Bench of our High Court in **W.A.No.2335 of 2019 (The Principal Secretary to Government and others Vs. S.Ram Kumar)** dated 07.10.2020 to contend that the pendency of a second charge memo cannot be a bar to consider the name of the writ petitioner for inclusion of his name in the panel for the previous year.

6.Per contra, the learned Government Advocate appearing for the respondents had contended that on the crucial date, the charge memo was pending as against the writ petitioner. Though the charges were dropped on 06.01.2007, before he could be promoted, the second charge memo was issued on 23.08.2007 for a different delinquency. The second charge memo



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got terminated only on 30.04.2017, immediately on 31.05.2012 the petitioner had got retired. Therefore, the question of considering the name of the petitioner for promotion to the panel for the year 2005-2006 does not arise. Hence, he prayed for sustaining the order impugned in the writ petition.

7.I have considered the submissions made on either side and perused the material records.

(C).Discussion:

8.The only issue that arises for consideration is when the name of an employee is deferred on the ground of pendency of charges, but later charges are dropped, whether the said employee could still be promoted for the relevant panel year when the second charge memo is pending.

9.The Hon'ble Supreme Court in a judgement reported in **(2000) 7 SCC 210 (Delhi Jal Board Vs. Mahinder Singh)** in paragraph No.5 has held as follows:

“5.....The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench.”



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10.A learned Single Judge of this Court in a judgment reported in

(2013) 6 Mad LJ 305 (Anburaj Vs. Government of Tamil Nadu and

another) in paragraph No.17 has held as follows:

“17.In my view, subsequent charge memo cannot be put against the petitioner for promotion for the year 2010-2011. As rightly contended by the learned counsel for the petitioner, the only impediment is charge memo, dated 8.4.2010. When the same was dropped, he has to be promoted pursuant to inclusion of his name in the panel for promotion to the post of Asst. Inspector General of Registration for the year 2010-2011. Subsequent charge memo, dated 7.3.2013 cannot be put against the petitioner, particularly when the juniors included in the panel for the year 2010-2011 were promoted on 22.6.2010.....”

11.The Hon'ble Division Bench in a judgment in **W.A.No.2335 of 2019 (The Principal Secretary to Government and others Vs. S.Ram Kumar)** dated 07.10.2020 in paragraph No.13 has held as follows:

“13.We find that the learned Single Judge has come to a just conclusion while passing the impugned order. In the facts of the case, issue of a subsequent charge memo or initiation of fresh departmental proceedings cannot be a bar for considering the promotion of the respondent as an Assistant Director for the panel year 2012-13. Promotion which was earlier withheld because of pendency of criminal proceedings can no longer act against the respondent as he was acquitted in the criminal proceedings.....”



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12.The Hon'ble Supreme Court in a judgment reported in **(1999) 5 SCC**

762 (Bank of India and another Vs. Degala Suryanarayana) in paragraph

No.14 has held as follows:

“14.However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India etc. v. K.V. Jankiraman etc., AIR (1991) SC 2010, 2113. As on 1.1.1986 the only proceedings pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3.12.1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent



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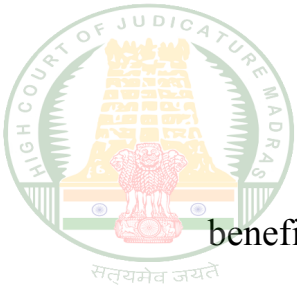
was found entitled as on 1.11986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1.1.1986.

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13. In view of the judgments of the Hon'ble Supreme Court and our High Court, it is clear that once the charges are dropped, an employee would get back his lost opportunity of promotion on par with his juniors. Just because a second charge memo has been issued, that would not be a legal impediment for considering the name of the petitioner for promotion for a particular panel year. In the present case, after the charges were dropped on 06.01.2007, the name of the petitioner ought to have been included in the panel for the year 2005-2006. The crucial date for inclusion of his name in the panel for the year 2005-2006 is 01.04.2006. The second charge memo has been issued only on 23.08.2007. Therefore, the second charge memo cannot be cited as an impediment for not including the name of the petitioner in the panel for the year 2005-2006.

Conclusion:

14. In view of the above said deliberations, the order impugned in the writ petition is set aside and the respondents are directed to promote the petitioner as Assistant Director of Panchayat with effect from the date on which his juniors were promoted and confer all the attendant and monetary



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benefits within a period of 12 weeks from the date of receipt of a copy of this order. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13.12.2023

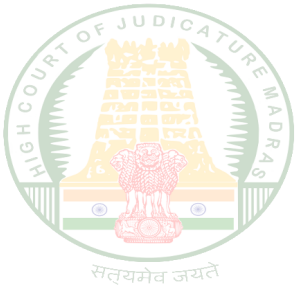
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To

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The State of Tamil Nadu
Rural Development and Panchayat Raj Department
Secretariat
Chennai -9

2. The Director of Rural Development and Panchayat Raj
Rural Development and Panchayat Raj Department
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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