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(2009) 07 MAD CK 0082

In the Madras High Court

Case No : Writ Petition (MD) No. 307 of 2007

D. Maria Pushpakaran — APPELLANT

Vs

Director of School Education and Joint Director (Personal) School Education — RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2009) 07 MAD CK 0082

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : T.R.B. Sivakumar, for the Appellant; D. Gandhi Raj, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—Heard both sides.

2. After going through the papers, I entertain a doubt about the outcome of the enquiry taken against the petitioner. Therefore, the matter was

posted for clarification on 16.07.2009 and on that date, it was represented by the learned Counsel appearing for the petitioner that final

proceedings were passed on 21.01.2009 in respect of the enquiry initiated against the petitioner.

3. The petitioner was working as Superintendent in the office of the District Elementary Educational Office, Theni and according to him, his name

was included in the panel list for promotion to the post of Personal Assistant, by the proceedings of the 2nd respondent dated 31.02.2002 and the

petitioner''s seniority No. is 24. However, the petitioner was not given promotion, but his juniors were promoted. Therefore, the petitioner

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submitted his representations dated 18.09.2003, 14.05.2004 and 17.08.2004 to the 2nd respondent. The petitioner was informed by the 2nd

respondent, by his proceedings dated 09.09.2004 that the request of the petitioner cannot be considered as 17(b) charges were framed against the

petitioner and the enquiry is pending against the petitioner and hence, as per G.O.Ms. No. 248 P& AR(S) Dept., dated 20.10.1997, during the

pendency of the 17(b) enquiry of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, the person''s name cannot be considered for

promotion and even though the persons'' name was included in the selection panel, after framing of the charges u/s 17(b), his name can be removed

and on that ground he could not be given promotion as per rules. The order of the 2nd respondent is challenged in this writ petition.

4. Though the order of the 2nd respondent was dated 09.09.2004 and served on the petitioner, the petitioner has not challenged that order for

nearly 2-1/2 years and filed this writ petition only in January 2007.

5. According to the petitioner, though under G.O.Ms. No. 248 dated 20.10.1997 promotion cannot be given to those persons against which the

charges were levelled under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, the promotion panel was prepared on

31.10.2002 and promotion was given to his juniors on 26.06.2003 and at that time, there was no charge levelled against him under Rule 17(b) and

hence, he cannot be denied the promotion on the ground of pendency of the charge.

6. G.O. 248, Personnel and Administrative Reforms(s) Department dated 20.10.1997 was passed in continuation of the guidelines issued in para

II(IV), (V) & (VI) of G.O.Ms. No. 368, Personnel and Administrative Reforms (S) Department dated 18.10.1993 and specific guidelines are

issued with regard to the pendency of vigilance enquiry charges, effect of adverse remarks in Personal File/Confidential report, while preparing

panels.

7. As per the G.O.Ms. No. 368, Personnel and Administrative Reforms (S) Department, guidelines were given in para II(IV), (V) & (VI):

As per (IV) (1), in the case of pending enquiries including vigilance enquiries and in cases where specific charges were not framed, promotions and

appointments shall be considered on the basis of the performance of the officers

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coming under the Zone of selection as on the date of consideration

for promotion/appointment as revealed through the personal files/Record sheets.

Under Sub-clause (IV)(2), the ''Specific Charges'' referred to are the charges framed under Rule 17(b) of the Tamil Nadu Civil Services

(Classification, Control and Appeal) Rules.

8. Therefore, as per the above guidelines, unless specific charges are framed under 17(b) of the Civil Services (Classification, Control and

Appeals) Rules, a person can be considered for promotion.

9. As per the new guidelines given in G.O.Ms. No. 248 dated 20.10.1997, pendency of charges framed under Rule 17(b) of the Tamil Nadu Civil

Service (D & A) Rules, shall be held against the officer and inclusion deferred until finalisation of the disciplinary proceedings.

10. It is further stated that enquiry by Tribunal for disciplinary proceedings undertaken by the Department or on the recommendation of the

Vigilance Commissioner, will be equivalent to charges framed under Rule 17(b) of the Tamil Nadu Civil Services (D & A)) Rules.

11. Further, the Preliminary or detailed enquiry undertaken by Directorate of Vigilance and Anti Corruption need not be held against the officer for

inclusion in the panel.

12. Bearing in mind the guidelines stated in the above two G.Os., we will have to see whether the impugned order of the 2nd respondent is liable

to be quashed.

13. The petitioner has stated in the affidavit that the promotion panel was prepared on 31.10.2002 and promotion was given to his juniors on

26.06.2003 and only by virtue of the proceedings of the District Educational Officer dated 26.08.2004, 17(b) charges were framed against him.

But it is not denied in the counter filed by the 2nd respondent that on the date of preparation of the promotion panel and on the date of overlooking

the petitioner by giving promotion to his juniors, 17(b) charge memo was not given to the petitioner.

14. As stated supra, only during the pendency of the charge u/s 17(b), a person cannot be considered for inclusion in the name of promotion panel.

As the charges were framed only on 26.08.2004 and when the promotion panel was prepared 31.10.2002 and on 26.06.2003 when the juniors

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of the petitioner were promoted, there were no pending of charges against the petitioner and therefore, he ought to have been considered for

promotion and the promotion ought to have been given to him on 26.06.2003. Therefore, the reason stated by the 2nd respondent in the impugned

order by reason of the framing of charges under Rule 17(b) against the petitioner on 26.08.2004, his name was considered for promotion panel

and even his name is included in the promotion panel after the framing of charges, the delinquent name can be removed from the promotion list is

not correct and is liable to be set aside and it is set aside. However, the 1st respondent, by his proceedings in Na.Ka. No. 49610/C1-E3/04/dated

21.01.2009, imposed a punishment of deduction of one increment viz., Rs. 200/- for a period of four months from 01.02.2009, having regard to

the fact that the petitioner is going to attain superannuation on 31.05.2009. Further, the recovery of Rs. 43,615/- was also ordered from the

DCRG payable to the petitioner.

15. Though, the petitioner attained superannuation on 31.05.2009 and as order of the 2nd respondent is set aside, the petitioner ought to have

been promoted on 26.06.2003, the date of which his juniors were promoted and all the attendant benefits must be given to the petitioner.

16. The punishment imposed by the 1st respondent in regard to the deduction of one increment can be worked out on the basis of the salary of the

petitioner may get by reasoning of this order.

17. With the above said observation, this writ petition is allowed. No costs.

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