
(2011) 02 MAD CK 0233

In the Madras High Court

Case No : Writ Petition No. 859 of 2010 and M.P. No. 1 of 2010

M. Manoharan

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

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

Citation : (2011) 02 MAD CK 0233

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : V. Suthakar, for the Appellant; B. Vijay, G.A., for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner has approached this Court, with a prayer for issuance of a writ in the nature of mandamus, directing

the Respondent to include the name of the Petitioner, in the list of Block Development Officer for the year 2009-2010 at appropriate place, with

all consequential benefits, such as retrospective promotion, refixation of pay, arrears of salary, etc.

2. The stand of the Petitioner is that he is working as Deputy Block Development Officer (Adi-Dravidar), Sulur Block, Coimbatore District. The

next avenue of promotion for the post of Deputy Block Development Officer is that of Block Development Officer. The Petitioner being the senior

most person in the cadre of Deputy Block Development Officer, is eligible for further promotion.

3. That the District Collector, Coimbatore District published a seniority list of Block Development Officer as on 01.01.2009 wherein the Petitioner

was assigned Sl. No. 6. Though the Petitioner was in the zone of consideration,

his name was not included in the panel, for the reason that charges were framed against the Petitioner vide Roc. No. 5027/09/T3 dated 14.7.2009 under Rule 17(b) Tamil Nadu Civil Services (D and A) Rules.

4. A perusal of the list of Deputy Block Development Officers not included in the Block Development Officer Panel for the year 2009-2010

shows that name of Petitioner was not included, due to pendency of charges which reads as under:

SL. Seniority Name and Date of Present post and Remarks

Retirement Tvl/Tmt.status

No. Number in

the feeder

category

(Dy. BDO)

1 2 3 4 5

2 16/ 2008 K. Manogaran Dy. B.D.O Charges framed vide

28.2.2014 Roc.No.5027/09/T3

Pollachi Dt.14.7.2009 under rule 17(b)

of TNCS (D and amp;A) rules is

(North)

pending

5. The case of the Petitioner is that on submission of reply to charge sheet, the competent authority dropped the charges against the Petitioner,

therefore there is no impediment in the promotion of the Petitioner.

6. The Petitioner therefore, prays for issuance of a writ in the nature of mandamus, directing the Respondent to include the name of the Petitioner in

the panel list for promotion.

7. The learned Counsel for the State on the other hand submitted, that though charges referred to in the order vide which his name was not

included in the panel were dropped, but subsequently, another charge memo under Rule 17(b) of Tamil Nadu Civil Service (Disciplinary and

Appeal Rules) was issued to the Petitioner, which is still pending. Therefore, the name of the Petitioner cannot be included in the panel list for

promotion.

8. In support of this contention, the learned Counsel for the State placed reliance on the G.O. Ms. No. 368 dated 18.10.1993. The relevant

portion of the G.O. reads as under:

If specific charges are framed or charge sheet is filed the criminal case before actual promotion, the person concerned shall not be promoted

notwithstanding the fact that his name has been included in the panel.

9. The learned Counsel for the Petitioner on the other hand, placed reliance on the judgment of the Hon'ble Supreme Court in the case of Union of

India Vs. K.V. Jankiraman, etc. etc., to contend, that even pending departmental enquiry, the name of the Petitioner is required to be considered

for promotion as the Respondents will be at liberty to follow sealed cover procedure. The contention of the learned Counsel for the Petitioner is

that pendency of the charge memo, cannot be a ground for not inclusion of the name of the Petitioner, in the panel for promotion.

10. The contention of the learned Counsel for the Petitioner that after dropping charges, the Petitioner was entitled to be included in the panel, and

this right could not be defeated by issuing second charge memo cannot be accepted. Rule 17(b) of Tamil Nadu Civil Service (Disciplinary and

Appeal Rules) stipulates that person against whom charges under 17(b) are pending, is not to be included in the panel for promotion.

11. The G.O. referred to above, would further shows that even person whose name is included in the panel, cannot be considered for promotion,

in the event of issuance of subsequent charge memo under Rule 17(b) of Tamil Nadu Civil Service (Disciplinary and Appeal Rules).

12. The right of the employee facing charges is protected under the rules, as in the event of exoneration from the charges, employee becomes

entitled to be considered for promotion from the due date with all consequential benefits.

13. In view of the specific rules, the judgment of the Hon'ble Supreme Court, on which reliance is placed by the learned Counsel for the Petitioner

will not be applicable to the facts of this case.

14. It is also not disputed, that the Petitioner has not challenged the subsequent charge memo, which is pending enquiry. The writ of mandamus

against provision of law cannot be issued. Consequently, this writ petition is

dismissed, but with no order as to costs.