

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.1287 of 2014
and
M.P. No.1 of 2014

- 1 The Principal Secretary to Government
Home Department
Fort St. George
Chennai 600 009
 - 2 The Director General of Police
Dr. Radhakrishnan Salai
Mylapore, Chennai 600 008
- ...Appellants

Vs.

J. Sivakumar

...Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
challenging the order dated 18.12.2013 passed in W.P. No.28654 of
2013.

W.P.No.28654 of 2013:

Petition presented to this court to issue a Writ of
certiorarified mandamus calling for the records of the 1st respondent
in connection with the impugned orders passed by him in Letter
No.32089/Pol.2/2013/5 dated 23.9.2013 and quash the same and further
direct the respondents to promote the petitioner as Deputy
Superintendent of Police, Cat-I by including his name in the panel
for the year 2008-09 published in G.O.Ms.No.504, Home (Pol.II)
Department dated 29.6.2009 without reference to the punishment of
postponement of increment for 3 years with cumulative effect imposed
in P.R.No.77/2011 dated 5.7.2012 imposed by the Commissioner of

Police Chennai and grant him all consequential service and monetary benefits on par with his junior and grant him all consequential service and monetary benefits.

For appellants : Mr. P.S. Sivashanmugasundaram
Special Government Pleader

For respondent : Mr. K. Venkataramani, Sr. Counsel
for M/s. M. Muthappan

JUDGMENT

(Judgment of the Court was delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-Court appeal is directed against the order dated 18.12.2013 passed in W.P. No.28654 of 2013, wherein, the learned Single Judge has held as under:

"For the reasons stated above, I am of the opinion that the impugned order of the first respondent dated 23.09.2013 is liable to be set aside and accordingly, set aside and the writ petition is allowed. The respondents are directed to promote the petitioner as Deputy Superintendent of Police, Cat-I by including his name in the panel for the year 2008-2009 published in G.O. Ms.No.504 Home (Pol.II) Department dated 29.06.2009 without reference to the punishment of postponement of increment for 3 years with cumulative effect imposed in P.R. No.77/2011 dated 05.07.2012 imposed by the Commissioner of Police, Chennai and grant him all consequential service and monetary benefits on par with his junior and grant him all consequential service and monetary benefits, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

2 The indisputable facts lying in a narrow compass are that the respondent was declined promotion to the post of Deputy Superintendent of Police, Cat-I (for short "DSP") on the basis of select list prepared on 29.06.2009. Aggrieved, the respondent had come up with the instant writ petition being W.P. No.28654 of 2013, seeking a direction to consider his case for empanelment for promotion to the post of DSP on the ground that during the period from the crucial date, viz., 01.06.2008 and the date of consideration of approval of panel dated 29.06.2009, there was no currency of punishment or departmental charges, or proceedings, thereon, as the punishment of postponement of increment for two years without

cumulative effect imposed by the Deputy Commissioner of Police, Chennai, vide P.R.No.140/2007 dated 02.11.2007 was modified as censure by the Joint Commissioner of Police vide PR No.140/2007 dated 12.12.2007. The alleged issuance of charge and enquiry subsequently after 04.06.2011 was of no relevance for the purpose of his empanelment for promotion to the post of DSP.

3 The learned Special Government Pleader appearing for the appellants would submit that the imposition of punishment of postponement of increment for two years without cumulative effect was subsequently modified, but, on the date of consideration, the same was in existence. Subsequently, a charge memo was issued on 04.06.2011, which culminated into imposition of punishment of postponement of increment for three years with cumulative effect on 05.07.2012 and as such, as on date, the respondent could not be considered for empanelment even from the earlier date.

4 The learned Single Judge, relying on the decision of the Supreme Court in Delhi Jal Board vs. Mahinder Singh¹, recorded the finding that on the crucial date, there was no currency of departmental enquiry and punishment and as such, the respondent was entitled to promotion to the post of DSP.

5 We have given our anxious consideration to the submissions made by the learned Special Government Pleader appearing for the appellants and the learned Senior Counsel appearing for the respondent. We have also perused the pleadings and the documents appended thereto.

6 It is indisputable and undeniable that during the relevant period, i.e., between the crucial date of 01.06.2008 and the date of consideration of approval of panel, viz., 29.06.2009, there was no departmental enquiry and also the punishment of postponement of increment for two years without cumulative effect stood modified to imposition of censure, which never comes in the way of consideration for promotion and as such, the respondent is entitled to consideration for empanelment for promotion to the post of DSP.

7 The learned Senior Counsel appearing for the respondent would fairly submit that the direction given in the order impugned, to promote the respondent to the post of DSP is unsustainable in the eye of law and the only direction that could be issued is only to empanel and consider the respondent's case for promotion and not promotion directly.

¹ (2000) 7 SCC 210

8 The law is well settled on this point that unless Departmental Promotion Committee comes to a conclusion that an employee is entitled to promotion, no such a direction for promotion directly to the higher post, in the case in hand, DSP, can be issued, as there was no consideration for empanelment and also for further promotion (See State of U.P. and another vs. Krishna Lal Sehgal² and Union of India and others vs. S.P. Nayyar³).

9 Accordingly, we modify the order impugned in the appeal and direct the authorities to consider the respondent to empanel for promotion to the post of DSP in the panel dated 29.06.2009 and thereafter, consider his case accordingly for promotion on the post of DSP on its own merit and in accordance with law.

10 Resultantly, the writ appeal stands allowed in part. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Principal Secretary to Government
Home Department
Fort St. George
Chennai 600 009

2 The Director General of Police
Dr. Radhakrishnan Salai
Mylapore, Chennai 600 008

1 CC to M/s. M. Muthappan, Advocate SR.No. 31712

NM (CO)
PSI (03.07.2015)

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2 (2005) 12 SCC 193

3 2014 8 Scale 174