

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.1406 of 2014
and
M.P. No.1 of 2014

- 1 The Director General of Police
Tamil Nadu
Dr. Radhakrishnan Salai
Mylapore
Chennai 600 004
 - 2 The Secretary to Government
Home (Pol.II) Department
Fort St. George
Chennai 600 009
 - 3 The Deputy Inspector General of Police
Kancheepuram Range
Kancheepuram
- Vs.
- T. Chandramohan
- ...Appellants

...Respondent

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 07.12.2014 passed in W.P. No.3405 of 2014.

W.P.No.3405 of 2014:

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records of the first respondent in connection with the impugned orders passed by him in RC No.125808/NGB-I(2)/2013 dated 22.1.2014 and quash the same and direct the respondents to promote the

petitioner as Inspector of Police, category-I by including his name in the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the year 2011/2012 without reference to the charge memo issued to the petitioner on 18.12.2013 in PR No.94 of 2013 and grant him all consequential service and monetary benefits on par with his juniors.

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 07.02.2014 passed in W.P. No.3405 of 2014, wherein, the learned Single Judge has held as under:

"7. In the result, the impugned order of the first respondent dated 22.01.2014 is set aside and the writ petition is allowed. The respondents are directed to promote the petitioner as Inspector of Police, Category-I by including his name in the "C" List of Sub-Inspector of Police fit for promotion as Inspector of Police for the year 2011-2012 without reference to the charge memo issued to the petitioner on 18.12.2013 in P.R. No.94 of 2013 and grant him all consequential service and monetary benefits on par with his juniors. The said exercise has to be carried out 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's claim for inclusion of his name in the panel of Sub-Inspectors (Taluk) fit for promotion as Inspectors (Taluk) was rejected by memorandum dated 22.01.2014. Hence, the respondent had come up with the instant writ petition, being W.P. No.3405 of 2014, challenging the said rejection order dated 22.01.2014 and also for a direction to the appellants to promote him as Inspector of Police-Category - I by including his name in the "C" List of Sub-Inspectors of Police fit for promotion as Inspector of Police for the year 2011-2012, without reference to the charge memo issued to him on 18.12.2013 in P.R. No.94 of 2013 and grant him all consequential service and monetary benefits at par with his junior. The main ground

of attack in the writ petition is that for the panel 2011-2012, either on the crucial date, i.e., 01.06.2011 or on the date of consideration, i.e., 04.08.2012, there was no currency of punishment nor was the respondent facing any disciplinary proceedings. The alleged issuance of charge memo and enquiry subsequently after 18.12.2013 was of no relevance for the purpose of inclusion of his name in the "C" List of Sub-Inspectors of Police fit for promotion as Inspector of Police for the year 2011-2012.

3 The learned Special Government Pleader appearing for the appellants would submit that the criminal case against the respondent in Spl.C.C. No.21 of 2011 on the file of the Special Court, Chengalpet ended in acquittal on 23.01.2013, but, on the date of consideration, the same was pending. Subsequently, a charge memo was issued on 18.12.2013 and as such, as on date, the respondent's case could not be considered for inclusion in the "C" List of Sub-Inspectors of Police fit for promotion as Inspectors of Police for the year 2011-2012 even from the earlier date.

4 The learned Single Judge, relying on the decision dated 15.09.2009 of this Court in W.P. No.1277 of 2009 in P. Chinnadurai vs. The Secretary to Government commercial Taxes and Registration Department, Chennai 9 and another, recorded the finding that on the crucial date, i.e. on 01.06.2011, there was no currency of departmental enquiry and punishment and as such, the respondent was entitled to promotion to the post of Inspector of Police.

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 01.06.2011 and the date of consideration of approval of panel, viz., 04.08.2012, there was no departmental enquiry nor was there any charge memo issued against the respondent and the respondent was acquitted in the criminal case on 23.01.2013. Only thereafter, the respondent was issued with a charge memo on 17.12.2013. As such, the respondent is entitled to inclusion of his name in the "C" List of Sub-Inspectors of Police fit for promotion as Inspectors of Police for the year 2011-2012.

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 Inspector of Police is

unsustainable in the eye of law and the only direction that could be issued is only to include the name of the respondent in the "C" List of Sub-Inspectors of Police fit for promotion as Inspectors of Police for the year 2011-2012 and not promotion directly.

8 The law is well settled on this point that unless the 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, Inspector of Police, 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 to include the name of the respondent in the "C" List of Sub-Inspectors of Police fit for promotion as Inspector of Police for the year 2011-2012 and thereafter, consider his case accordingly for promotion to the post of Inspector of Police.

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 Director General of Police
Tamil Nadu
Dr. Radhakrishnan Salai
Mylapore
Chennai 600 004

² (2005) 12 SCC 193

³ 2014 8 Scale 174

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- 3 The Deputy Inspector General of Police
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NM (CO)
PSI (03.07.2015)



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