

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.28581 of 2015

and

M.P.No.1 of 2015

S.Rajasekaran

.. Petitioner

- Vs -

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Home Department, Fort St. George,
Madras - 600 009.

2. The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai - 600 009.

.. Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents to consider the petitioner for promotion to the post of Deputy Superintendent of Police (Category-I) irrespective of the private complaint registered against the petitioner in the Court of the Chief Metropolitan Magistrate, Egmore, Chennai in C.M.P.No.3742/2013 dated 13/05/2013 as the same was filed after the lapse of 23 years from the date of the incident, and the withdrawal of the earlier complaint by the Collector, Chennai dated 13.09.2004 and also after the expiry of the punishment dated 03.12.2002 and consequently promote the petitioner to the post of Deputy Superintendent of Police (Category-I) in the light of G.O.Ms.No.22, P & AR(S) Department dated 24.02.2014 and (2009) 4 MLJ 708.

For Petitioner : Mr.V.S.Jagadeesan

For Respondents : Mr.S.Gunasekaran
Government Advocate

O R D E R

By consent, the writ petition is taken up for final disposal.

2. The petitioner while working as the Sub Inspector of Police was proceeded with departmental proceedings, which resulted in

reduction in pay by two stages in the time scale of pay for a period of one year, without cumulative effect and with regard to the same incident, a criminal complaint was also lodged by the Collector of Chennai before the XII Metropolitan Magistrate and the same was returned by the said Court for want of original records and thereafter, it was not pursued and the petitioner has got promoted as Inspector of Police on 02.03.2005 after the expiry of currency of punishment.

3. The grievance now expressed by the petitioner is that more than 22 years have been lapsed and now on the basis of the complaint given by the P.A. to the Collector of Chennai District before the XIII Metropolitan Magistrate, the respondents have denied the petitioner his rightful claim for consideration for promotion to the post of Deputy Superintendent of Police and in this regard, he has already submitted a representation dated 27.07.2015 to the second respondent and since no orders have been passed, he came forward to file this writ petition.

4. Mr.V.S.Jagadeesan, learned counsel appearing for the petitioner would submit that though after the currency of the punishment, the petitioner was also promoted as Inspector of Police and when his name was about to be included in the panel for promotion to the post of Deputy Superintendent of Police, P.A. to the Collector once again want to review the criminal complaint before the Court which has no jurisdiction and the same was done only with a view to deny promotion to the petitioner and he would further add that in the light of the judgment reported in (2009) 4 MLJ 708 as well as G.O.Ms.No.22, P & AR(S) Department dated 24.02.2014, the name of the petitioner has to be included in the panel for promotion to the post of Deputy Superintendent of Police and prays for appropriate orders.

5. The Court heard the submissions of the learned counsel appearing for the petitioner and Mr.S.Gunasekaran, learned Government Advocate who accepts notice on behalf of the respondents.

6. It is not in serious dispute that the petitioner has suffered punishment of reduction in pay by two stages in the time scale of pay for a period of one year, without cumulative effect and after the currency of punishment is over, he was given promotion as Inspector of Police and that the criminal complaint lodged at that point of time was also returned by the Jurisdiction Court for want of records and nearly after 22 years, the issue is sought to be reviewed in the form of complaint by P.A. to the Collector. In the judgment relied on by the learned counsel appearing for the petitioner the ratio laid down is that if the departmental proceedings has already been followed and a punishment is imposed, it would not be permissible for the departmental authorities to again subject the very same delinquent to a fresh punishment in a criminal prosecution. The G.O.Ms.No.22, dated 24.02.2014 relied on by the learned counsel appearing for the petitioner would also state that "mere filing of

cases in Courts by the appropriate Investigating Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date, his name shall not be considered for inclusion in the approved list."

7. This Court in the light of the above facts and circumstances, without going into the merits of the case, directs the second respondent to consider and dispose of the petitioner's representation dated 27.07.2015, on merits and in accordance with law and pass orders within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. The writ petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government,
Home Department, Fort St. George,
Madras - 600 009.
2. The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai - 600 009.

+1 cc to Mr.V.S.Jagadeesan, Advocate, sr.49417
+1 cc to Government Pelader, sr.49577

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