

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

W.A.No.2283 of 2010
& M.P.No.1 of 2010

1. The Secretary to Government,
Home Department,
Fort St. George, Secretariat,
Chennai-600 009.
 2. The Director General of Police,
Kamarajar Salai,
Chennai-600 004.
 3. The Inspector General of Police,
Armed Police, Kilpauk,
Chennai-600 010.
- .. Appellants/Respondents in WP.39196/2006
on the file of this Court
- Vs.
- P.Krishnamurthy .. Respondent/Petitioner
in W.P.No.39196/2006 on the file of this Court

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 11.06.2009 made in W.P.No.39196 of 2006 on the file of this Court.

Writ petition is filed under Article 226 of the Constitution of India by way of transfer of O.A.No.1893 of 1999 from the Tamilnadu Administrative Tribunal praying for a Writ of Certiorari, to call for the records relating to G.O.(D) No.147, Home(Pol.II) Department dated 27.2.1998 and quash the same and direct the respondents herein to promote the applicant as Deputy Commandant on par with his immediate juniors and sanction of monetary benefits of the appeal order made in O.A.No.1133/91, dated 13.05.1996 and pass such further order or other orders.

For appellants

:: Mr.S.T.S.Moorthy,
Government Pleader

For respondent

:: Mrs.R.Arunmozhi

JUDGMENT

(Judgment of Court was made by M.M.Sundresh,J.)

While the respondent before us was serving as Inspector of Police, proceedings were initiated resulting in an order of removal. Challenge was made before the Tribunal in O.A.No.1133 of 1991. By the Order dated 13.12.1996, the order of removal was set aside with a direction to reinstate the respondent. Resultantly, the appellants were directed to treat the period of out of employment as one on duty followed by continuity of service and pensionary benefits.

2. The respondent made a representation to the 2nd appellant seeking to promote him as Assistant Commandant on par with his immediate juniors. On the failure of the appellants to consider the said request, application was once again filed in O.A.No.9326 of 1997. In pursuant to the directions of the Tribunal, the 1st appellant rejected the request of the respondent in Government Order passed in G.O.(D) No.147, Home (Pol-II) Department, dated 27.2.1998. It is this order put into challenge before the learned single Judge in the writ petition.

3. After hearing the submissions of both sides, the writ petition filed was allowed holding that the order of removal of the respondent having been set aside on merits and thereafter given effect to, the consequences thereon would flow from it. Taking into consideration of the fact that the respondent has retired from service, while setting aside the order impugned, the appellants were directed to consider and promote him as Assistant Commandant notionally with the consequential benefits. However, it was made clear that the respondent cannot seek back wages in tune with the earlier order passed.

4. The learned Government Pleader appearing for the appellants submitted that the respondent cannot seek the promotion as a matter of right as it is based upon merit. The promotion post involves a process of selection. The respondent was not considered as an order of suspension was in vogue at the relevant point of time. Therefore, the order of the learned single Judge requires interference.

5. At the time of passing the order, the respondent reached the age of superannuation. It is not the case of the appellants that the respondent was not otherwise eligible to be promoted. The grievance of the respondent was that but for the suspension order passed he

would have been considered on par with his juniors, who were duly promoted ahead of him. Even while setting aside the earlier order, the Tribunal was pleased to hold that the respondent was entitled to full pay and allowances and other monetary benefits and the entire period of out of employment shall be counted as duty for continuity of service. The order passed by the Tribunal has become final and the order of removal passed was set aside on merits. Therefore, the respondent cannot be denied the resultant benefits accrued out of the said order. Taking note of the above said facts, the learned single Judge has rightly passed appropriate orders. Even in the order under challenge the respondent was not given the back wages. What was granted was notional fixation of pay scale in the post of Assistant Commandant based on which the appellants were directed to revise the terminal benefits. Thus, we do not find any error in the order passed warranting interference at our hands and the appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition also stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home Department,
Fort St. George, Secretariat,
Chennai-600 009.

2. The Director General of Police,
Kamarajar Salai,
Chennai-600 004.

3. The Inspector General of Police,
Armed Police, Kilpauk,
Chennai-600 010.

1 cc to Government Pleader, Sr.No10806

1 cc to Mr.Mrs.R.Arunmozhi ,Advocate, SR.No.10662

W.A.No.2283 of 2010

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pmk.13.3.2015