



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WEB COPY

W.P. (MD) No.18058 of 2014
and
M.P. (MD) Nos.1 and 2 of 2014

E.Shanmugaiah

... Petitioner

Vs.

1.The Principal Secretary,
Government of Tamil Nadu,
Secretariat,
Home (Police 2) Department,
Fort St.George,
Chennai - 9.

2.The Director General of Police,
Beach Road, Chennai - 4.

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in Government order in G.O.Ms.No.954, Home (Police - 2) Department, dated 06.11.2013 and to quash the same in so far it fails to include the name of the petitioner in the temporary panel of Inspector of Police fit for appointment for the post of Deputy Superintendent of Police (Category I) by transfer for the year 2012-2013 and consequently, direct the respondents to include the name of the petitioner in appropriate place in the said list with all consequential benefits.

For Petitioner : Mr.V.Rajasekaran
For Respondents : Mr.S.Kumar, AGP

ORDER

The petitioner has filed the present Writ petition seeking an order for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in Government order in G.O.Ms.No.954, Home (Police - 2) Department, dated 06.11.2013, quash the same for not including the name of the petitioner in the temporary panel of Inspector of Police fit for appointment for the post of Deputy Superintendent of Police (Category-I) by transfer for the year 2012-2013 and consequently, direct the respondents to include the name of the petitioner in appropriate place in the said list with all consequential benefits.



2.The case of the petitioner is that originally, he has been shown as an accused in a criminal case and thereafter, he has been removed from array of the accused and shown as prosecution witness. Apart from that there are two departmental proceedings initiated against the petitioner viz., P.R.No.11 of 2010 and P.R.No.12 of 2010. The proceedings in P.R.No.12 of 2010 dated 26.05.2010 relating to PAAZEE case and the same is kept in abeyance till the disposal of the CBI case and the other proceedings in P.R.No.11 of 2010 dated 26.05.2010 is also kept in abeyance. According to the petitioner, there is no legal impediment for the respondents to proceed against the petitioner departmentally and that he would prove his innocence and due to the pendency of the departmental proceedings, his promotion chances are deprived.

3.Admittedly, in this case, there is no criminal case pending against the petitioner and there is no reason why the respondents have not proceeded further with the enquiry against the petitioner in the departmental cases. That apart, it has been clearly stated in a proceedings of the Deputy Inspector General of Police, Coimbatore Range, dated 22.01.2014, that disciplinary proceedings in P.R.No.12 of 2010 can be proceeded with. Unfortunately, both the cases are kept pending without any initiation.

4.The learned Additional Government Advocate appearing for the respondents submitted that since CBI case is pending and they are awaiting for final result and that is the reason further action against the petitioner is kept pending.

5.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

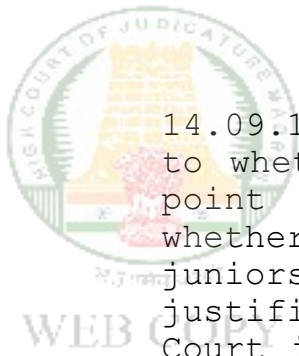
6.At this juncture, it is relevant to refer the Judgment of the Hon'ble Supreme Court in 1995(2) SCC 570, wherein it has been held as follows:

"Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a larger extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately."

7.This Court by an order dated 30.09.2013 in *W.P.(MD)No.15690 of 2013*, has observed as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

6.This writ petition is not for quashing the charge memo issued to the petitioner in P.R.No.120/99, dated



14.09.1999. Therefore, I need not go into the question as to whether the charges are sustainable or not. The only point to be answered in this Writ petition is as to whether denial of promotion to the petitioner, when his juniors were promoted in the year 2009 itself, is justifiable. As has been held by the Hon'ble Supreme Court in the judgment cited supra and the judgment of the learned Single Judge of this Court, mere pendency of a disciplinary proceedings cannot be a ground to deny promotion. In this case, except the above said charge memo, there is no other proceedings pending against the petitioner so as to deny him promotion. In view of settled law, I am inclined to issue direction to respondents 1 and 2 to promote the petitioner as Deputy Superintendent of Police from the date on which his immediate junior was promoted, provided there is no other legal impediment."

8. In view of the decision of the Supreme Court (cited supra) as well as the decision of this Court, the departmental proceedings may go on, de hors the criminal case and the respondents are directed to proceed against the petitioner departmentally and proceed with the enquiry on day to day basis preferably, the proceedings of the enquiry shall not be adjourned beyond two working days at any point of time and the same shall be completed, within a period of 6 months from the date of receipt of a copy of this order. The respondents shall communicate this order copy to the Deputy Inspector General of Police, Coimbatore Range and he shall complete the enquiry within the stipulated period as stated supra.

9. The respondents are directed to promote the petitioner to the post of Deputy Superintendent of Police from the date on which his immediate junior was promoted, provided there is no other legal impediment for the same and if he is otherwise eligible for promotion. At any rate consequential orders shall be passed by the respondents within a period of one month from the date of receipt of a copy of this order.

10. It is represented that the petitioner has also filed a Writ petition in W.P.No.4704 of 2014 against the show cause notice before the Principal Bench of this Court and no interim order has been granted. In view of the directions issued in this Writ petition, the Writ petition in W.P.No.4704 of 2014 has become infructuous automatically. No costs. Consequently, connected M.Ps. are closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar



To

1.The Principal Secretary,
Government of Tamil Nadu,
Secretariat,
Home (Police 2) Department,
Fort St.George,
Chennai - 9.

2.The Director General of Police,
Beach Road, Chennai - 4.

+1cc to Special Government Pleader Sr NO.41990

+1cc to Mr.V.Rajasekaran,Advocate Sr No.41772

W.P. (MD) No.18058 of 2014

27.07.2015

rg.31.07.2015

4p/5c