

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.03.2016

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.25067 of 2009
and
MP.Nos.2 and 3 of 2009
and MP.No.01 of 2010

1. C.Arul Prakash
2. V.Shanmugam
3. K.Veeramani
4. S.Balamurugan
5. M.Mahendran
6. C.Rajendran
7. M.Chandrasekaran
8. S.Baskaran
9. S.Ramesh
- 10.D.Ravi
- 11.M.Muthumanikandan
- 12.G.Sivaganesan

.. Petitioners

vs

1. Secretary to Government
Home Department
Fort St.George
Chennai - 600 009
2. Director General of Police
Chennai -600 004

3. S.Manimaran
4. J.Selvakumar
5. L.Michael Fernando
6. V.Karunanidhi

.. Respondents

(R3 to R6 impleaded as per order
dated 14.3.2016 in MP.No.1 of 2014)

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the impugned order passed by the first respondent herein in his proceedings G.O.Ms.No.959 Home (Pol-8) Department dated 10.11.2009 and quash the same insofar as the petitioners are concerned.

For Petitioner : Mr. R.Thiagarajan
Senior Counsel

For R1 and R2 : Mr.A.Kumar,
Special Government Pleader

For R3 to R6 : Mr.G.Sankaran

O R D E R

This writ petition has been filed by 12 Sub Inspector of Police, challenging the order passed by the first respondent in his proceedings in G.O.Ms.No.959, Home (Pol-8) Department dated 10.11.2009 in and by which, they have been reverted from the post of Sub Inspector of Police to the post of Naik (equivalent to Grade I Police Constable).

2. Mr.R.Thiagarajan, learned senior counsel appearing for the petitioners would submit that while the petitioners were working as a Havildars, they had opted to work in the Special Task Force(STF) formed by the Government to apprehend the notorious forest brigand Veerappan. After elimination of the said forest brigand Veerappan, the Government has passed an order in G.O.Ms.No.1252 Home (Police VIII) Department, dated 29.10.2004 awarding one stage of accelerated promotion to members of the Special Task Force who had participated in the encounter and killing of forest brigand Veerappan. Based on the said order, the petitioners were promoted from the post of Havildar to the post of Sub-Inspector of Police with effect from 30.10.2004. All of a sudden to the shock and surprise of the petitioners, the Government has passed an order dated 10.11.2009, reverting the petitioners from the post of Sub-Inspector of Police to the post of Naik (equivalent to Grade I Police constable).

3. The learned Senior Counsel would further submit that the petitioners have been subjected to double reversion i.e. to a post which is below the rank the petitioners were holding at the time of grant of accelerated promotion, which is contrary to the law and in violation of principles of natural justice for a simple reason that without giving reason or whatsoever, they have been wrongly reverted. Therefore, according to the learned counsel, the impugned order of reversion passed behind the back, without calling for the explanation or whatsoever, is liable to set aside.

4. Learned Senior counsel, drawing the notice of this Court the unreported decision of this Court in the case of A.SIVARAMAN V. THE STATE OF TAMIL NADU AND OTHER (WP.(MD) No.12590 of 2009

dated 10.8.2011) submitted that in a similar circumstances, this Court interfered with the similar order of reversion passed by the Government. Learned senior counsel also brought to the notice of this Court the judgment of the Hon`ble Supreme Court in M.A.HAMEED V. STATE OF ANDHRA PRADESH AND ANOTHER [(2001) 9 SCC 261] and submitted that in a similar circumstances, the Hon`ble Supreme Court has held that the reversion of the District Inspector of Local funds (Accounts) after eleven years was not justified. Therefore according to the learned senior counsel, when the respondents promoted the petitioners to the post of Sub Inspector of Police based on the Government Order in G.O.Ms.No.1252 Home (Police VIII) Department dated 29.10.2004, it is not fair on their part to pass the impugned order reverting them from the post of Sub Inspector of police to the post of Havildar, that too, after a lapse of five years. He would further submit that this Court also protected the petitioners by granting interim order and as a result, from 2004 onwards, i.e. for more than 11 years, the petitioners have been allowed to function as Sub-Inspector of Police. Therefore, he would submit that at this belated stage, if the petitioners are reverted once again, it would cause grave humiliation to them. Concluding his argument, the learned senior counsel submitted that 7 other persons, whose names have been enclosed in Annexure - II, were also given similar promotion, but their names have not been included in the impugned order, for the reasons best known to them.

5. On the other hand, the learned Special Government Pleader appearing for the respondents 1 and 2 submitted that the Government has come forward to give one stage accelerated promotion to the police personnel in recognition of their courage and heroic achievement in killing notorious forest brigand Veerappan. Accordingly, G.O.Ms.No.1252 dated 29.10.2004 has been issued awarding accelerated promotion. Since the rank was wrongly mentioned in the Government Order, the Government requested the Director General of Police to send suitable proposals for revision of ranks. Based on the proposals submitted by the Director General of Police, the impugned order in G.O.Ms.No.959 dated 10.11.2009 has been passed extending one stage of accelerated promotion to 53 deserving police personnel and thereby rectified the ranks wrongly mentioned in G.O.No.1252, Home dated 29.10.2004. The learned Special Government Pleader further submitted that since all the petitioners were given erroneous promotion inadvertently, question of issuing notice does not arise.

6. Admittedly, in the present case, at the time of promotion of Sub-Inspector of Police, the petitioners were holding the post of Naik, which is neither equivalent to Grade-I nor Head Constable. The promotion to the post of Sub-Inspector of Police to be given only from the stage of Head Constable. In

G.O.Ms.No.1252 dated 29.10.2004, the Government have announced one stage accelerated promotion. But the petitioners were wrongly given double promotion. Therefore, it is not open to the petitioners to contend that the impugned order has been passed behind their back. Therefore, I find some force in the contentions made by the learned Special Government Pleader.

7. But at the same time, though it is stated that the petitioners were given wrong promotion to the post of Sub Inspector of Police in the year 2004, the same was modified only in the year 2009, i.e. only after a period of five years from the date of promotion. Further, before passing the order of reversion, the respondents 1 and 2 have not called for any explanation or whatsoever from the affected persons. That apart, this Court is not able to find out the factual position whether the petitioners were given promotion from the post of Grade-II Police constable or from the post of Head Constable level. Since the impugned order of reversion has been passed in violation of principles of natural justice, this Court feels that it is a fit case to interfere with the said order passed by the first respondent.

8. At this stage, the learned counsel appearing for the newly impleaded parties/respondents 3 to 6, would submit that the respondents were joined in the year 1988 i.e much prior to the petitioners and the promotion given to the petitioners by way of accelerated promotion would definitely affect their promotion. Therefore, he would submit that the case of the respondents 3 to 6 should also be considered. Adding further, learned counsel would submit that the Government, after verifying the records relating to the position of the petitioners as Naik, which is equivalent to Grade-II Police constable, have rightly passed the impugned order rectifying the mistake committed by them and hence, the question of issuance of notice does not arise. He would also submit the impugned order was passed in the year 2009 and the petitioner came to this Court and obtained interim order and by virtue of the interim order, they are continuing the post of Sub-Inspector and, therefore, the petitioners cannot be shown any indulgence simply on the ground that the petitioners were allowed to work as Sub-Inspector of Police for more than 11 years. Therefore, the learned counsel submit that the impugned order of reversion need not be interfered with.

9. Be that as it may. Admittedly, in the present case, the petitioners were given promotion to the post of Sub-Inspector of Police from the post of Havildar in the year 2004. Subsequently, after noticing that they were given wrong promotion, that too, after a period of five years, the first respondent passed the impugned order, without issuing notice or whatsoever, for the reasons best known to them.

10. Therefore, without expressing any opinion on merits, only on the limited scope that no notice was served on the petitioners before passing the order of reversion, the impugned order is set aside and the matter is remitted back to the first respondent for fresh consideration. The first respondent is directed to consider the case of the petitioners, after issuing notice to all the parties concerned, and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

2. Director General of Police
Chennai -600 004

+1cc to Mr.G. Sankaran, Advocate, S.R.No.16480
+1cc to Mr.G. Bala & Daisy, Advocate, S.R.No.16167 (6/4/16)
+1cc to the Government Pleader, S.R.No.16369

SNS (CO)
EU(31/03/2016)

WP.No.25067 of 2009

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