

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.25953 of 2007

K.Chandrasekaran

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. By Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.

2. The Director General of Police,
Tamil Nadu Police,
Mylapore,
Chennai - 600 004.

3. The Commissioner of Police,
Chennai City,
Chennai - 600 008.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the 3rd respondent which is made in Rc.No.Estt V(1)/04/231/2007, dated 17.06.2007 and quash the same consequently directing the respondents to promote the petitioner as Head Constable with retrospective effect from the year 1989 along with other service and monetary benefits.

For Petitioner : Mr.Arwas Bharmal
for N.Ganesh Murthy

For Respondents: Mr.V.Jayaprakash Narayanan,
Special Govt. Pleader

O R D E R

The prayer in the Writ Petition is to issuance of Writ of Certiorarified Mandamus calling the records pertaining to the proceedings of the 3rd respondent which is made in Rc.No.EsttV(1)/04/231/2007, dated 17.06.2007 and quash the same consequently directing the respondents to promote the petitioner as Head Constable with retrospective effect from the year 1989 along with other service and monetary benefits.

2. The case of the petitioner is that the petitioner has joined as police constable in the Armed Reserve of the Respondents Department on 27.02.1986. While so, by a proceedings dated 9.08.1988 the 3rd respondent had sent the petitioner to the photo section for training on "on duty" basis, i.e., "on duty for other service".

3. The main object of the training was to train the constable as like the petitioner in the field of photography with lien in the Armed Reserve. This position has been clarified in the proceedings dated 29.03.1989 of the 3rd respondent. When that being so, for the purpose of further promotion as Lance Naik (LNK) post, the procedure to be adopted is that the Grade II PC of Armed Reserve, like petitioner has to undergo a written test. Thereafter, there shall be a physical parade and also an interview. Only, those who have completed the test formally alone will be eligible to be promoted as Lance Naik(LNK).

4. The case of the petitioner is that while he was working in the photo section, the said test namely i.e. LNK post was proposed to be conducted for Grade II PC serving in the Armed Reserve police Department of the respondent including the petitioner working in photo section. There was no proper intimation to the petitioner, hence the petitioner was not in a position to attend the test and therefore some of the juniors, who were enlisted along with the petitioner were given promotion.

5. Therefore, for redressal of the above grievance, the petitioner has already approached the erstwhile Tamil Nadu State Administrative Tribunal, Madras by filing an application in O.A.No.2027/1993. Since the said Tribunal defunct, the said O.A. was transferred to this Court and numbered as Writ Petition No.13856 of 2006 and the said Writ Petition was disposed by this Court on 09.10.2006. By the said order dated 09.10.2006, this Court directed the respondents to consider the representation submitted by the petitioner on 24.06.1992 and pass orders within a period of eight weeks.

6. In response to the said order of this Court, the 3rd respondent by the impugned order, dated 17.06.2007 has rejected the claim of the petitioner for promotion as LNK/NK/HC in 1989 and 1993 along with the colleagues of the petitioner. Challenging the said order dated 17.06.2007, the present Writ Petition has been filed with the aforesaid prayer.

7. Heard both sides.

8. The learned counsel for the petitioner would contend that the petitioner while he was working in the Armed Reserve, was subsequently deputed to the photo section, as per the

instructions issued by the department on 05.10.1988 and accordingly the petitioner has joined the photo section. At this juncture, a memorandum was issued on 08.02.1993 regarding announcement about the promotion test. In this connection, a proper intimation should have been given to the petitioner about the proposed test so as to enable the petitioner and other similarly placed staff to attend the test, which was conducted for getting further promotion as LNK. However, without following the procedure reflected in their own instructions, the respondents have conducted the test by merely announcing the same only in the Armed Reserve Head quarters and without any specific announcement or intimation either to the petitioner or to the superior namely Senior Photographer of the photo section. In view of the failure of such information or notice for the proposed test, the petitioner was unable to attend the test. With the result the petitioner could not get promotion along with others. Therefore, the petitioner is entitled for promotion from the date on which his juniors got promoted, atleast in the year 1993 and therefore the prayer sought for in the present Writ Petition is fully justifiable and the Writ Petition has to be allowed.

9. Per contra, the learned Special Government Pleader has submitted that the intimation with regard to the test to be conducted for promotion to LNK post would be given only to the Head of the Department wherein in any aspects the petitioner is concerned. Since he belonged to Armed Reserve such intimation is given to Armed Reserve Head Quarters, where the same was put on Notice Board and also during the parade, an announcement was made. These are the two modes being carried out by the respondent about the intimation of the test and only after these modes of information, such test being conducted.

10. The rival submission of the respective counsel were considered.

11. Here in this case in hand, the learned Special Government Pleader submits that the test conducted in the year 1993 was on the basis of intimation given to the Head Quarters of Armed Reserve and a large number of Police Constables had participated in the test. After conducting the written test, a parade test was fixed on 17.02.1993, which was subsequently rescheduled to 19.02.1993 and the same was mentioned by way of a memorandum dated 15.02.1993 to all the Head of the Departments and a copy of such intimation was also sent to the Assistant Commissioner of Police, Armed Reserve - I, II, Headquarters, Control Room as well as to Inspectors of Police A to F copy, Headquarters, Control Room by the Commissioner of Police, City Police Office, Egmore, Madras - 8. It is further stated that one of the copies of such information dated 15.02.1993 regarding re-schedule of parade and test from 17.02.1993 to 19.02.1993 was also served

on to the Senior Photographer of the photo section, where the petitioner herein and others were working in the photo section.

12. Only pursuant to the above information as has been stated above, those who are willing to participate in the test including the parade and interview had attended and in this regard, the learned Special Government Pleader would invite the attention of this Court that three of his colleagues, out of 6 working along with the petitioner by name Rajaian, PC 10503, N.Suresh Kumar, PC 10193 and R.John Chistropher, PC 10240 who are also on Other Duty in the photo Section had attended the LNK test and subsequently got promoted, since they passed the test. When out of 6 colleagues, who worked along with the petitioner had participated in the test, the case put forward by the petitioner as projected by the learned counsel for the petitioner that no intimation was given to the petitioner is untenable. Therefore the Special Government Pleader submits that the Writ Petition has no merits and is liable to be dismissed.

13. On being considered the rival submissions made by the respective counsels, the learned counsel appearing for the petitioner heavily relied upon the judgment of the Apex Court in Secretary, State of Karnataka & Others V. Uma.devi & Ors. reported in AIR 2006 SUPREME COURT 1806, wherein the Supreme Court held that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Relevant portion of the said Judgment of the Supreme Court reads as follows :-

"30. In Union Public Service Commission V.Girish Jayanti Lal Vaghela & Others (2006 (2) SCALE 115), this Court answered the question, who was a Government servant and stated :-

"Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment" or "appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body

of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the interse merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (See.B.S.Minhas V.Indian Statistical Institute and others IAR 1984 SC 363)""

14. The learned counsel for the petitioner further states that appointment includes further promotion and all service benefits till superannuation. In every stage Article 16 of the Constitution of India has a major role to play. The learned counsel, would further submit that there was no proper intimation to the petitioner about the proposed test for Lance Naik promotion and as such, the respondent failed to follow the mandatory provision under Article 16 of the Constitution and in that view, the learned counsel for the petitioner would contend that the petitioner would be eligible to get promotion along with his juniors and therefore, the prayer sought for in the Writ Petition has to be allowed.

15. In respect of the contention made by the learned counsel for the petitioner, the fact remains that the petitioner worked in the photo section along with 5 others. Atleast three of his colleagues as mentioned supra, out of 6 including the petitioner, did attend the LNK test conducted by the respondent and they have also passed the test and subsequently got promoted. If the contention of the petitioner is that there was no intimation about the test conducted, it is not known as to how others working in the photo section on "Other Duty basis" came to know and three of his colleagues, had properly attended the test. Moreover, the learned counsel heavily relied upon the intimation dated 15.02.1993 issued by the city police to all Heads of Departments concerned, whereby the reschedule of the test from 17.02.1993 to 19.02.1993 was duly intimated and such intimation made subsequently on the Senior Photographer of the photo section, also under whom the petitioner was working, the learned counsel for the petitioner contend that when such an intimation is given to the Senior Photographer only about the reschedule of the parade, such intimation for the very purpose and the date of written test also should have been intimated.

Had the intimation been sent to the petitioner, he would have attended the test. In the absence of such an intimation, as that of the one dated 15.02.1993, the contention of the respondent that the intimation has been duly given and in response to which, only of the colleagues of the petitioner have attended, has to be rejected.

16. However, this Court is not agreeing with such a proposition for the simple reason that there are six people working including the petitioner. For these six persons one Senior Photographer is there. If at all, there is any information, the same would be for all of his junior colleagues including the other three of his colleagues who attended the test and subsequently got promoted. There is absolutely no reason for not complying with such intimation given by the authorities, which was received by the Senior Photographer, who had passed on the intimation only to three out of six and not to the petitioner is totally imaginary and cannot have legs to stand.

17. The petitioner might have missed to know the intimation or might have thought of not to attend the test. This Court does not want to go into the details, as it pertains to the privileges and the rights of the petitioner either to attend the test or not to attend the test.

18. The only issue raised in the Writ Petition for adjudication is as to whether there was any proper intimation to the petitioner and similarly placed persons, i.e. colleagues of the petitioner for the test for promotion as Lance Naik and if so, what is the proof for it.

19. In this regard, as has been discussed above, the intimation has been duly circulated to all of his colleagues. With the result three of his colleagues had attended the test, when that being so there is no plausible reason to the petitioner to claim that he had no proper intimation. With the result, the petitioner missed the chance to attend the test. Hence, the arguments advanced by the learned counsel for the petitioner is liable to be rejected and therefore, it is rejected.

20. Pursuant to the earlier orders of this Court, the representation made by the petitioner has been considered in detail and an exhaustive order has been passed by the 2nd respondent by the Order dated 17.06.2007. The reasons adduced in the impugned order are fully acceptable in this regard and in that view, this Court is of the considered opinion that the petitioner has not made out any case in his favour, which

would warrant an interference to the impugned order. Hence, the impugned order is fully sustainable and accordingly, the Writ Petition is liable to be dismissed. Hence, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi2

To

- 1.The Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.
2. The Director General of Police,
Tamil Nadu Police,
Mylapore,
Chennai - 600 004.
3. The Commissioner of Police,
Chennai City,
Chennai - 600 008.

+1cc to Mr.Arwas S. Bharmal, Advocate, S.R.No.64520
+2ccs to Mr. N. Ganeshmoothy, Advocate, S.R.No.64665
+1cc to the Government Pleader, S.R.No.65863

CA(CO)
EU 24.1.17

WEB COPY

W.P.No.25953 of 2007