

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.28925 of 2016

and W.M.P.No.25002 of 2016

P.Periyasamy

... Petitioner

versus

Commissioner of Transport
Chepauk,
Chennai - 600 005.

... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, to direct the respondent herein to consider the claim of the petitioner for promotion to the post of Regional Transport Officer under Rule 39(d) of the Tamil Nadu State and Subordinate Service Rules without reference to the criminal case pending against the petitioner in Spl.C.C.No.16 of 2014 on the file of the Special Judge and Chief Judicial Magistrate, Tiruppur and all consequential service and monetary benefits.

For Petitioner : Mr.K.Sridhar

For Respondent : Mrs.A.E.Raniselvam,
Additional Govt. Pleader

ORDER

The present writ petition has been filed by the petitioner, seeking a direction to the respondent to consider his claim for promotion to the post of Regional Transport Officer under Rule 39 (d) of the Tamil Nadu State and Subordinate Services Rules, without reference to the Criminal case pending against him in Spl.C.C.No.16 of 2014 on the file of the Special Judge and Chief Judicial Magistrate, Tiruppur with all consequential service and monetary benefits.

2. The case of the petitioner is that he was appointed in the Transport Department as Motor Vehicle Inspector Grade-II in the year 1998 and he was promoted as Motor Vehicle Inspector

Grade-I, with effect from 27.09.2002. While he was working as Motor Vehicle Inspector Grade-I at Kangeyam Union Office, a criminal case was registered against him by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Erode in Crime No.13/AC/05/ER dated 29.08.2005 on the basis of a complaint given by one T.R.Senthilkumar alleging that the petitioner demanded illegal gratification for registering his wife's vehicle. Upon registration of the criminal case, the petitioner was arrested on 31.08.2005 and released on bail on the same date. On the basis of the criminal case registered against the petitioner, he was suspended from service on 01.09.2005. In pursuant to the order of this Court dated 15.06.2007 passed in W.P.No.20423 of 2007, his suspension was revoked on 25.10.2007 in proceedings No.56476/VC2/2005 of the Transport Commissioner, Chennai-5 and he was posted to Enforcement Wing in the office of the Joint Transport Commissioner in Proceedings Proc.R.No.T1/64093/2007 dated 31.10.2007 of the Transport Commissioner, Chepauk, Chennai - 600 005. Now, the petitioner is working as Motor Vehicle Inspector Grade-I at the Regional Transport Office, Hosur. While so, investigation in the criminal case was completed and charge sheet was filed in C.C.No.93 of 2007 before the Special Court, Erode and after four years, it was subsequently transferred to the Special Court, Coimbatore and renumbered as C.C.No.132 of 2011. Thereafter, L.W.2, the sanctioning authority for A2 and A3 was examined. Since L.W.1 the Transport Commissioner/Sanctioning Authority had ignored to receive the summons of the Criminal Court, the said case was pending without any further process. Again, the case was transferred to the file of the Chief Judicial Magistrate, Special Court for Vigilance and Anti-corruption cases, Tiruppur and re-numbered as C.C.No.16 of 2014 and the case was adjourned from time to time for non-appearance of the sanctioning authority and the same is still pending.

3. According to the petitioner, he never demanded bribe and he was not present in the Office at the time of occurrence during the trap on 30.08.2005. The trap team waited in vain till 3.00 p.m. Since the trap ended in failure, the alleged bribe amount was forced on the Night Watchman A2, who came for duty after 6.00 p.m. In fact, the vehicle was registered on 22.08.2005, i.e. 7 days before the complaint. Further, he has been attending the Court for every hearing. Due to non appearance of the L.W.1, the case is pending before the Court and there is no fault on his part.

4. Now the grievance of the petitioner is that his name has not been included in the panel for promotion to the post of Regional Transport Officer in view of the pendency of the

Criminal Case, which was pending for the past 11 years for non-appearance of the Sanctioning Authority. In the meantime, his juniors were promoted to the said Post. Since he has completed 14 years of service as Motor Vehicle Inspector, Grade-I and he has also passed the Departmental Examinations, he is eligible for promotion to the post of Regional Transport Officer. Hence, the petitioner made a representation dated 06.11.2013 to the respondent seeking promotion to the post of Regional Transport Officer stating that his juniors were promoted to the said post and the pendency of the criminal case is not a bar for his promotion. Despite the same, there was no response from the respondent. The petitioner has also made another representation dated 04.07.2016 for the above said relief. But, till date, the respondent has not passed order on the said representation. Hence, the present writ petition has been filed by the petitioner herein.

5. The learned counsel appearing for the petitioner submitted that the petitioner's claim for promotion to the post of Regional Transport Officer cannot be deferred due to pendency of Criminal Case. Ignoring the summons and non-appearance of the Sanctioning Authority before the Criminal Court is the reason for the prolonged delay in completing the Criminal Case. Therefore, the repeated denial of promotion of the petitioner to the post of Regional Transport Officer under Rule 4(a) of the Tamil Nadu State and Subordinate Service Rules on the ground of pendency of Criminal case is illegal against law and unconstitutional. In support of his contention, he relied upon the Judgment of the Supreme Court reported in 1995 (2) SCC 570 (State of Punjab and others vs. Chaman Lal Goyal), wherein, it has been held that promotion cannot be denied due to the delay in completing the criminal proceedings.

6. The learned counsel appearing for the petitioner submitted that there is a bar for promotion during the pendency of the criminal case under the amended General Rule 4(a) of the Tamil Nadu State and Subordinate Service Rules. But, the Full Bench of this Court in the case of Deputy Inspector General of Police Vs. P. Rani, reported in 2011 (3) CTC 129, held that there cannot be an absolute bar on promotion and also held that the above Government Order does not cover the case of prolonged pendency of criminal case. Further, this Court, in W.P.No.29999 of 2010 etc. batch dated 24.02.2011, held that if there is an inordinate delay in finalising the criminal proceedings then temporary promotion has to be given to the concerned individual, whose name cannot be overlooked for promotion, after getting an affidavit of undertaking that in the event of the criminal case ending against him, he can be reverted back. The relevant portion of the said Judgment reads as under:

"10. Yet another factor to be noted is that as far as promotions are concerned, when an individual's name is overlooked for four panels, his juniors might have been promoted overlooking him. Based on an application kept pending for more than seven years, whether the petitioners have to be forced to serve under their juniors also has to be looked into. Under such circumstances, if any punishment is imposed, they have to forego their promotion, but, only on an allegation, that is to say, on suspicion, this cannot be done. Consequently, I am of the considered opinion that the petitioners are entitled to get temporary promotion.

Consequently, the writ petitions are disposed of by directing the respondents to promote the petitioners as prayed for, however, after getting an affidavit of undertaking from them to the effect that in the event of their failure in the criminal case, they can be reverted to the lower post. Such exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

7. The learned counsel for the petitioner further submitted that the petitioner also undertakes that he will file an affidavit stating that if he is convicted in the Criminal Case, he will not claim the benefits accrued on promotion as there is no other case pending against him. In any event, the inordinate delay of 11 years in completing the criminal case should not hamper his future in getting the promotion. Hence, he prayed for a direction to the respondent to consider the name of the petitioner in the upcoming proposed promotion.

8. The learned Additional Government Pleader appearing for the respondent submitted that the delay in prosecuting the criminal case is not due to the fault of the prosecution. Normally, if a criminal case is pending against an employee, he could not be considered for promotion.

9. Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondent.

10. The petitioner herein did not get any promotion in view of the pendency of the criminal case for the past 11 years. Now, the only grievance of the petitioner is that his name was not considered for promotion in view of the pendency of the criminal case. Hence, the petitioner now prayed for a direction

to the respondent to consider his name in the future promotion.

11. Taking into consideration of the Judgments relied upon by the learned counsel appearing for the petitioner as stated supra, this Court directs the respondent to consider the representation of the petitioner dated 04.07.2016 and pass orders in the light of the Judgments of this Court and the Supreme Court as stated supra, as expeditiously as possible.

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

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1 The Commissioner of Transport,
Chepauk,
Chennai - 600 005.

2 The Chief Judicial Magistrate,
Special Court for Vigilance and Corruption Cases,
Tirupur, Erode District.

+2 CC to Mr. M/s. K. Sridhar, Advocate, Sr.No.47325

सत्यमेव जयते

W.P.No.28925 of 2016

NRJK (CO)
MD : 16/09/2016

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