

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.29802 of 2013

S.Mallikha

... Petitioner

Vs.

1. The Government of India,
rep. By its Secretary to Government,
Ministry of Home Affairs,
North Block, New Delhi.

2. The State of Tamilnadu,
rep. By its Secretary to Government,
Home Department,
Fort St. George, Chennai.

3. Union Public Service Commission,
rep. By its Chairman,
Dolpur House, Shahjahan Road,
New Delhi.

4. Tmt.Lalitha Lakshmi

5. V.Jayashree

6. Tmt.B.Vijayakumari

7. Selvi M.V.Jeyagowri

8. Tmt.N.Kamini

9. Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 104.

... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the Central Administrative Tribunal relating to its order in O.A.No.664 of 2010 dated 01.08.2013 and quash the same also and consequently direct the first to third respondents to appoint the petitioner in the Indian Police Service with effect from 05.05.2009 as per Select List - 2008 with seniority above her junior, the fourth respondent herein and with all monetary, seniority and other benefits to which the petitioner is entitled.

For Petitioner : Mr.P.Anbarasan

For Respondents : Mr.Dr.Simon -R1
Mr.P.H.Arvind Pandian, AAG V
assisted by Mr.R.Ravichandran - R2
Mr.K.Sridhar - R3
Mr.R.Saravana Kumar - R4,5,7 and 8
Mr.Sundar Mohan
for Mr.L.Baskar - R6

O R D E R

(Order of the Court was made by R.SUDHAKAR,J.)

Challenging the order passed by the Tribunal dated 01.08.2013 in O.A.No.664 of 2010 dismissing the Original Application filed to set aside the appointments made in favour of respondents 4 to 8 herein and for consequential order to appoint the petitioner herein to the Indian Police Service, the present Writ Petition has been filed.

2. The brief facts leading to the filing of this Writ Petition are as follows:

The petitioner while serving as Deputy Superintendent of Police was required to make a self-assessment for the purpose of preparing confidential report in respect of Group A and B Officers and for the period which is relevant for the present case from 01.04.2004 to 20.01.2005, she was working as a Deputy Superintendent of Police, Thiruvannamalai. The length of service under the Reporting Officer is 10 months as stated above. The Reporting Officer, viz., Superintendent of Police, Thiruvannamalai District, on a overall rating of the Officer, endorsed a remark as "Average" on 04.04.2005. The said remark was forwarded to the Scrutinising Officer, viz., Deputy Inspector General of Police, who agreed with the said remark on 18.06.2005. It is also on record that the said endorsement has been communicated to the petitioner herein, who acknowledged the same on 06.07.2005. Thereafter, it appears that the Inspector General of Police, North zone, Chennai has made another endorsement on 19.7.2005, which is hand written as follows:

"I do not agree. She had turned out good work in supervision of crime investigation. The detection and recovery of stolen properties in Tvmalai Dt. Were maintained. Hence, I rate her VERY GOOD."

3. The grievance of the petitioner is that even though the Inspector General of Police has made a remark as " Very good", she was not considered for the selection of conferment of IPS and she did not find place in the list of candidates in the

notification dated 05.05.2009. Hence, she submitted a representation dated 03.03.2010 to expunge the rating awarded in his Confidential Records for the period from 01.04.2004 to 06.07.2005, which was rejected on 23.03.2010, in the following manner:

" I am to inform that the following instructions were issued in G.O.No.11, Personnel and Administration (Per-R), Department dated 05.01.1984:-

Para: 10(1) Representation for expunging or modifying adverse remarks should be submitted within three months of the date of receipt of remarks by the official reported upon. Otherwise they are liable to be summarily rejected. x x x x x"

2. In view of the above instructions, the representation of Thiru.S.Mallikha is rejected, as there is no merit in it."

4. Aggrieved by the above said order, the petitioner herein has approached the Tribunal by filing an Original Application, which was dismissed by the Tribunal holding as follows:

" 16. Admittedly, the applicant served as Additional Superintendent of Police, Crime, Tiruvannamalai during the period in question (i.e. 01.04.2004 to 20.01.2005). The Reporting Officer of the applicant at that point of time was the Superintendent of Police Tiruvannamalai District and the Scrutinising Officer was the Dy. Inspector General of Police Vellore Range Vellore as per the Consolidated Instructions On the System of Personal Files. A perusal of part I and art II of " personal file for Gaazetted officer's Assessment of work" shows only two officers could record their assessment on the officer to be reported upon. Part I is to be filled by the Reporting Officer and part II is to be filled by the Scrutinising Officer.

17. The applicant has filed a copy of the confidential report for the period from 01.04.2004 to 20.01.2005 (Annex. A/1). It is seen from Annex. A/1, the Reporting officer had made his remarks on 04.04.2005 and the Scrutinising Officer, Dy. Inspector of General of Police Vellore Range, Vellore had made his remarks on 18.06.2005. It is also seen that the applicant has acknowledged the receipt of the same on 06.07.2005. Therefore, the applicant cannot contend that adverse remarks were not communicated to her and the Select Committee should not take above CR into account, while considering her case for appointment by promotion to IPS.

18. It is further seen from page 3 of the CR form in question, the remarks made by the Inspector General of Police L&O North Zone, Chennai 16 on 19.07.2005. It is stated by the 2nd respondent in the reply, that the Inspector General of Police, North Zone Chennai - 16 has no authority to review the CR of the applicant. It is also stated by the 2nd respondent that there is no provision for review of CR of an officer working in the State Government and only two officers i.e. Reporting and Scrutinising Officer could make the remarks with regard to performance of the officer, to be reported upon. It is further seen from letter dated 23.03.2010, the applicant had submitted her representation for expunging the adverse remarks beyond the time limit prescribed as per para 10.91) GO Ms.No.11 dated 05.01.1984 and hence the State Government has summarily rejected the representation of the applicant as there was no merit in it.

19. In view of the above discussion, we hold that the applicant has not made out any case for our interference with the impugned orders dated 05.05.2009 and 23.03.2010. The O.A is therefore liable to be dismissed. Accordingly, the O.A is dismissed. No order as to costs. "

5. As against the above-said order of the Tribunal, the present Writ Petition has been filed.

6. Learned counsel appearing for the petitioner submitted that the third Officer, who had made an endorsement, disagreeing with that of the Reporting Officer and that of the Scrutinising Officer is correct in terms of paragraph 5 of the Circular issued by the Director General of Police dated 08.10.1994, which reads as follows:

" 5. The officer reported upon should send his self assess report to the reporting officer before 10th April every year or within ten days of his relief from a particular post if he is transferred in the middle of the Confidential Report period. If the self assessment report is not received by the reporting officer within the time limit, he may issue a memo to the officer reported upon to furnish the same within a week's time. After a week's time, even if the self assessment report is not received, he may initiate Confidential Report on the officer and forward the same to the reviewing officer, who in turn after recording his remarks should forward the C.R. To the accepting/countersigning officer within ten

days. The accepting authority after recording his own remarks, should return the C.R. To the officer who is maintaining the Personal File of the concerned. On receipt of the C.R. The acknowledgement of the officer reported upon should be obtained for having seen the report and adverse if any should also be communicated under acknowledgement and both the C.R. And acknowledged copy of adverse remarks should be filed in the personal file. This process should be completed before 15th of May every year at any cost and within 1 ½ months if any Special Confidential Report is initiated during the middle of the year."

7. In the light of the above, learned counsel appearing for the petitioner submitted that the endorsement made by the Accepting Authority should have been considered for the purpose of conferment of IPS.

8. Per contra, learned Additional Advocate General appearing for the second respondent relied upon G.O.Ms.No.193, Personnel and Administrative Reforms (Per.R) Department, dated 18.07.1994, which is prior to the Circular issued by the Director General of Police dated 08.10.1994 and submitted that the Government has issued directions to the Heads of Departments that confidential report should be in the format evolved in terms of the said G.O. In particular, he referred to Annexure - I to the said G.O., which provides for rating by the Reporting Officer and remarks of the Scrutinising Officer and nothing more. He further submitted that the Director General of Police, Chennai, referring to G.O.Ms.No.193, Personnel & Administrative Reforms (Per.R) Department, has issued Circular memo in R.C.No.193208/Con.II(1)/99, dated 11.1.2000 dated 18.07.1994, whereby it is specifically mentioned that the revised format for writing confidential report on Group A and B officers (other than I.P.S. Officers) in Tamil Nadu Police Service and Tamil Nadu General Service should be as per the enclosed format, which is in terms of G.O.Ms.No.193, Personnel and Administrative Reforms (Per.R) Department, dated 18.07.1994. Hence, he submitted that the Tribunal is correct in rejecting the plea sought for by the petitioner herein.

9. Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the second respondent and the learned counsel appearing for other respondents and perused the materials placed before this Court.

10. The short point that arises for consideration is whether the Circular issued by the Director General of Police dated 08.10.1994 overrides G.O.Ms.No.193, Personnel and Administrative

Reforms (Per.R) Department, dated 18.07.1994 and the Circular of the Director General of Police dated 11.01.2000. The issue gets resolved, if we take the exact date of service, for which the confidential report is under scrutiny. The relevant period herein is 01.04.2004 to 20.01.2005, which would come specifically under Circular of the Director General of Police dated 11.01.2000, wherein, it is stated that the confidential report should be written as per G.O.Ms.No.193, Personnel and Administrative Reforms (Per.R), Department, dated 18.07.1994.

11. The contention of the learned counsel appearing for the petitioner that the circular issued by the Director General of Police dated 08.10.1994 provides for three level assessment would have no force in the light of the Circular issued by the Director General of Police, Chennai dated 11.01.2000, which is binding on the petitioner, as the period of scrutiny comes under the said Circular. Hence, the Circular dated 11.01.2000 issued by the Director General of Police, Chennai overrides the Circular issued by the Director General of Police dated 08.10.1994.

12. Even though, as per the contention of the learned counsel appearing for the petitioner, the Circular dated 08.10.1994 provides for three level assessment, since the period involved in this case is 01.04.2004 to 20.01.2005, the Circular dated 11.01.2000 issued by the Director General of Police is binding on the petitioner. Therefore, we find that the Tribunal was justified in rejecting the claim of the petitioner to include her name in the select list of candidates for conferment of IPS. We also find that the rejection of the representation by the second respondent on 23.3.2010 is in consonance with paragraph No.10(1) of G.O.No.11, Personnel and Administration (Per-R), Department dated 05.01.1984.

13. In the result, the order passed by the Tribunal stands confirmed and this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Government of India,
rep. By its Secretary to Government,
Ministry of Home Affairs,
North Block, New Delhi.

2. The State of Tamilnadu,
rep. By its Secretary to Government,
Home Department,
Fort St. George, Chennai.

3. Union Public Service Commission,
rep. By its Chairman,
Dolpur House, Shahjahan Road,
New Delhi.

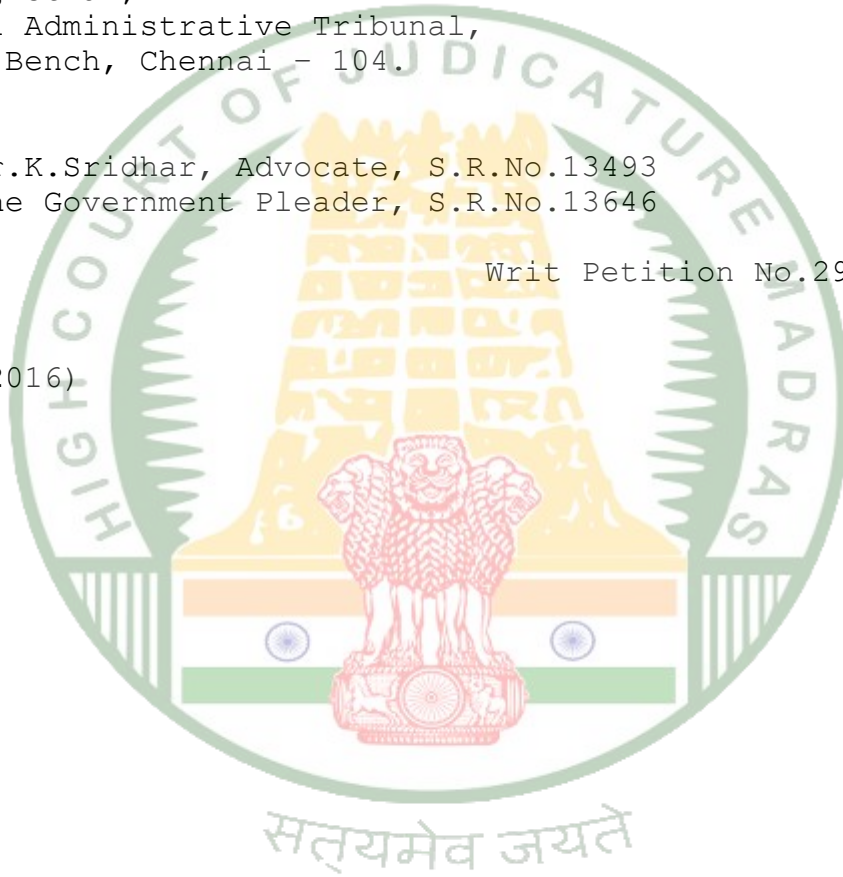
4. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 104.

+1cc to Mr.K.Sridhar, Advocate, S.R.No.13493

+1cc to the Government Pleader, S.R.No.13646

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PPA(CO)
CA(29/03/2016)



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