

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.36344 of 2016

Mr.P.Mahimainathan

.. Petitioner

Vs.

1. State of Tamilnadu rep. by its
Secretary, (Home-III) Department,
The Secretariat, Chennai-600 009.

2. The Additional Director General of Police,
Armed Police, Kilpauk,
Chennai-600 010.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for records of the second respondent and quash the impugned Endorsement letter, dated 01.08.2016, vide Rc.No.ESTT.II(2).8896/2015 passed by the second respondent as null and void and consequently direct the second respondent to include the name of the petitioner at the appropriate place below the name of his immediate senior Mr.Sivaganesan found in Sl.No.30 and above his immediate junior Mr.R.Munusamy found in Sl.No.31 in the approved list of candidates dated 15.04.2013, vide Rc.No.A1/6212/2013 of the second respondent found fit for promotion to the post of Inspector of Police (General) for the year 2013-14 with all attendant benefits.

For Petitioner : Mr.K.Ravi Anantha Padmanaban

For Respondents : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for records of the second respondent and quash the impugned Endorsement letter, dated 01.08.2016, vide Rc.No.ESTT.II(2).8896/2015 passed by the second respondent as null and void and consequently direct the second respondent to include the name of the petitioner at the appropriate place below the name of his immediate senior Mr.Sivaganesan found in Sl.No.30 and above his immediate junior Mr.R.Munusamy found in Sl.No.31 in the approved list of candidates

dated 15.04.2013, vide Rc.No.A1/6212/2013 of the second respondent found fit for promotion to the post of Inspector of Police (General) for the year 2013-14 with all attendant benefits.

2. It is the case of the petitioner that he joined the Police Department as Grade-II Constable in TSP/Battalion. On 12.01.2001, he was appointed as Sub-Inspector of Police (General) on temporary basis. While he was working as Sub-Inspector of Police, he was awarded with punishment of Censure. According to the petitioner, the check period of one year was calculated from 17.07.2003 to 16.07.2004 and hence, on the crucial date, i.e. on 18.03.2004, he was not regularised in the post of Sub-Inspector of Police, but only from the year 2005-2006. Thereafter, on 24.09.2004, the petitioner was regularised as Sub-Inspector of Police along with 144 others in the 'C' list in the year 2005-2006 on permanent basis. It is the further case of the petitioner that he should have been regularised on permanent basis on the date of appointment itself, i.e. on 12.01.2001.

3. While so, on 15.04.2013, promotion panel list for 2013-14 was prepared for the post of Inspector of Police. The second respondent prepared the panel for the post of Inspector of Police for the year 2013-14 and the petitioner's name was not included. It is the grievance of the petitioner that his name should have been included below the name of his immediate senior Mr.Sivaganesan found in Sl.No.30 and above his immediate junior Mr.R.Munusamy found in Sl.No.31 in the approved list of candidates, dated 15.04.2013. Since the petitioner's name was not included in the panel for the year 2013-2014, he sent a representation, dated 01.08.2013 to the second respondent seeking inclusion of his name in the panel for promotion to the post of Inspector of Police. Since the second respondent did not send any reply, the petitioner sent another representation, dated 29.04.2015 to the second respondent to include the petitioner's name in the panel for the year 2013-2014 for the post of Inspector of Police.

4. It is the further case of the petitioner that after a gap of three years, the second respondent sent a reply, dated 04.05.2016, stating that there was a check period of one year for the punishment of Censure ending on 16.07.2004. Therefore, as per the crucial date, 18.03.2004 to include the petitioner's name in the 'C' list for the year 2004-2005, the check period of one year became a blockade and hence, his name was included in the 'B' list for the year 2005-2006. It is also the stand of the second respondent that as per G.O.Ms.No.22, the petitioner's name was not included for the year 2004-2005. When the facts were brought to the notice of the second respondent by way of subsequent representation, 20.07.2016, the second respondent, by the impugned 'Endorsement', dated 01.08.2016, rejected the claim of the petitioner for including the petitioner's name in the promotion panel for the post of Inspector of Police in respect of the year

2013-2014. Challenging the same, the present Writ Petition is filed for the relief stated supra.

5. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the check period came to an end as early as on 16.07.2004. He further submitted that the petitioner's seniority has to be counted from the date of appointment and not according to the date of confirmation, whereas the petitioner's seniority was counted from the date of confirmation in the year 2004, i.e. after punishment. In this regard, learned counsel for the petitioner relied on a decision of the Supreme Court reported in 1990 (2) SCC 715 (Direct Recruit Class II Engineering Officers' Assn. Vs. State of Maharashtra), wherein it has been held that once an incumbent is appointed to a post according to Rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation and that, seniority cannot be determined on the sole test of confirmation.

6. Heard the learned Special Government Pleader appearing for the respondents on the above aspects.

7. On a perusal of the impugned order, I find that the reason assigned in the impugned order (Endorsement) for not including the petitioner's name in the panel for the year 2013-2014 for promotion to the post of Inspector of Police is that the punishment of Censure was imposed on the petitioner covering the period from 17.07.2003 to 16.07.2004 and after expiry of the said punishment period, i.e. on 17.07.2004, he had been promoted as Sub-Inspector of Police by including his name in the 'C' list for the year 2005-2006, considering his eligibility as on 31.12.2004. In my considered opinion, as per the said judgment of the Supreme Court reported in 1990 (2) SCC 715 (cited supra), the petitioner's seniority ought to have been fixed based on the date of his appointment and not according to the date of confirmation.

8. In the instant case, the petitioner had been appointed as Sub-Inspector of Police on temporary basis on 12.01.2001. Further, on the date of preparing the panel, there is no currency of punishment as against the petitioner and therefore, there is no impediment for including the name of the petitioner in the panel for the year 2013-2014. Hence, the impugned Endorsement is liable to be quashed.

9. Accordingly, the impugned Endorsement is quashed. The Writ Petition is allowed as prayed for. The second respondent is directed to include the name of the petitioner at the appropriate place below the name of his immediate senior Mr.Sivaganesan found in Sl.No.30 and above his immediate junior Mr.R.Munusamy found in Sl.No.31 in the approved list of candidates, dated 15.04.2013, vide Rc.No.A1/6212/2013 of the second respondent found fit for promotion to the post of Inspector of Police (General) for the year 2013-14, with all attendant benefits. No costs.

CS

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

Copy to

1. The Secretary, (Home-III) Department,
The Secretariat, Chennai-600 009.
2. The Additional Director General of Police,
Armed Police, Kilpauk,
Chennai-600 010.

+1CC to MR.K.RAVI ANANTHA PADMANABAN, Advocate SR.NO.71618

+1CC to Govt. Pleader, High Court, Madras SR.NO.71279

W.P.No.36344 of 2016

CA[CO]

MK:06/01/2017

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