

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No. 6540 of 2016

Mr.Hariharaputhiran

... Petitioner

Vs

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

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

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent and quash the impugned order vide C.No.Esstt.II(2)/1288/2015 dated 15.2.2016 of the 2nd respondent rejecting the relief of retrospective promotion to the petitioner on and from 18.3.2006 in the cadre of Sub Inspector of Police, which was served on the petitioner vide C.No.A1/Sec/120/2016 dated 19.2.2016 and consequently direct the 2nd respondent to grant promotion to the petitioner on permanent basis on and from 18.3.2006 in the cadre of Sub Inspector of Police (General).

For Petitioner : Mr. K.Ravi Anantha Padmanabhan

For Respondent : Mr.S.Gunasekaran
Additional Government Pleader

ORDER

Heard Mr. K.Ravi Anantha Padmanabhan, learned counsel appearing for the petitioner and Mr.S.Gunasekaran, learned Addl. Government Pleader appearing for the respondents 1 and 2.

2. Mr.A.Hariharaputhiran has come forward with this Writ Petition who was appointed as Grade II constable on 9.6.1993 and given promotion as Grade I Constable on 18.3.1997.

Thereafter, he was promoted again on temporary basis as Sub-Inspector with effect from 8.12.2006 on 6.3.2008. After one year and one month, he was made permanent in the post of Sub Inspector with effect from 28.4.2008.

3. Therefore, the crux of the issue raised in the Writ Petition is that as he was given the benefit of temporary promotion with effect from 8.12.2006, as Sub-Inspector of Police, he should have been given promotion to the post of Sub Inspector of Police on permanent basis from 18.3.2006. Since they have given him promotion, on temporary basis with effect from 8.12.2006 and made him permanent in the same post with effect from 28.4.2008, the petitioner has given a representation before the 2nd respondent on 8.3.2013. Adding further, the learned counsel appearing for the petitioner would submit that when a similar representation given by Mr.Govindaraj was considered in his favour by proceedings dated 30.7.2013, citing the administrative delay as one of the reasons for making him a permanent Sub Inspector of Police (ARMR), the same reason will equally apply to the case of the petitioner as well.

4. Adding further, he would submit that the Additional Director General of Police, in his proceedings dated 30.7.2013 while allowing the representation of Mr.Govindaraj on the basis of the instructions issued in the Office Circular Memorandum in C.No.A1/30200/05 dated 2.12.2005 which has been recalled for the reason that after publishing the "Ç" List on 18th March, if there are vacancies as on 18.3.2006, orders should be issued for promotion as on 18th March.

5. Relying on the said proceeding, learned counsel would further submit that even as per the stand taken by the respondent, since the petitioner was given a reply on 9.12.2015 in Rc.No.Estt.II (1)/13774/2015, stating that though there were 46 vacancies estimated for the estimated for the year 2006-2007, the names of only 20 Havildars, who had passed the prescribed test for promotion to the post of Sub-Inspector of Police (General) alone were included in the "C" list leaving the remaining 26 vacancies in anticipation of clarification from Government regarding scrapping of test for Tamilnadu Special Police Personnel and consequently as orders on scrapping of test for promotion to the post of Sub Inspector of Police (general) was awaited from Government, the test was not conducted to assess the eligibility of next batch of Havildars for promotion as Sub Inspector of Police (General) to fill up the remaining 26 vacancies estimated under promotee quota for the year 2006-2007. Pending receipt of orders on scrapping the efficiency test, 26 (21+5) Havildars were promoted as Sub Inspectors of Police

temporarily vide R.O.No.348/2006 dated 18.11.2006 . Therefore when the petitioner was given the benefit of temporary promotion with effect from 8.12.2006, he goes without saying that there were permanent vacancies, therefore, instead of giving promotion on permanent basis with effect from 18.3.2006 after promoting the petitioner on temporary basis with effect from 8.12.2006, the impugned order not giving the benefit of permanent promotion, with effect from 8.12.2006 is only arbitrary, untenable and unjustified. Concluding his argument, he would further submit that when the Additional Director General of Police in his proceedings 30.07.2013 has made it clear that if there are vacancies as on 18th March, which is a crucial date, the order should be issued for promotion as on 18th March, the impugned order giving promotion on permanent basis with effect from 28.4.2008 after promoting the petitioner on temporary basis with effect from 18.3.2006 is liable to be set aside and the benefit given to Mr.Govindarajan, Mr.Karuppasamy, Mr.Prakasam and Mr.Thiyagarajan should be extended to the petitioner also.

6. Opposing the above prayer, learned Additional Government Pleader for appearing for the respondent after filing a detailed counter affidavit vehemently contended that the case of the petitioner cannot be mixed up with the cases of Mr.Govindarajan, Mr.Karuppasamy, Mr.Prakasam and Mr.Thiyagarajan. The reason is that they were all appointed as Sub Inspector of Police with effect from 18.3.2004 instead of 4.6.2005 stating the reason that inspite of availability of four vacancies in the rank of Sub Inspector of Police, during the year of panel 2004-2005, namely as on 31.12.2003, he has been promoted as Sub Inspector of Police only on 13.6.2009 as per the order passed on 4.6.2005. After giving the temporary promotion, the Additional Director General of Police, scrutinized the connected records and relevant rules. During his scrutiny of the papers, it was revealed that four vacancies in the rank of Sub Inspector of Police were available from 31.12.2003. Therefore, the panel for drawl of "C" List for the year 2004-2005, which is due to approval on 18.3.2004 has been drawn and approved only on 5.5.2005.

7. The learned Additional Government Pleader has made clear that if there are vacancies as on 18th March, order should be issued as on 18th March. Accordingly, the said Mr. Govindaraj and 3 others who were fully found eligible to get promotion as Sub Inspector of Police with effect from 18.3.2004 due to administrative reasons having been given benefit from 5.6.2005, their seniorities in the post of Sub Inspector of Police were restored with effect from 18.3.2004 retrospectively. Therefore, the same analog cannot be applied to the petitioner.

8. This Court is unable to agree with the objections raised by the learned Addl. Govt. Pleader. The reasons are as follows;

(i) It is not in dispute that Mr. Hariharaputhiran, the petitioner herein was promoted on temporary basis with effect from 8.12.2006. After he was given promotion on temporary basis with effect from 8.12.2006, about 3 years later, he was given promotion on permanent basis with effect from 28.4.2008. Therefore, the contention made by the petitioner that the reason cited by the Additional Director General of Police in his proceedings dated 30.7.2013 stating that after publishing the 'C' list on 18th March, if there are vacancies as on 18th March, orders should be issued for promotion as on 18th March should be applied to the case of the petitioner finds merits. In as much as the petitioner as mentioned above was given promotion on temporary basis with effect from 8.12.2006 and subsequently, he was given promotion on permanent basis with effect from 28.4.2008. Therefore unless there were vacancies on 18.3.2006, the petitioner would not have been promoted on temporary basis with effect from 8.12.2006.

(ii) Secondly, it is the admitted case of the respondent that they were not able to give benefit of permanent promotion to the petitioner and others in view of pending receipts of orders on scrapping of the efficiency test. Finally the efficiency test came to be scrapped by order dated 27.2.2008. Therefore it is seen from paragraph 4 of the counter affidavit filed by the respondent that the remaining 26 vacancies for the Sub Inspector of Police estimated for the year 2006 and 2007 were not filled up due to the pendency of file seeking clarification from the Government regarding test held for selection to the post also shows that there were vacancies even on the date when the petitioner was given temporary promotion with effect from 18.3.2006.

9. Therefore, the order passed by the Additional Director General of Police dated 30.7.2013 in favour of Mr.Govindarajan, Mr.Karuppasamy, Mr.Prakasam and Mr.Thiyagarajan has to be applied even for the year 2006 for the petitioner. Therefore, the Writ petition stands allowed as prayed for and the impugned order is set aside.

10. It is needless to mention that the 2nd respondent is directed to grant promotion to the petitioner on permanent basis from 18.3.2006 in the cadre of Sub Inspector of Police by passing an order within a period of eight weeks from the date of receipt of a copy of this order. No costs.

11. With the above direction, this writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msr

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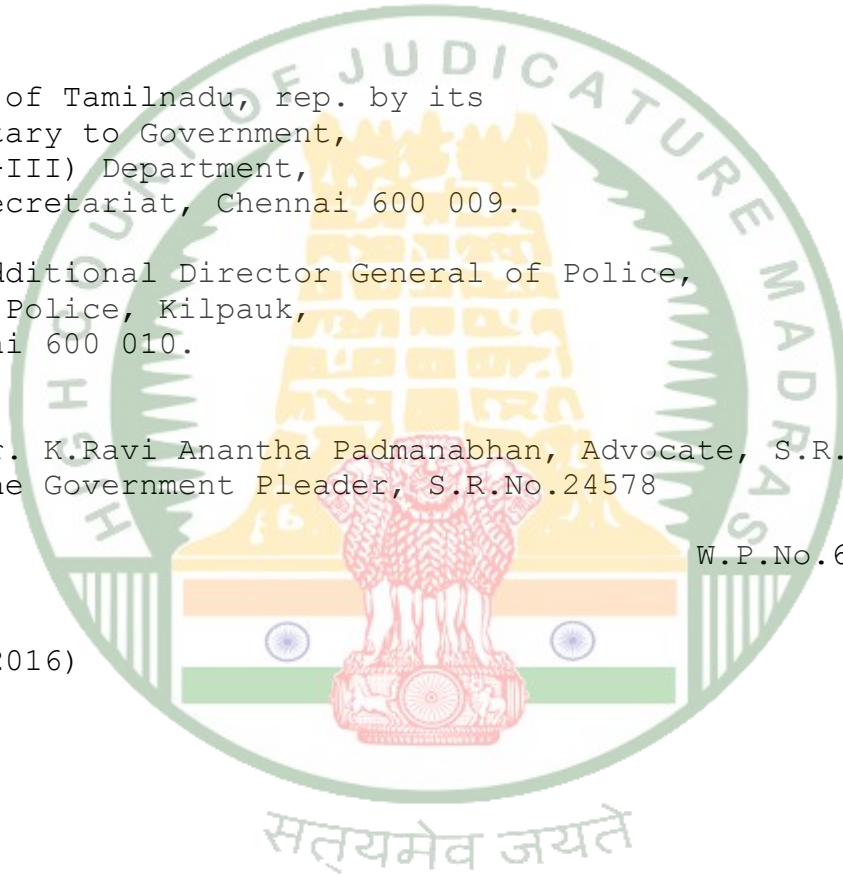
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+1cc to Mr. K.Ravi Anantha Padmanabhan, Advocate, S.R.No.24638

+1cc to the Government Pleader, S.R.No.24578

W.P.No.6540 of 2016

AD(CO)
CA(17/05/2016)



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