



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A(MD) No.1354 of 2015

1. The State of Tamilnadu,
Rep. By its Principal Secretary,
Government of Tamil Nadu,
Secretariat, Home (Police-2) Department,
Fort St. George,
Chennai - 600 009.

2. The Director General of Police,
Beach Road,
Chennai - 600 004.

..Appellants/Respondents

Vs.

E. Shanmugaiah

..Respondent/Petitioner

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 27.07.2015 made in W.P.(MD) No.18058 of 2014.

Prayer in WP(MD). 18058/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned order passed by the 1st Respondent in Government Order in G.O. Ms. NO. 954, Home (Police -2) Department, dated 06.11.2013 and to quash the same in so far as it fails to include the name of the petitioner in the temporary panel of Inspectors of Police fit for appointment for the Post of Deputy Superintendent of Police (Category - I) by transfer for the year 2012-2013 and consequently direct the Respondents herein to include the name of the petitioner in appropriate place in the said list with all consequential benefits and pass such further or other orders.

For Appellants : Mr.A.K.Baskara Pandian
Special Government Pleader
For Respondent : Mr.V.Rajasekaran

J U D G M E N T

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)



passed in the said writ petition in and by which the appellants herein were directed to promote the respondent/writ petitioner to the post of Deputy Superintendent of Police from the date on which his immediate junior was promoted subject to the condition that there is no legal impediment to do the same, the appellants have filed this Writ Appeal.

2. The facts leading to filing of the Writ Petition briefly narrated there as follows:

The respondent/writ petitioner was recruited as the Sub-Inspector of Police (Law and Order) in the year 1987 and got his promotion as the Inspector of Police and at present serving as the Inspector of Police (Protection of Civil Rights), Ooty, Nilgiris District. It is the case of the respondent/writ petitioner that he was issued with a Charge Memo in P.R.No.125/CBE/2009 by the Office of the Deputy Superintendent of Police, Coimbatore, Coimbatore - 13 under Rule 3(b) of Tamilnadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 framing 8 charges and he was placed under suspension by the order dated 15.02.2010 with effect from 16.02.2010.

2.ii) The first appellant herein has drawn the temporary panel for promotion of Inspector of Police (Law and Order) to the post of Deputy Superintendent of Police vide Government Order in G.O.Ms.No.954, Home (Police-2) Department dated 06.11.2013. The name of the respondent/writ petitioner was not considered on the ground of pendency of the Departmental Proceedings and on account of pendency of charge memo in P.R.No.125/CBE/2009 and also another charge memo dated 26.05.2010 in and by which, three charges were framed against him in connection with Paazee Forex Trading Company. The order of suspension passed against the petitioner was revoked on 10.11.2014. The petitioner made a challenge to the G.O.Ms.No.954, Home (Police-2) Department dated 06.11.2013 of the first appellant on the ground that the contents of the two charge memos are *per se* unsustainable, false and concocted and his legitimate rights for considering his name for promotion to the post of Deputy Superintendent of Police was unjustly over looked.

2.iii) The appellants/respondents in the said writ petition have filed a counter affidavit. The learned Judge on appraisal of facts also placed reliance on judgment rendered by the Hon'ble Supreme Court of India reported in 1995(2) SCC 570 in State of Punjab and others Vs. Chaman Lal Goyal and also the order dated 30.09.2013 made in W.P.(MD) No. 15690 of 2013 allowed the writ petition vide order dated 27.07.2015 with the direction directing the appellants herein to promote him to the post of the Deputy Superintendent of Police in the event of absence of any other legal impediments and also placed him above his immediate junior ~~respondent/writ petitioner~~ to the said post. The respondents in the writ petition has filed the Writ Appeal have made challenge to the said order.



3. Mr.A.K.Baskara Pandian, learned Special Government Pleader has drawn attention of this Court to the G.O.Ms.No.22 Personnel and Administrative Reforms(s) Department dated 24.02.2014 and would contend that as per the said Government Order, amendment to Rule 4(a) of the General Rules for the Tamil Needy State and Subordinate Services has been made and Schedule VI of Part-A deals with preparation of the approved list. As per para No.II, which deals with consideration of members for inclusion in the approved list, due to pendency of the departmental proceedings or criminal proceedings, the names shall be deferred and on exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion.

4. The learned Special Government Pleader submitted that in the present case, admittedly, two charge memos are pending at the time of preparation of promotion panel for promotion to the post of the Deputy Superintendent of Police on 06.11.2013 and as such his name was overlooked and in the event of the respondent/writ petitioner getting exonerated from the departmental proceedings, his name would be definitely considered for promotion to the post of the Deputy Superintendent of Police strictly in accordance with law and the above cited Government Order and prays for interference.

5. Per contra, Mr.Rajasekaran, learned counsel appearing for the respondent/writ petitioner would draw attention of this Court to the additional typed set of documents dated 17.10.2016 as well as the affidavit dated 13.10.2016 and would submit that one Ramakrishnan, the Inspector of Police, who is facing the prosecution for the commission of offence under Section 302 IPC in the form of custodial death, was promoted as the Deputy Superintendent of Police and insofar as the present case is concerned, in respect of the second charge memo, criminal prosecution was launched against the petitioner, which include one Mr.Promoth Kumar, I.P.S, the Inspector General of Police and he was granted tender of pardon and he was arrayed as a witness and Mr.Promoth Kumar made a challenge to the criminal prosecution launched against him and the Hon'ble Supreme Court of India has closed the criminal proceedings and as such, as on today, no criminal proceedings is pending against him. Ever otherwise by virtue of grant of interim order, he was arrayed as only a witness and it cannot be cited an impediment to consider his name for promotion to the post of the Deputy Superintendent of Police.

6. It is further submission of the learned counsel appearing for the respondent/writ petitioner that in the light of the said development, further proceedings took place in the form of a charge memo and insofar as the first charge memo is concerned, it is unduly kept pending for nearly six years only to deprive him from consideration of the name to the post of the



Deputy Superintendent of Police. He would further add that the learned Judge on proper appreciation of facts and on correct application of legal principles issued an appropriate direction and prays for dismissal of this Writ Appeal.

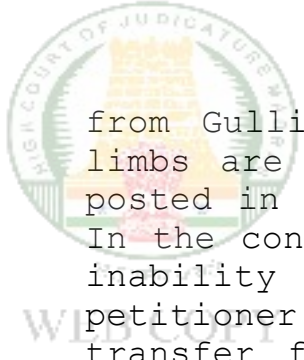
7. This Court paid its best attention to the rival submissions and perused the materials placed before it.

8. The learned Judge, for the purpose of issuing direction directing the appellants herein to promote him to the post of the Deputy Superintendent of Police with the consequential direction, has placed reliance upon the judgment rendered by the Hon'ble Supreme Court of India reported in 1995(2) SCC 570 and the order dated 30.09.2013 made in W.P.(MD) No.15690 of 2013 (cited supra). A perusal and consideration of the judgment of the Hon'ble Supreme Court of India reported in 1995(2) SCC 570(cited supra) would disclose that the charge memo came to be quashed on the ground of delay of nearly 5 ½ years for serving the memo of charges. The Hon'ble Supreme Court of India, on finding there is no acceptable explanation for such a delay, had quashed the charge memo. In the considered opinion of this Court, the said case has no application to the case on hand for the reason that in respect of the alleged delinquency, which took place during May and August 2009 the charge memo came to be issued during November 2009. Insofar as placing reliance on the order dated 30.09.2013 made in W.P.(MD) No.15790 of 2013, it is not clear from the impugned order passed in the writ petition the facts of the case and extraction of paragraph No.6 of the said order also does not reveal clear fact as to the reason for quashing of the charge memo. In the considered opinion of this Court, the reliance placed in the above cited judgment of the Hon'ble Supreme Court of India as well as the order made in W.P.(MD) No.15690 of 2013, is not sustainable for the reason that the said decisions have no application to the facts of the present case.

9. It is also pertinent to point out at this juncture that as per the amendment made to Tamilnadu Subordinate Service General Rules, during pendency of the charge memo or criminal proceedings, consideration for promotion to a higher post can be deferred till culmination of the said case. In the present case on hand, two charge memos are pending and as such, the appellants are justified in deferring/not considering the name of the first respondent/writ petitioner for the promotion to the post of the Deputy Superintendent of Police. Therefore, this Court is of the considered view that the impugned order directing the appellant to grant promotion to the respondent/writ petitioner to the post of the Deputy Superintendent of Police with consequential direction warrants interference.

<https://hcservices.ecourts.gov.in/hcservices/>

10. At this juncture, the learned counsel for the respondent would submit that he is aged about 56 years suffering



from Gullian Barre Syndrome, due to which, his upper and lower limbs are not functioning and by way of punishment, he has been posted in hill station namely, Ooty as Inspector of Police (PCR). In the considered opinion of this Court, in the light of physical inability in the form of illness pleaded by the respondent/writ petitioner and he is taking treatment at Trichy, his request for transfer from hill station to some other place other than hill station, especially a place either at Trichy or nearby place, requires positive consideration.

11. In the result, the Writ Appeal is allowed and the order dated passed in W.P.(MD) No.18058 of 2014 dated 27.07.2015 is set aside as a consequence, the writ petition is dismissed. No costs. The respondents 1 and 2, in the light of the reasons assigned above shall positively consider the request made by the petitioner for transfer from Ooty and may accommodate him either at Trichy or nearby place and the said exercise shall be carried out within a period of six weeks from the date of receipt of copy of this order and communicate the decision taken to the respondent/writ petitioner.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS)

To

1.The Principal Secretary, State of Tamilnadu,
Government of Tamil Needy, Secretariat,
Home (Police-2) Department, Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Beach Road,
Chennai - 600 004.

+1cc to Mr.V.Rajasekaran, Advocate in SR.69269

W.A(MD)Nos.1354 of 2015
15.11.2016

cm

PBK/SS3/AR-II 21.11.2016 ::5P-4C:(IT)