



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 04.08.2016
Delivered on: 30.08.2016

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P (MD) No.11671 of 2015

R.Thirumalai,
S/o.Ramasamy,
Sub-Inspector of Police,
VDDS Wing, Tirunelveli City,
Tirunelveli.

.. Petitioner

Vs.

1.The Director General of Police,
Tamil Nadu,
Mylapore, Chennai - 4.

2.The Deputy Inspector General of Police,
Salem Range, Salem.

.. Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to consider the claim of the petitioner for promotion as Inspector of Police without reference to the pending disciplinary proceedings in C.No.B1/12441/2005 P.R.No.25/B1/2005, dated 18.11.2005 and promote him as Inspector of Police and grant him all consequential service and monetary benefits.

For Petitioner : Mr.Veera Kathiravan
Senior Counsel
for M/s.T.Ayngaraprabhu

For Respondents : Mr.Aayiram K. Selva Kumar
Government Advocate

O R D E R

This Writ Petition has been filed for issuance of a Mandamus to direct the respondents to consider the claim of the petitioner for promotion as Inspector of Police without reference to the pending disciplinary proceedings in C.No.B1/12441/2005 P.R.No.25/B1/2005, dated 18.11.2005 and promote him as Inspector of Police and grant him all consequential service and monetary benefits.



2.The brief facts as set out in the affidavit filed in support of the Writ Petition are as follows:

2.1.The petitioner entered in service as Sub Inspector of Police by direct recruitment through a selection conducted by Tamil Nadu Uniformed Service Recruitment Board (TNUSRB) and appointed on 02.06.1997.

2.2.Though the petitioner attained sufficient seniority, his claim for promotion as Inspector of Police for the year 2006-2007 was not considered when the list was published by the respondents on 14.09.2006. However, the petitioner's junior by name Samarasam was included in the panel and he was promoted.

2.3.The petitioner was overlooked on the ground that he was facing disciplinary proceedings initiated against him by the second respondent in PR No.26/2004 dated 18.11.2004 and PR No.26 of 2005 dated 18.11.2005 and that the criminal case in C.C.No.30 of 2003 is also pending trial before the Chief Judicial Magistrate-cum-Special Judge, Salem.

2.4.Though the petitioner made a representation on 10.04.2008 to promote him as Inspector of Police without reference to the criminal case and the other disciplinary proceedings and obtained a direction from this Court in W.P.No.6347 of 2008 by order dated 13.03.2008 to consider a representation, the first respondent rejected the representation of the petitioner by citing the pendency of the departmental proceedings and the criminal case before the Chief Judicial Magistrate-cum-Special Judge, Salem.

2.5.The criminal case that was filed against the petitioner in C.C.No.30 of 2003 on the file of the Chief Judicial Magistrate-cum-Special Judge, Salem ended in honourable acquittal on 20.05.2013 and further action was dropped in respect of the departmental proceedings vide PR No.26 of 2004 and another case in RC No.121537/Conf.I(2)/2004. Thus, except the departmental proceedings in connection with the offence in respect of which the criminal court has acquitted the petitioner, no other case is pending against the petitioner before the criminal Court.

2.6.Having regard to the inordinate delay in the conclusion of the departmental proceedings, the respondents should be directed to promote the petitioner without reference to the pendency of the departmental proceedings as otherwise it would seriously affect the petitioner's right.

3.The learned Senior Counsel appearing on behalf of the petitioner submitted that the charges were framed long back. It is desirable to conclude the departmental proceedings within a reasonable time, the respondents on the one hand do not complete the disciplinary proceedings and on the other hand, do



not consider the petitioner's grievance to promote him as Inspector of Police which he ought to have been given even in the year 2006.

4.The learned Senior Counsel appearing for the petitioner also submitted that there are several incidences that the respondents have promoted police officers despite pendency of a criminal case or departmental proceedings. However, the respondents have not considered the request of the petitioner.

5.The learned Additional Government Pleader appearing for the respondent strenuously argued that the petitioner is not entitled to for a direction from this Court having regard to the peculiar facts of the present case. He also relied upon the counter affidavit filed by the second respondent.

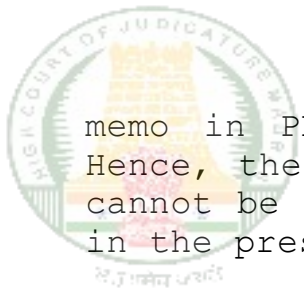
6.The second respondent in the counter affidavit has come up with a specific case that the petitioner is not entitled to promotion in view of the pendency of departmental proceedings against him on the serious charges framed and the pendency of Criminal Appeal in CrI.A.(MD)No.515 of 2013 before this Court.

7.The petitioner was accused in a corruption case. It was a trap case. Though he was acquitted, it is not a honourary acquittal. In the judgment in Special Calendar Case No.30 of 2004 it has been observed as follows:

"All these circumstances create serious doubts about the allegations set forth against both the accused. Therefore, it is decided that the prosecution has failed to prove the charges against the accused beyond all reasonable doubts and such benefits of doubts has to be given to the accused."

8.It is also admitted that an appeal against this judgment of acquittal has been filed before this Court in Criminal Appeal No.515 of 2013 and that it is pending.

9.It is also admitted that the petitioner is facing departmental action under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 in PR No.B1/26/2005. The petitioner has filed a writ petition in W.P.(MD)No.3106 of 2006 before this Court against the disciplinary proceedings on the ground that on the same set of allegations a criminal case is pending and obtained interim stay. Though this writ petition was dismissed as withdrawn on 21.06.2010, the respondents were not able to finalise the departmental proceedings during the pendency of Writ Petition. The departmental proceedings were delayed only due to the stay obtained by the writ petitioner. The petitioner thereafter filed another writ petition in W.P.(MD)No.19273 of 2014 before this Court to quash the charge



memo in PR No.26/B1/2005. This writ petition is now pending. Hence, the long delay in the disposal of departmental proceedings cannot be cited as a reason by the petitioner to grant him relief in the present case.

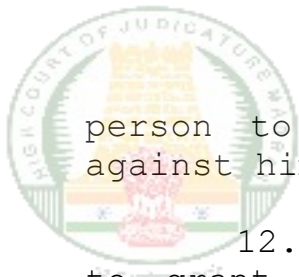
10. The learned Senior Counsel relied upon G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 24.02.2014, whereunder Schedule VII has been introduced by way of amendment to the General Rules for the Tamil Nadu State and Subordinate Services. Relevant clause relied upon by the Senior Counsel in Schedule VII, Part A, Clause II, which reads as follows:

"II. Consideration of members for inclusion in the approved lists:-

(1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of service and no specific charges have been framed, promotion or appointment of such member of service shall be considered on the basis of the merit revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. 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."

11. It can be seen from the above passage that a member of service shall be considered for promotion only when no specific charges have been framed. In a case where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, he cannot be considered for promotion. In the present case, charges have been framed and departmental proceeding is pending. Though the petitioner is acquitted in the criminal case, appeal is pending. Assuming that the criminal case is over, the petitioner is not exonerated from the charges in the disciplinary proceedings. Hence, the petitioner's claim for promotion cannot be accepted based on this clause. The fact that the petitioner is entitled to get promotion with retrospective effect upon exoneration from the charges would only justify to turn down the request for promotion pending disciplinary proceeding against him. The petitioner also relied upon Rule 39(d) of Tamil Nadu State and Subordinate Service Rules, 1955 seeking temporary promotion. The position is explained by a

<https://hdservices.sco.n.gov.in/Services/> of this Court in **the Secretary to Government and another v. M.Pugalendran and another** reported in **2011 (2) CTC 412** by holding that Rule 39(d) does not confer any right on any



person to be temporarily promoted if an enquiry into charges against him is pending.

12. For the reasons stated above, this Court is not inclined to grant any relief to the petitioner and the writ petition deserves dismissal. However, there is no order as to costs.

Sd/-

Assistant Registrar(Crl.side)

/True copy/

Sub Assistant Registrar

To

1. The Director General of Police,
Tamil Nadu,
Mylapore, Chennai - 4.

2. The Deputy Inspector General of Police,
Salem Range, Salem.

+1cc to special Government Pleader SR.No.48600

srm

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Order made in
W.P. (MD) No.11671 of 2015
30.08.2016