



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P (MD) No.22083 of 2016
and W.M.P (MD) No.15800 of 2016

S.Balasubramanian

: Petitioner

Vs.

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Ma/A-776/2009 Na.No.A1(2)/12913/2009 dated 30.07.2009 on the file of Respondent No.2 and quash the same as illegal and consequently to direct the Respondent No.2 to restore promotion of petitioner to the post of Head Constable with effect from 09.06.2008 with retrospective effect with all monetary benefits with arrears in the revised scale within the time stipulated by this Court.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents

: Mr.T.S.Mohammed Mohideen,

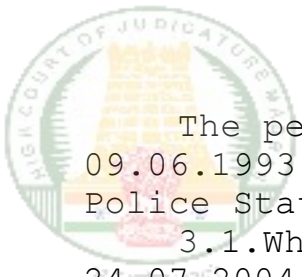
Additional Government Pleader.

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, challenging the order dated 30.07.2009 passed by the second respondent, by which, the promotion of the petitioner was postponed by one year.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who took notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

<https://hcservices.courts.gov.in/hcservices>
3. The facts leading to the filing of this writ petition are as follows:



The petitioner was appointed as a Grade II Police Constable on 09.06.1993 and now he is working as Head Constable at Vembakottai Police Station.

3.1. While he was working in Sattur Town Police Station, on 24.07.2004, a case under Section 309 IPC was booked against him, alleging "attempt to commit suicide by hanging" on 24.07.2014, whereas his wife attempted to commit suicide on the very same day and later she succumbed to the injuries due to her self-immolation.

3.2. In connection with the same, a charge memo has been issued on 01.04.2006 and a "Black Mark" was awarded by the second respondent, vide order, dated 28.07.2016, which was also confirmed by the first respondent, vide order, dated 23.07.2009.

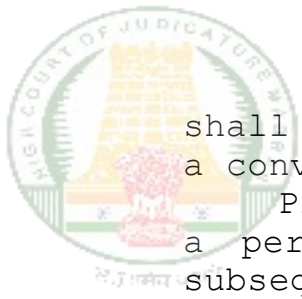
3.3. When the next promotion as Head Constable was due on 09.06.2008, citing the punishment of "Black Mark", by the impugned order dated 30.07.2009, the promotion was postponed by one year. The said order is under challenge in this writ petition.

4. The learned counsel for the petitioner would submit that as per the Judgment of the Full Bench of this Court in the case of Deputy Inspector General of Police, Thanjavur Range v. V.Rani reported in 2011(3) CTC 130, postponing the promotion in respect of a minor punishment, is illegal and therefore the case of the petitioner is to be considered, in the light of this judgment. The learned counsel for the petitioner would further submit that even though the prayer is widely worded, it would suffice if the representation of the petitioner is considered, on merits and in accordance with law, within the time frame to be fixed by this Court.

5. The learned Additional Government Pleader would submit that the Judgment of the Full Bench of this Court, cited by the learned counsel for the petitioner would not be applicable to the facts of the present case, but it is not explained as to how the dictum laid down would not be applicable to the facts of the present case. It is also contended that Rule 3(b) of the TNPSS (D&A) Rules, 1955, is not challenged in the decision referred to by the petitioner. This contention also cannot be accepted, as the issue involved is not pertaining to the validity of Rule 3 (b) of the said Rules.

6. A perusal of the records would go to show that the Criminal Court while dealing with the offence under Section 309 IPC has chosen to release the petitioner, invoking the provisions of Section 3 of the Probation of Offenders Act, 1958. Under Section 12 of the said Act, no disqualification shall be attached to the conviction and the said Section reads as under:-

"12. Removal of disqualification attaching to conviction.- Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4



shall not suffer disqualification, if any, attaching to a conviction of an offence under such law :

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence."

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6.1.Suffice to point out that when the charge for the Criminal Offence and the charge framed in the Departmental enquiry are one and the same, the Departmental Proceedings ought not to have been proceeded with, after the judgment in the Criminal Case.

6.2.Under such circumstances, the second respondent is directed to consider the representation of the petitioner dated 12.09.2016 in the light of the: (a)observations made by this Court, including the decision of the Full Bench of this Court, referred to supra; (b)the family circumstances of the petitioner; (c) Section 12 of the said Act; and (d) other circumstances, if any; and to pass orders on merits and in accordance with law, within a period of four weeks, from the date of receipt of a copy of this order.

7.With the above direction, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/
Assistant Registrar(A.S)

/True copy/

Sub Assistant Registrar

To

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

+1CC TO M/S.T.LAJAPATHI ROY, Advocate,SR.NO.70578
+1CC TO SPECIAL GOVERNMENT PLEADER,SR.NO.70710

ORDER MADE IN
W.P (MD) No.22083 of 2016
and
W.M.P (MD) No.15800 of 2016
18.11.2016