

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.10752 of 2017

J.Sivakumar

.. Petitioner

Vs

1.Government of Tamil Nadu,
Rep. By its Principal Secretary,
Home (Police) Department,
Fort St. George, Chennai - 9.

2.Director General of Police,
Office at Santhome High Road,
Mylapore,
Chennai - 4.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents to include the name of the petitioner in the panel drawn for the year 2009-2010 taking the crucial date for drawal of the panel as 01.06.2009 at the appropriate place and to confer him promotion to the post of Deputy Superintendent of Police with all consequential service by considering the representation dated 01.07.2016 of the petitioner and monetary benefits.

For petitioner : Mr.P.Ganesan

For Respondents : Mr.T.M.Pappiah, Spl.GP

ORDER

The petitioner seeks a direction to the respondents to include his name in the panel drawn for the year 2009-2010, taking the crucial date for drawal of the panel as 01.06.2009, on the ground that since there was no currency of punishment pending against him on the said crucial date, subsequent charge memo issued in PR No.77/2011, dated 05.07.2012, cannot be a bar for inclusion of his name in the panel for the year 2009-2010.

2. Learned counsel for the petitioner submitted that the petitioner was directly recruited to the post of Sub-Inspector of Police on 27.09.1987. In the year 1997-98, the respondent had prepared a 'C' list of Sub-Inspector of Police fit for promotion to the post of Inspector of Police, whereby the name of the petitioner was not found place on the ground of disciplinary proceedings pending against him under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. Thereafter, the said disciplinary proceedings also came to an end with a punishment of reduction of time scale of pay for two years without cumulative effect on 19.12.1995. As against that, when Writ Petition No.7580/2007 was filed, this Court, by order dated 21.07.2011, quashed the said punishment. Thereafter, the said punishment was also dropped by the Commissioner of Police, vide his proceedings dated 16.04.2013.

3. It is further submitted that the claim of the petitioner to include his name in the panel for the year 2008-2009 fit for promotion to the post of Deputy Superintendent of Police was rejected on the ground that he had suffered a punishment of postponement of increment for three years with cumulative effect in PR No.77/2011, dated 05.07.2012. Challenging the same, when writ petition was filed in W.P.No.28654 of 2013, this Court, by order dated 23.09.2013, set aside the said punishment and thereby directed the respondent to promote the petitioner to the post of Deputy Superintendent of Police by including his name in the panel for the year 2008-2009. Aggrieved by the same, when Writ Appeal No.1287 of 2014 was filed, the learned Division Bench of this Court, by order dated 26.06.2015, modified the order of the learned Single Judge with a direction to the respondents to consider the claim of the petitioners for empanelment for promotion to the post of Deputy Superintendent of Police.

4. Pursuant to the order of the Hon'ble Division Bench, the second respondent in his proceedings dated 29.09.2015 addressed to the first respondent, has stated that since he suffered a punishment of postponement of increment for one year in PR No.140/2007, dated 02.11.2007, his claim for promotion to the post of Deputy Superintendent of Police could not be considered.

5. In such circumstances, the only grievance of the petitioner is that although his claim could not be considered in the panel for the year 2008-2009, in the subsequent panel for the year 2009-2010 which was drawn by taking the crucial date as 01.06.2009, his claim could have been considered by the respondents, as the currency of the above said punishment was operational only from 02.11.2007 to 01.11.2008, and in other

words, since there was no currency of punishment pending against him on the crucial date i.e. 01.06.2009, there is no embargo for the respondents to consider his claim for promotion in the panel year 2009-2010.

6. Learned counsel for the petitioner has also relied upon a judgment of this Court in A.Kalaiselvan v. State of Tamil Nadu [2016 Writ Law Reporter 847] for a proposition that when there is no currency of punishment on the crucial date, subsequent charge memo cannot be a bar for conferring promotion. By relying this judgment, it is further submitted that admittedly there was a currency of punishment pending as on 01.06.2008, therefore, his name was not included in the panel for the year 2008-2009, however, the respondents ought to have included his name in the subsequent panel for the year 2009-2010. It is further submitted that in the light of the above said judgment, subsequent charge memo issued in PR No.77/2011, dated 05.07.2012, cannot be a bar for his promotion with effect from the panel for the year 2009-2010.

7. In the light of the above, considering the fact that there was no currency of punishment on the crucial date i.e. 01.06.2009, the respondent shall consider the representation dated 01.07.2016 of the petitioner seeking to include his name in the panel for the year 2009-2010 fit for promotion to the post of Deputy Superintendent of Police, on merits, by taking note of the above said judgment of this Court in A.Kalaiselvan's case (cited supra), within a period of six weeks from the date of receipt of a copy of this order. With this direction, the writ petition is disposed of. No Costs.

Sd/-
Assistant Registrar

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

vga/klt

WEB COPY

1. The Principal Secretary,
Government of Tamilnadu,
Home (Police) Department,
Fort St. George, Chennai - 9.

+1cc to Mr.P.Ganesan, Advocate, S.R.No.26003
+1cc to the Government Pleader, S.R.No.26449

RSY (CO)
RS (19/05/2017)

