

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2017

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THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH

and

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.206 of 2017
and C.M.P.No.3335 of 2017

- 1.The Director General of Police,
TamilNadu,
Mylapore, Chennai - 600 004.
 - 2.The Deputy Inspector General of Police,
Salem Range, Salem.
 - 3.The Superintendent of Police,
Nethimedu, Salem District,
Salem.
- ... Appellants/Respondents

versus

O.P.Ramasamy ... Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 19.03.2015 in W.P.No.11870 of 2014.

WP.No.11870 of 2014:Writ filed under article 226 of the Constitution of India, praying to issue a writ of certiorarified Mandamus Calling for the records of 2nd respondent in RC.No. A3/756/8582/2010 RO.No.331/2010 dated 12.08.2010 quash the same in so far as non-inclusion of Petitioner herein for promotion and consequently direct the 2nd respondent herein to promote the petitioner to the post of Special Sub-Inspector from the date on which his immediate Junior was promoted and also to grant service and other attendant benefits with effect from 12.08.2010

For Appellants : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For Respondent : Mr.A.Edwin Prabakar

J U D G M E N T

[Judgment of the Court was delivered by HULUVADI G. RAMESH, J.]

The Writ Appeal has been preferred challenging the order of the learned single Judge in allowing the Writ Petition.

2. The respondent has joined the Tamil Nadu Police Service as Constable on 25.10.1984. He was eligible for automatic upgradation as Special Sub-Inspector of Police on completion of ten years of service as Head Constable. The grievance of the respondent is that, all those who were appointed along with him were upgraded to the post of Special Sub-Inspector of Police by proceedings dated 12.08.2010. However, the name of the respondent was not included in the said panel. He obtained information under the Right to Information Act. He was informed that a Charge Memo dated 14.08.2010 was pending against him and that was the reason for non-inclusion of his name in the panel for upgradation as Special Sub-Inspector of Police.

3. Challenging the same, the Writ Petition was filed before this Court. On 19.03.2015, the learned single Judge directed the second respondent therein to include the name of the respondent in the panel drawn relating to the order dated 12.08.2010 for upgrading him as Special Sub-Inspector of Police, within a period of two months from the date of receipt of a copy of the order. Accordingly, the Writ Petition was allowed.

4. The above said order is under challenge by the Government on the ground that in paragraph 5 of the order they made it clear that the entire order need not be quashed. It is contended by the learned Special Government Pleader for the appellants that the learned single Judge directed the second appellant to include the respondent's name in the panel for promotion along with others. He further contended that there was an enquiry being held both on the criminal and disciplinary enquiry [departmental enquiry] and as such, during the pendency of enquiry, the case of the respondent cannot be considered for promotion as ordered by the learned single Judge.

5. The learned Special Government Pleader for the appellants submitted that in the case of the respondent is not entitled for upgradation as Special Sub Inspector of Police as per the orders stipulated by the Government of Tamilnadu in G.O. (Ms)No.937, Home (Police-3) Department dated 21.07.1998 in which

the Government have ordered to upgrade Head Constables those who have completed 10 years of service and had put in total of 25 years of service, as Special Sub Inspectors of Police providing fulfilment of the conditions laid down in G.O.(Ms)No.368, Personnel and Administrative Reforms Department dated 18.10.1993.

6. The learned counsel for the respondent, in support of his contention, relying on the judgment of the Hon'ble Apex Court reported in (2013) 4 SCC 161 [UNION OF INDIA AND OTHERS vs. ANIL KUMAR SARKAR] has held that the date on which the respondent's batchmates were promoted, neither any criminal proceedings was initiated against him nor any departmental enquiry was initiated, nor was any charge-sheet served upon him and nor was he placed under suspension and held that the impugned judgment directing the appellant state to consider the respondent's case for promotion in terms of Office Memorandum dated 14.09.1992. Further held, that "sealed cover procedure" is adopted when an employee is due for promotion, increment, etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to benefit of promotion are kept in a sealed cover to be opened after the proceedings in question are over, which was not the case herein. It is also the ratio of the Hon'ble Apex Court in the said case that the disciplinary proceedings commence only when a charge sheet is issued to the delinquent employee.

7. In similar view of the Hon'ble Apex Court in the case of UNION OF INDIA vs. K.V.JANKIRAMAN reported in [1991] 4 SCC 109 has emphasised that the promotion, etc. cannot be withheld merely because some disciplinary / criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge memo / charge sheet has already been issued to the employee.

8. The submission of the learned counsel for the respondent is that on the date of panel neither there is criminal case is pending nor charge memo / charge sheet is pending against the respondent. The submission of the learned Special Government Pleader for the appellants is that within two days the charge memo is filed. It is to be noted that from the date of consideration of panel for promotion, there is no such charge memo / charge sheet was served on the respondent. The learned single Judge passed an order dated 19.03.2015 to consider the case of the respondent for promotion cannot be interfered with.

9. In view of the matter, the order of the learned single

Judge does not call for any interference and ordered accordingly. The Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

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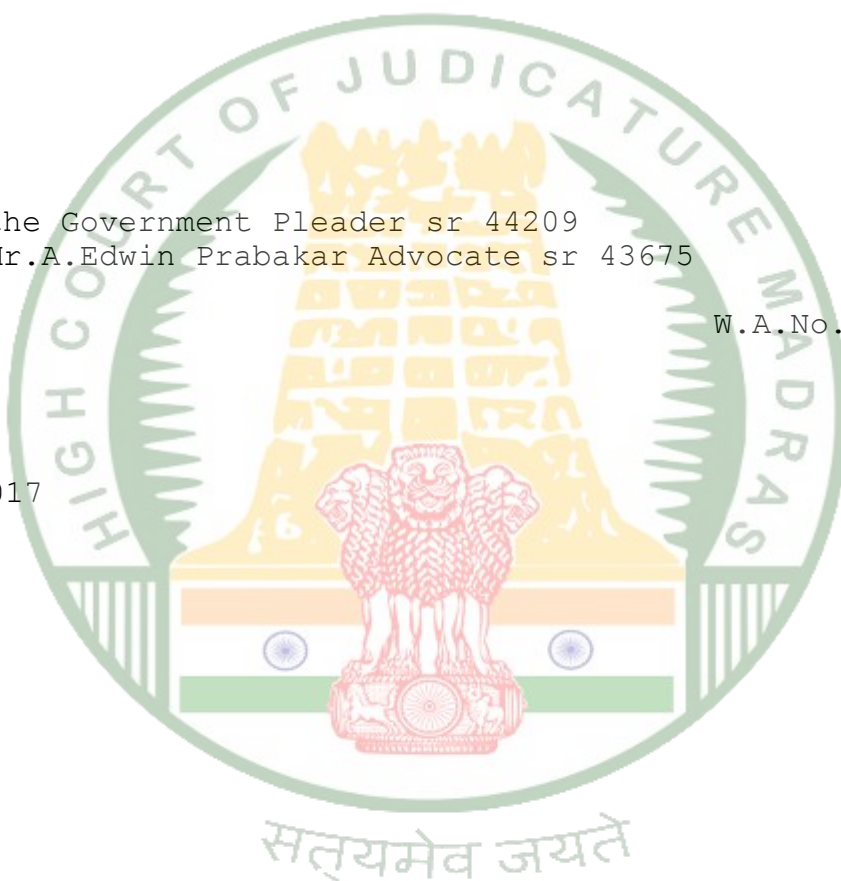
Sub Assistant Registrar

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To

+1 cc to the Government Pleader sr 44209
+1 cc to Mr.A.Edwin Prabakar Advocate sr 43675

W.A.No.206 of 2017

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