

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2017

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P. No.12666 of 2017 &
W.M.P. No.13496 of 2017

S.Logachandran

Petitioner

Vs.

1 The Government of Tamilnadu
Rep. by its Secretary,
Home Department,
Fort St. George, Chennai - 600 009

2. The Director General of Police,
Mylapore, Chennai - 4

3. The Superintendent of Police,
Nagapattinam,
Nagapattinam District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing 1st and 2nd respondents herein to promote the petitioner as Personal Assistant (Administration) as per the promotion panel approved in G.O. (Ms).No.153 Home (Pol.V) Department dated 27.02.2017 with all monetary and other attendant benefits without reference to the disciplinary proceedings subsequently initiated in charge memo dated 11.05.2017 on the file of 3rd respondent.

For Petitioner : Mr. K.Raja for
Mr.N.Kolandaivelu

For Respondents: Mr. K.Rajendra Prasad
Government Advocate

O R D E R

This writ petition has been preferred seeking a writ of mandamus directing 1st and 2nd respondents herein to promote the petitioner as Personal Assistant (Administration) as per the promotion panel approved in G.O.Ms.No.153 Home (Pol.V) Department dated 27.02.2017 with all monetary and other attendant benefits without reference to the disciplinary

proceedings, subsequently initiated in charge memo dated 11.05.2017 on the file of the 3rd respondent.

2. The learned counsel appearing for the petitioner would submit that the petitioner is now working as Superintendent in the office of the District Police Office, Nagapattinam. The petitioner became eligible for promotion to the post of Personal Assistant (Administration) in the year 2016-2017. Considering the petitioner's eligibility, 1st respondent prepared the approved panel on 27.02.2017 after finding that he was fit for promotion to the post of Personal Assistant (Administration) on the crucial date, i.e., 01.09.2016. He would also submit that when G.O.(Ms).No.153 Home (Pol.V) Department dated 27.02.2017 was issued, the name of the petitioner was included in the approved panel of Superintendents fit for appointment as Personal Assistant (Administration) and among 40 eligible and qualified names, the petitioner's name was shown at Sl.No.30. However, when the 1st respondent, promoted 34 persons, as Personal Assistant (Administration) in G.O.(D)No.570 Home (Pol.V) Department dated 09.05.2017, the name of the petitioner was omitted. However, his juniors were given posting as Personal Assistant (Administration), they are, (i) P.Xavier Seelan, (ii) V.Anbalakan, (iii) G.Raja Joslin, (iv) K.Chitra, (v) T.Ramasamy and (vi) R.S.Ravi. The said persons have also joined duty on 10.05.2017. Subsequently, the petitioner was issued with a charge memo under Rule 17(b) of the Tamilnadu Government Civil Services (Discipline and Appeal) Rules, 1955 on 11.05.2017 by the 3rd respondent and the same was served upon him on the same day.

3. It is further submitted by the learned counsel appearing for the petitioner that it is well settled proposition of Law that while drawing the panel for promotion, if charge memo is not pending against the petitioner, he would be entitled to get promotion. The learned counsel for petitioner also by inviting the attention of this Court to Paragraph Nos.16 and 17 of the Judgment of the Hon'ble Apex Court reported in (2013) 4 Supreme Court Cases 161 (Union of India and others V. Anil Kumar Sakar), has pleaded that merely by issuing a charge memo, on the ground that disciplinary or criminal proceedings are pending against the said employee, the promotion cannot be withheld. Moreover, by referring to Paragraph Nos.19 and 21 of the said Judgment, he has stated that Departmental Proceedings shall commence only when charge sheet is issued to the delinquent employee.

4. The learned counsel for the petitioner again by placing an order passed by me in a similar and identical case, namely, R.Perumal V. The Government of Tamilnadu Rep. by its Additional Chief Secretary to Government, Home (Police.V) Department, Secretariat, Chennai - 600 009 and two others in W.P.(MD) No.9447 of 2017 dated 27.07.2017, submitted that the same issue has already been considered and the said Writ Petition was allowed.

5. The Learned Government Advocate appearing for the respondents would also accede to the submission made by the learned counsel appearing for the petitioner that Mr.R.Perumal, who was shown in Sl.No.17, having suffered a similar charge memo on the same day, i.e., on 11.05.2017 had approached the Madurai Bench of Madras High Court in W.P.No.9447 of 2017 and this Court allowed the Writ Petition on 27.07.2017 with a direction to the concerned authority to give promotion to the petitioner therein as Personal Assistant (Administration) forthwith etc.,

6. In the present case, admittedly, charge memo was served on the petitioner only on 11.05.2017, much before issuance of the said charge memo, the name of the petitioner was already included in the approved panel prepared on 27.02.2017 showing his name at Sl.No.30.

7. A perusal of the order dated 27.07.2017 passed by me in W.P.(MD) No.9447 of 2017 in the case of R.Perumal V. The Government of Tamilnadu rep. by its Additional chief Secretary to Government, Home (Police.V) Department, Secretariat, Chennai - 9 and two others clearly shows that the issues are no longer resintegra, the reason is, both the persons, namely, R.Perumal and the petitioner herein were included in the promotion panel as they were found fit for promotion to the post of Personal Assistant (Administration) for the year 2016-2017 in G.O.(Ms) No.153 dated 27.02.2017 issued by 1st Respondent. However, both the persons, namely the petitioner herein and R.Perumal were issued with charge memo on 11.05.2017. Since I have considered the case of R.Perumal in my order in W.P.(MD)No.9447 of 2017 dated 27.07.2017, the petitioner herein, who was shown in Sl.No.30 is also entitled to get the same direction. Accordingly, the G.O.(D) No.570 Home (Police.V) Department dated 09.05.2017 is set aside to the extent of non-inclusion of the petitioner's name alone.

With the above direction, the Writ Petition stands allowed. The respondents are directed to pass appropriate orders by giving promotion to the petitioner on par with R.Perumal and the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssd

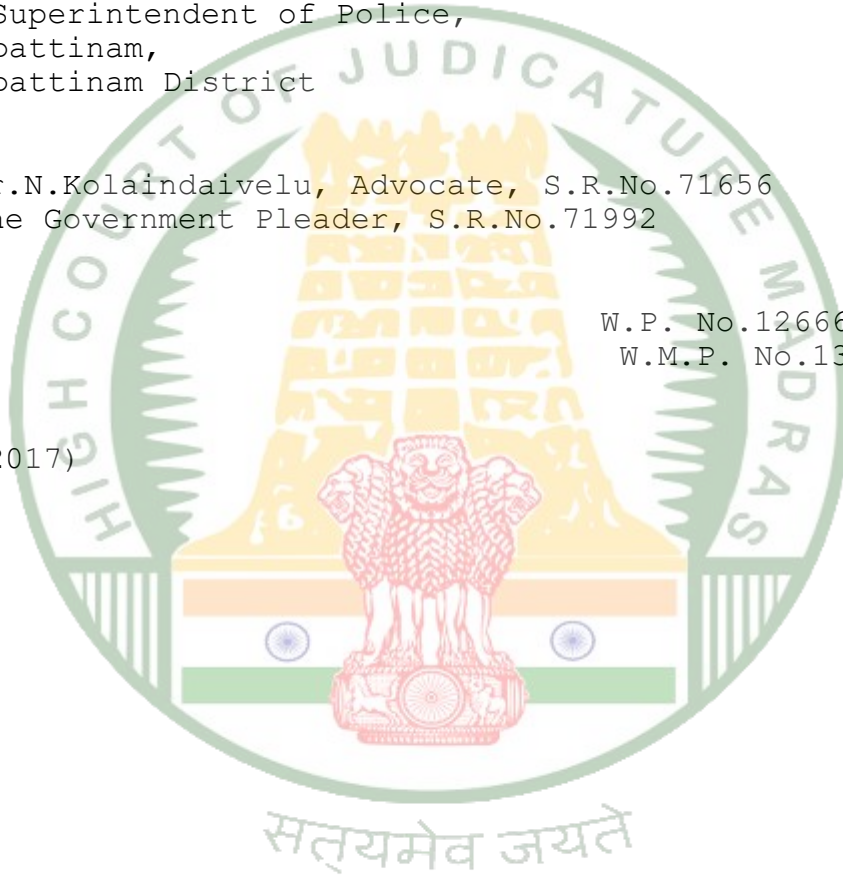
To

- 1 The Government of Tamilnadu
Rep. by its Secretary,
Home Department,
Secretariat, Chennai - 600 009
2. The Director General of Police,
Tamilnadu, Chennai - 4
3. The Superintendent of Police,
Nagapattinam,
Nagapattinam District

+lcc to Mr.N.Kolaindaivelu, Advocate, S.R.No.71656
+lcc to the Government Pleader, S.R.No.71992

W.P. No.12666 of 2017 &
W.M.P. No.13496 of 2017

NRI (CO)
GN(10/11/2017)



WEB COPY