

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.38470 of 2016

A.Durairaj

..Petitioner

Vs

1.The Director General of Police,
Law and Order,
Chennai.

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

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records in respect of the impugned order issued by the 1st respondent vide his proceedings in Rc.No.166071/NGBI(2)/2015 dated 13.07.2016 and quash the same as illegal and against the law laid down by this Honourable Court and consequently direct the respondents to consider the claim of the petitioner for promotion as Inspector of Police for the year 2013-2014 without reference to the pending disciplinary proceedings initiated by the second respondent in KGI:PR.No.G133/2016 dated 04.10.2016 on par with his juniors with all consequential service and monetary benefits.

For Petitioner : Mr.Ravishanmugam
for Mr.Ayngaraprabhu

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader.

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O R D E R

By consent, the writ petition itself is taken up for final disposal. Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondents.

2. The petitioner joined the service of the Tamil Nadu Police as Sub-Inspector of Police on 21.05.2000 and his name ought to have been included for promotion to the post of Inspector of Police (Taluk) for the year 2011-2012 and the

petitioner's name was not recommended on account of currency of punishment as well as pendency of the case instituted by the Vigilance and Anti Corruption Department.

3. Learned counsel for the petitioner would submit that the petitioner was implicated for the alleged commission of offence under Sections 7, 13(2) r/w 13(1)(d) under the Prevention of Corruption Act in Crime No.6/AC/2005 by the Vigilance and Anti-Corruption Department, Dharmapuri and the said case, after investigation, culminated into a charge sheet, which was taken on file in S.C.No.2 of 2007 on the file of the Court of Chief Judicial Magistrate, (Special Judge for Prevention of Corruption Act) Krishnagiri, and vide judgment dated 29.04.2015, he was acquitted. It is the further submission of the learned counsel for the petitioner that on the very same set of allegation, the petitioner was also issued with a charge memo by the 2nd respondent and in the light of the fact, the criminal case, on the very same set of allegation, has ended in acquittal and no further challenge has been made so far, he prays for quashment of the impugned order.

4. Learned counsel for the petitioner would further contend that the matter in issue is squarely covered by the order dated 07.02.2014 made in W.P.No.3405/2014 (T.Chandramohan vs. The Director General of Police, TamilNadu & 2 others) which was also confirmed vide judgment dated 26.06.2015 made in W.A.No.1406 of 2014 filed by The Director General of Police, Tamil Nadu, The Secretary to Government, Home (Pol.II) Department and the Deputy Inspector General of Police, Kancheepuram.

5. Per contra, Mr.Dhananjayan, learned Special Government Pleader appearing for the respondents would submit that dehors the acquittal of the petitioner, it is open to the Department to initiate disciplinary proceedings on the very same set of allegation and since considering the fact that the petitioner has involved himself in the commission of offence of moral turpitude, departmental proceedings had been initiated against the petitioner and prays for dismissal of the writ petition.

6. This Court, considered the rival submissions and perused the materials available on record.

7. A perusal of the order of acquittal dated 29.04.2015 in Spl.Case.No.2/2007 passed by the Court of Chief Judicial Magistrate, (Special Court for trial of Prevention of Corruption Act Cases) Krishnagiri, read with the contents of the impugned charge memo would disclose that the allegations are one and the same. It is the submission of the learned Special Government Pleader that the standard of proof in criminal prosecution as well as departmental proceedings differs and as such, it is open to the Department to initiate disciplinary proceedings, dehors the acquittal.

8. Admittedly, the petitioner has been acquitted after full-fledged trial and no further challenge has been made to the said acquittal so far by the concerned Department. In the light of the law laid down in the above cited order dated 07.02.2014 made in W.P.No.3405 of 2014 as confirmed by the judgment dated 26.06.2015 made in W.A.No.1406 of 2014, the order of acquittal had come to the aid of the petitioner and as on today, no criminal prosecution is pending against the petitioner and it is also to be pointed out at this juncture, the disciplinary proceedings are also on the very same set of allegations. As such, the impugned order dated 13.07.2016 passed by the 1st respondent is liable to be quashed.

9. In the result, the writ petition is partly allowed and the impugned proceedings dated 13.07.2016 is quashed and the respondents are directed to consider the claim of the petitioner for promotion to the post of Inspector of Police for the year 2013-2014, if his records are otherwise in order and pass appropriate orders including the conferment of consequential benefits and the said exercise shall be carried out as expeditiously as possible, not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. The writ petition is disposed of accordingly. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Director General of Police,
Law and Order,
Chennai.
2. The Deputy Inspector General of Police,
Salem Range,
Salem.

+1cc to Government Pleader Sr. 14476

+1cc to T. Ayngaraprabhu, Advocate Sr. 14064 dt. (16/03/2017)

W.P.No.38470 of 2016

MG(CO)

VR(15/03/2017)