



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2017

CORAM:

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**THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.A.[MD].No.748 of 2015

and

C.M.P.[MD]No.1 of 2015

1. The Secretary to Government,
Government of Tamil Nadu,
Home Department,
Secretariat, Chennai - 9.
2. The Director General of Police,
Mylapore, Chennai - 4.
3. The Deputy Inspector General of Police,
Madurai Range, Madurai.
4. The Superintendent of Police,
Madurai Rural District, Madurai. : Appellants/Respondents

Vs.

- 1.A.Gnanasekaran
- 2.Guna Balan
- 3.S.Sankar
- 4.Ganesh Kumar
- 5.R.Jeyaraj : Respondents/Petitioners

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Act, praying to allow the writ appeal by setting aside the order made in W.P.(MD)No.18354 of 2013 dated 28.11.2013.

Prayer in WP(MD)No.18354/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents herein to consider the promotion of the petitioners to the post of Special Sub Inspector of Police by including the name of the petitioners in the panel for promotion from the date of promotion of their juniors and promote them as Special Sub Inspector of Police from the date of promotion of their juniors with all monetary and attendant benefits.



For Appellants

: Mr.R.Karthikeyan

Additional Government Pleader

For Respondents

: Mr.C.Jeganathan

for M/s.Veera Associates

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JUDGMENT

[Judgment of the Court was delivered by The Hon'ble Chief Justice]

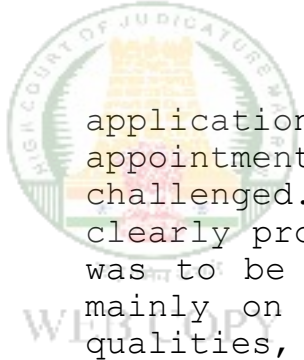
This appeal is against an order dated 28th November 2013, passed by the learned Single Bench allowing the Writ Petition filed by the respondents and directing the appellants to consider the case of the respondents for promotion to the next higher post, notwithstanding the pendency of the disciplinary proceedings against them.

2. The respondent No.1 was working as a Grade II Police Constable, the respondent Nos. 2 to 4 were working as Grade I Police Constables and the respondent No.5 was working as Head Constable. Disciplinary proceedings were initiated against the respondents under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, way back in 1999. The disciplinary proceedings, being P.R.Nos.111, 113, 116, 117 and 118 of 1999 are pending for eighteen years.

3. Learned counsel appearing on behalf of the appellants submits that the disciplinary proceedings against the respondents could not be concluded expeditiously as there were criminal proceedings also, against these respondents. It, however, appears that the respondents were acquitted of the charges against them in the criminal proceedings way back in 2012. Even after acquittal of the respondents about five years have lapsed.

4. The learned Additional Government Pleader appearing on behalf of the appellants has cited the Judgment of the Supreme Court in **State of Punjab and others Vs. Chaman Lal Goyal** reported in **(1995) 2 SCC 570**, where, the Supreme Court held that delay of 5½ years in serving the charges would not entitle the employee concerned to have the charges quashed. However, in the aforesaid case, the Supreme Court directed that the respondent should be considered for promotion forthwith, without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he was found fit for promotion, he should be promoted immediately. The promotion pending enquiry, if any, would be subject to review after the conclusion of the enquiry, in the light of the findings in the enquiry.

5. The judgment dated 27th August 2013 of the Supreme Court in **Civil Appeal No.7706 of 2013, (Bhajan Singh Vs. State of Uttarkhan and others)** cited on behalf of the appellants, was rendered in the particular facts and circumstances of the case and has no



application in this case. In the case before the Supreme Court, an appointment to the post of Managing Director by promotion had been challenged. The Supreme Court considered Rule 5 of the Rules, which clearly provided that selection to the post of the Managing Director was to be made on the basis of merit and merit would be assessed mainly on the basis of the integrity of the officer, leadership qualities, capability to take quick decision and technical knowledge. There were three charge sheets against the incumbent which the High Court had overlooked.

6. It is true that there are charges against the respondents in the instant case. However, as observed above, the respondents have been acquitted by the Criminal Court way back in 2012. Disciplinary proceedings initiated in 1999 have been kept pending for eighteen years. The writ petitioners/respondents cannot be precluded from consideration for promotion to the next higher post, if otherwise eligible. As directed by the Supreme Court in **Chaman Lal Goyal** (supra), the respondents/writ petitioners should be considered for promotion without taking the charges into consideration and be promoted, if found fit. In **State of M.P Vs. J.S.Bansal and another** reported in **(1998) 3 Supreme Court Cases 714**, the Supreme Court held that an employee has a right to be considered for promotion, even though disciplinary proceedings might be pending against him. In this context, it may also be pertinent to refer to the Special Rules for Tamil Nadu Police Subordinate Service and in particular Rule 15 (d), which provides as follows:

"Where it is necessary to promote an officer against whom an enquiry into allegations of corruption or misconduct is pending, the appointing authority may promote him temporarily pending enquiry into the charges against him. The competent authority shall have discretion to make regular promotions in suitable cases".

7. We find no ground for interference with the order under appeal. The appeal is, thus, dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
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2. The Director General of Police,
Mylapore, Chennai - 4.

3. The Deputy Inspector General of Police,
Madurai Range, Madurai.

4. The Superintendent of Police,
Madurai Rural District, Madurai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 83631

NB/RSB

TE/MR-KKR/SAR-II : 03/11/2017 : 4P/6C

JUDGMENT MADE IN
W.A.[MD].No.748 of 2015 IN
C.M.P.[MD]No.1 of 2015
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