



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :21.04.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD).No.2353 of 2014

and

W.M.P. (MD).No.1 of 2014

K.Visvanathan

..Petitioner

Vs.

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

2.The Deputy Inspector General of Police,
Trichy Range,
Trichy District.

3.The Superintendent of Police,
Trichy,
Trichy District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 1st respondent in his proceedings RC.No.231039/NGB.I(2)/2013 dated 23.09.2013 and the quash the same as illegal in so far as promoting the petitioner as Inspector of Police for the year 2009 - 2010 and consequently to direct the 1st respondent to include the name of the petitioner in the 'C' list of Sub-Inspector of Police fit for promotion to the post of Inspector of Police for the year 2005-2006 and further promote the petitioner as Inspector of Police w.e.f. 13.10.2005 with seniority and all other monetary benefits within the period that may be stipulated by this court.

For Petitioner

: Mr. M. Ajmalkhan,
Senior Counsel.
For M/s Ajmal Associates.

For Respondents

: Mr. N.S.Karthikeyan,
Additional Government Pleader.

O R D E R

Heard Mr. M. Ajmalkhan, learned Senior Counsel for the petitioner and Mr. N.S.Karthikeyan, learned Additional Government Pleader, who accepts notice for the respondents.

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2.The petitioner was appointed as Sub-Inspector of Police on 01.03.1996 by direct recruitment. Though he was transferred to various places, at the time of filing the present Writ Petition, he was working as Inspector of Police. While he was working as Sub-Inspector of Police at Trichy, a case was registered against him by V & AC in Crime No.4/2003, under Section 7, 13(2) (i) (d) of Prevention of Corruption Act 1988. It is because of the pendency of the said crime case, the petitioner's name was not included in the 'C' list of Sub-Inspector of Police fit for promotion to the post of Inspector of Police for the year 2005-2006. However, the said criminal case was ended in acquittal as per the Judgment delivered by the Special Court for trial under Prevention of Corruption Act at Trichurapalli by Judgment, dated 16.11.2012. The petitioner, therefore, submitted a representation to the second respondent for promotion as Inspector of Police on par with his batchmates for the year 2005-2006. Though the petitioner states that his name should be considered for promotion to the post of Inspector of Police for the year 2005-2006, the first respondent has rejected the petitioner's request by impugned proceedings, dated 23.09.2013, stating that the petitioner's name was not considered in view of the pendency of charges and the V & AC case against him.

3.According to the second respondent, it was on account of the minor punishments that were given to the petitioner, his name was not included in the 'C' list for promotion to the post of Inspector of Police for the year 2005-2006. The second respondent further contented that subsequent years namely 2006-2007, 2007-2008, 2008-2009, the petitioner's name could not be included in view of the pendency of charge memo as against the petitioner. We are not concerned about the subsequent charges framed against the petitioner. In the present case, the learned Senior Counsel for the petitioner argued mainly on the ground that the petitioner's name should be included so as to consider for promotion to the post of Inspector of Police for the year 2005-2006. The learned Senior Counsel for the petitioner draw the attention of this Court to the impugned proceedings of second respondent, dated 23.09.2013. It has been categorically tabled in the said proceedings the reasons for non-inclusion in the list for promotion to the post of Inspector of Police for the year 2005-2006 till 2008-2009. The impediments referred to in the impugned order for including the petitioner's name in the promotion list for the year 2005-2006, are as follows:-

(i) PR No.252/1999 u/r 3(b):-

''Postponement of increment for one year without



cumulative effect'' awarded on by DIG Villipuram 05.11.1999.

(ii) PR No.31/2000 u/r 3(a):- ''Postponement of increment for one year without cumulative effect'' awarded on 10.03.2000 by Superintendent of Police, Cuddalore District.

(iii) PR No.42/2002 u/r 3(a) Postponement of increment for one year without cumulative effect by SP, Trichy dated 22.04.2002.

(iv) Trichy V & Ac Crime No.4/2003 u/r 7 of PC Act is pending.

(v) Charge u/r 3(a) in PR 33/2005 is pending Charge memo served 30.05.2005.

(vi) Suspension period from 16.06.2003 to 25.06.2004 not settled.

4.The learned Senior Counsel for the petitioner stated that the reasons given for non-inclusion of petitioner's name in the panel proposed for 2005-2006 are unsustainable. The first impediment is on account of the punishment of postponement of increment for one year without cumulative effect awarded by Deputy Inspector General, Villupuram on 05.11.1999 as against the petitioner. The punishment is dated 05.11.1999 and the period of punishment is also over by 04.11.2000. Hence this can not be an impediment.

5.Second impediment is also the punishment of postponement of increment for one year without cumulative effect. This punishment was awarded on 10.03.2000. However in the impugned order, the date is wrongly mentioned as 25.03.2007. This mistake was accepted by the respondents. If the punishment is dated 25.03.2007, the same also can be ignored as not relevant. Since the period of punishment is also over by 2001, there is no impediment for including petitioner's name in the promotion list for the year 2005-2006.

6. The third reason stated in the impugned order again by referring to the punishment by order dated 22.04.2002 and this is also a punishment of postponement of increment for one year without cumulative effect. Hence the same cannot stand in the way for including the petitioner's name in the promotion list for the year 2005-2006.

7. The fourth reason stated in the impugned order is the pendency of criminal case under Section 7 of Prevention of Corruption Act. It is not in dispute that the criminal case ended in acquittal in favour of the petitioner. Since ultimately, there was no punishment and the petitioner was acquitted, the petitioner is entitled to be considered for promotion and this position is not in dispute. The learned Senior Counsel relied upon several



8. The fifth reason/impediment is on account of a charge memo in PR No.33/2005 which was served on 30.05.2005. The learned Senior Counsel for the petitioner submitted that the charge memo was served on 30.05.2005 and the punishment awarded to the charge memo was only Censure, which will not create a bar for promotion.

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9. The sixth reason is by citing the order of suspension by which the petitioner was suspended from 16.06.2003 to 25.06.2004. Though this period was not settled or regularised having regard to the final order that was passed pursuant to the Department proceedings the learned Senior Counsel submitted that this cannot be an impediment.

10. The learned Senior Counsel for the petitioner submitted that the concept of five years check period in spite of the punishment other than the Censure was cancelled by the Full Bench of this Court in the Deputy Inspector of General Vs V.Rani reported in 2011 (4) MLJ 1. When the State Government issued G.O.Ms.No.22 P&AR (S) dated 24.02.2014 introducing the concept of check period once again despite the Judgment of Full Bench of this Court, the same was challenged before this Court and the Hon'ble Division Bench of this Court in the Judgment in W.A.No.983 of 2015 and batch of cases dated 14.09.2016, passed the following Order

"12. Therefore, it is clear that the impugned G.O. is with several ambiguities, based on which, the appellant herein and the writ petitioner are denied promotion, even after the expiry of currency of punishment on the ground of 'check period' or treating 'censure' as an embargo for granting promotion. Hence, the impugned G.O., insofar as it suggests the 'check period' and treats the 'Censure' as an embargo for granting promotion, which was already condemned by a Full Bench of this Court, cannot be maintained as a valid one. In view of the above, the order of the learned Single Judge passed in W.P.No.243 of 2015 is set aside and the impugned G.O. is quashed, in so far as it suggests the 'check period' and treats the 'Censure' as an embargo for granting promotion. The appellant and the writ petitioner shall be considered for promotion with retrospective effect, from the date when they became otherwise, eligible, within a period of three months from the date of receipt of a copy of this Judgment. The writ appeal and the writ petitions are disposed of accordingly. No costs. The connected miscellaneous petitions are closed."

11. The learned Senior Counsel for the petitioner submitted that pendency of charge memo under Rule 3(a) is not a bar for promotion. Since this Court has already settled the issue by stating that the pendency of charge under Rule 3(a) is not a bar for promotion, inclusion of petitioner's name in the 'C' list for



the year 2005-2006 cannot be deferred or denied to the petitioner on the ground of pendency of charge memo under Rule 3 (a).

12. The next question is regarding the punishment of deferred Censure, and whether it will operate as a bar for the promotion. Referring to Police Standing Order No.97, the learned counsel for the petitioner submitted that the censure or warning is not a punishment and it is imposed only to check performance of the policeman during the punishment and that the effect of such punishment is suspended or kept in abeyance during the period mentioned in the penalty. Since the petitioner has not committed any delinquency which resulted in the punishment of deferred censure, learned Senior Counsel for the petitioner submitted that the punishment of deferred censure is automatically cancelled on completion of the period of deferment.

13. The learned Senior Counsel for the petitioner also relied upon the Judgment of this Court in the case of M.Kaliappan Vs. The Secretary to Government dated 21.10.2008. The learned Single Judge of this Court after referring to Police Standing Order No.97 has held as follows:

"48. The punishment of deferred censure imposed by the appellate authority on the petitioner was cancelled on 08.05.1995 by the Superintendent of Police, Thanjavur. As per Police Standing Order 97, at the end of three months period, the punishment of deferred censure would automatically stands cancelled. Though in the eye of law, a punishment of "deferred censure" is inflicted on a policeman, the effect of such punishment is suspended or kept in abeyance during the period mentioned in the penalty. Applying PSO 97, the punishment of "deferred Censure" imposed by the appellate authority, by order dated 19.12.1994, stands automatically cancelled on 18.03.1995 itself. The effect of such cancellation would mean that the policeman is not inflicted with any penalty at all and therefore, the same cannot be put against him at the time of consideration of his name for promotion to higher post. By cancelling the deferred punishment belatedly on 08.05.1995, the Superintendent of Police, Thanjavur, cannot be permitted to say that the deferred punishment for a period of three months would still have the effect, till the date of passing of an order of cancellation. If the contention of the respondent has to be accepted, then it will be contrary to PSO 97 and would amount to extending the period of punishment which is not permissible. In the case on hand, the punishment of deferred censure stands cancelled on 18.03.1995 and therefore, as on the date of



consideration, viz., publication of the panel, I.e., on 31.03.1995, the petitioner has no impediment or adverse records to put against him. In such view of the matter, the petitioner has got a legitimate right to be included in the panel for the post of Deputy Superintendent of Police, Category I."

14.The next issue is regarding the bar if any on account of subsequent charge memo for permitting the petitioner for including the petitioner's name in the promotion panel of the year 2005-2006. The learned Senior Counsel for the petitioner relied upon the Judgment of this Court in G.Anburaj Vs Government of Tamilnadu reported in (2013) 6 MLJ 305 and another Judgment of the learned Single Judge of this Court in A.Kalaiselvan Vs. The State of Tamil Nadu reported in 2016 (2) CWC 430. The precedents above referred to clearly demonstrate that the subsequent charge memo or departmental proceedings do not stand in the way of giving promotion to the petitioner or for including the petitioner's name in the promotion panel for the year 2005-2006.

15.It is relevant to refer to the reply affidavit filed by respondents 1 and 2. In paragraph 7 and 8, the factual position reiterated by the learned Senior Counsel for the petitioner has been categorically admitted. Hence, this Court find that the impediments referred to in the impugned order cannot be accepted and this Writ Petition is liable to be allowed holding that the petitioner is entitled to have his name included in the promotion list for the post of Inspector of Police for the year 2005-2006.

16. Accordingly the impugned proceedings of the first respondent dated 23.09.2013 is quashed and the first respondent is directed to include the petitioner's name in the 'C' list of Sub-Inspector of Police fit for promotion to the post of Inspector of Police for the year 2005-2006 and further to promote the petitioner as Inspector of Police as per the panel along with his batchmates and the petitioner is entitled to all other benefits of service and seniority as per the panel.

17.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar



To

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

2.The Deputy Inspector General of Police,
Trichy Range,
Trichy District.

3.The Superintendent of Police,
Trichy,
Trichy District.

+One cc to M/s.Ajmal Associates, Advocate, SR.No.53481

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RL/5C/7P/KP/SAR1/1.6.2017

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and
W.M.P. (MD) .No.1 of 2014

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