



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Review Petition No.1 of 2018
in Cont.P.No.705 of 2014
and Cont.P.S.R.No.23979 of 2016
in WP.No.24322 of 2010

S.Arumugasamy

... Petitioner

Vs

1. Mr.Niranjan Mardi.I.A.S.,
Additional Superintendent of Police,
Prohibition Enforcement Wing-II,
Dharmapuri District.
- 2.Mr.Apurva Varma
Principal Secretary to Government,
Home Department, St.George Fort,
Chennai-600 009.
- 3.Mr.K.Ramanujam, I.P.S.,
Director General of Police (Retd.)
Tamil Nadu, Mylapore,
Chennai-600 004.
- 4.The Principal Secretary to Government,
Home Department, St.George Fort,
Chennai-600 009.
- 5.The Director General of Police,
Tamil Nadu, Mylapore,
Chennai-600 004.

... Respondents

Prayer: Review Petition filed under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 to review and recall the order dated 24.11.2017 as originally passed and modified. Subsequently after mentioning on 11.12.2017; review and recall the order dated 18.12.2017 after mentioning on 15.12.2017; restore the contempt petitions being Cont.P.No.2014 and Contempt Petition



Sr.No.23979/2016 to file; punish the contemnors for having committed contempt by willfully disobeying the order and directions of this Court passed in WP.No.24322 of 2010 dated 09.11.2010.

For Petitioner : Mr.A.Mohan

For Respondents : Mr.S.R.Rajagopal
Additional Advocate General
assisted by
Mrs.A.Srijayanthi,
Special Government Pleader

O R D E R

The grievances of the writ petitioner is that the petitioner initially filed WP.No.24322 of 2010, for a declaration to declare GO.Ms.No.1396, Home Department dated 03.10.2007 is null and void as far as the petitioner is concerned, and declare inclusion of the petitioner's name in SI.No.19 in G.O.Ms.No.504, Home Department dated 29.06.2009 as illegal, null and void, unwanted and inoperative as far as the petitioner is concerned and consequently direct the respondents more particularly the 2nd respondent to grant opportunity to the petitioner by including his name in the promotion list or individually and the promote the petitioner fit for promotion to the post of Additional Superintendent of Police by fixing the seniority of the petitioner with effect from 07.02.2005.

2. This Court passed an order on 09.11.2010 and the relevant paragraphs are extracted hereunder:



WEB COPY

''2.The case of the petitioner is that he was appointed as Sub Inspector of Police (Category-I) in the year 1987. He served in various places and was promoted as Inspector of Police during the year 1997 and was posted in the Directorate of Vigilance and Anti-corruption, City Special Unite-III, Chennai. Thereafter, he was promoted as Assistant Commissioner of Police and served as Deputy Superintendent of Police, DCRB, Ramanathapuram District. According to the petitioner, he has secured several rewards and he was conferred with Honorary Membership by the Indian Academy of Forensic Science, kolkatta and the Bureau of Police Research and Development, New Delhi, suggested that his name may be considered for upgradation to improve the Research oriented Academic Activities, pursuant to which the Director of Vigilance and Anti-Corruption, Chennai forwarded a proposal to the Secretary, Home Department, for out of Accelerated promotion Committee as per the guidelines given by the Government in G.O.Ms.No.468, Home (Police-V) Department dated 19.03.1996 for the performance in securing one gold and one bronze medal in Scientific Aids to Investigation competition during the 44th All Indai Police Duty Meet-2000. The petitioner was subsequently given higher post of Deputy Superintendent of Police, Category-I in the Tamil Nadu Police Service by giving out of turn promotion by relaxation of Rule 4 (B) of the Special Rules for Tamil nadu Police Services in consultation with the Tamil Nadu Public Service Commission. The said promotion was given by recruitment by transfer. The petitioner assumed



WEB COPY

charge as Assistant Commissioner of Police, Egmore Range on 01.02.2003 and completed the probation on 07.02.2005. The petitioner was also awarded several commendations and medals during his tenure from 2002 to 2009 including Chief Minister Medal for distinguished service. After issuance of the impugned Government orders, the petitioner was not given further promotion and the said Government orders were challenged by one K.Mohan in WP.No.17312 of 2008 before this Court and one M.Chandrasekar in WP.Nos.10290 and 12725 of 2009 and some other persons. According to the learned counsel for the petitioner, the said writ petitions were allowed by this Court. The operative portion of the order reads as follows:

7. Considering the above facts and circumstances, I am of the considered view that the refusal to accord promotion to the petitioner to the post of Superintendent of Police citing G.O.ms.No.1396, Home [pol-1A] Dept., dated 03.10.2007 is wholly unjustified. Consequently, the GO.Ms.No.1396, dated 03.10.2007, so far as denying promotion to the petitioner is liable to be quashed and accordingly quashed. Consequently, I direct the respondents to consider including the name of the petitioner in the panel of promotion, fit for promotion to the post of Superintendent of Police from the year, which he is eligible but for G.O.ms.No.1396 dated 03.10.2007. The said exercise has to be carried out by the respondents within a period of six weeks from the date of receipt of a copy of this order. The writ petition is ordered. Accordingly.''

3. The learned counsel appearing for the petitioner submitted that the said order is followed in other cases and the said order of this Court was also implemented and therefore,



WEB COPY

the matter in issue is covered by the judgement of this Court, more particularly, WP.NO.17312 of 2008 dated 13.10.2009.

4. When the matter was posted for admission on 28.10.2010, the learned Government Advocate was directed to take notice and to verify whether the matter in issue is covered by the above said judgments. The learned Government Advocate for the respondents on instructions and also on perusal of the earlier orders submitted that the earlier orders have become final as the same were implemented by the Government and therefore, similar order may be passed in this writ petition also.

5. In the light of the said submission, this writ petition is disposed of in terms of paragraph 7 of the judgement extracted above and consequential order has to be passed by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. NO costs. Consequently connected miscellaneous petition is closed.''

3. The learned counsel appearing for the petitioner states that WP.No.12725 of 2009 was filed by one Mr.Chandrasekaran and in respect of the said Mr.Chandrasekaran, this Court passed an order as in paragraph 2 (7) of WP.No.24322 of 2010 [above cited]. The learned counsel appearing for the petitioner with reference

to the above judgment made a submission that the order



passed in the case of Mr.Chandrasekaran, was followed by this Court in the case of the petitioner also. Thus, the respondents ought to have been granted promotion to the post of Additional Superintendent of Police. However, the respondents have not initiated any action to grant such promotion in favour of the writ petitioner. It is contented that the contempt application was filed in Cont.P.No.705/2014 and this Court passed an order on 24.11.2017, closing the contempt application. Once again, the learned counsel appearing for the petitioner made a mentioning and accordingly, another order was passed by this Court in the very same Cont.P.No.705/2014 on 18.12.2017.

4. The facts and circumstances raised by the petitioner had already been adjudicated and the orders were passed twice in the very same contempt application on 24.11.2017 and on 18.12.2017. Not satisfied with the above two orders passed in the contempt application, the petitioner has preferred the present review application, in respect of the orders passed in Cont.P.No.705/2014 and Cont.Sr.No.23979/2016 in WP.No.24322/2010.

5. The grounds raised in the review petition are that to review and recall the order dated 24.11.2017 and on 18.12.2017 and restore the contempt petition on file.



6. The learned counsel appearing for the petitioner states that the respondents have not implemented the orders of this Court dated 09.11.2010, till today. Thus, the respondents are liable to be punished under the provisions of Contempt of Courts Act.

7. The learned counsel appearing for the petitioner made a sincere attempt to convince this Court by arguing the merits of the case by stating that the case of Mr.Chandrasekaran was considered by the respondents and the very same orders was referred in the order passed in favour of the writ petitioner on 09.11.2010 and therefore, whatever benefit granted to Mr.Chandrasekaran, should be granted to the writ petitioner also.

8. The learned Additional Advocate General appearing for the respondents opposed the contention by stating that the order of this Court dated 09.11.2010, is to pass a consequential order with reference to the order already passed in the case of Mr.Chandrasekaran and however, this Court has never prevented the Government to consider the merits and demerits of the case independently by the competent authorities. Thus, the case of the writ petitioner was independently considered by the competent authority and he was not promoted on account of certain implications. In other words, the case of the review petitioner was considered on merits and decision was also



taken by the authorities and his claim for promotion was deferred.

9. The learned Additional Advocate General urged this Court by stating that the review petition itself is not maintainable under Order 47 Rule 1 of Code of Civil Procedure and the writ petitioner has not established any error apparent on the face of the records. The grounds now set out in the present review petition reveals that there is no substantial grounds to entertain the present review petition and accordingly, the same is liable to be dismissed in limine.

10. Considering the arguments as advanced by the learned counsel for the petitioner as well as the learned Additional Advocate General for the respondents, this Court is of an opinion that the order dated 09.11.2010 passed in WP.No.26322 of 2010, states that the ''writ petition is disposed of in terms of paragraph no.7 of the judgment extracted is the earlier paragraph and consequential order has to be passed by the 2nd respondent within a period of eight weeks from the date of receipt of a copy of that order'. The respondents were given opportunity to pass consequential order within a period of eight weeks''.



WEB COPY

11. Thus, it is made clear that the respondents, more specifically, the 2nd respondent has to pass orders by considering the facts and circumstances, in relation to the case of the writ petitioner. It is not as if, the writ petitioner can be directly promoted to the post of Additional Superintendent of Police based on the order passed by this Court on 09.11.2010 in WP.No.24322 of 2010. In respect of promotions, the authorities competent are empowered to consider the merits and demerits of the individual cases. The authorities concerned are bound to consider whether there is any charges pending against the petitioner or all other merit consideration and the rules in force. Thus, this Court without adjudicating those issues, simply directed the 2nd respondent to pass consequential order with reference to paragraph No.7 of the order passed in WP.No.12725/2009, wherein the writ petitioner was not a party and the said writ petition was filed by one Mr.Chandrasekaran. Thus, it is not left open to the writ petitioner to claim that the promotion granted to Mr.Chandrasekaran, also to be granted to him, with reference to his service records. It is needless to mention that in respect of grant of promotion, the files of all individuals are to be considered independently by the competent authority, by taking note of the seniority, merit and the Rules in force.



WEB COPY

12. This being the legal principles to be followed for grant of promotion, this Court is of an opinion that there is no direction issued by this Court to grant promotion directly for the post of Additional Superintendent of Police. Consequently, this Court passed an order stating that consequential order has to be passed by the 2nd respondent within a period of eight weeks. Such an order was passed by the respondents rejecting the claim of the writ petitioner. This being the factum of the case, this Court is of an opinion that the review petitioner has not met out any ground to invoke the contempt jurisdiction under the provisions of Contempt of Courts Act, at all.

13. Even otherwise, the order of this Court in WP.No.24322/2010 was passed on 09.11.2010. The first contempt application was filed in Cont.P.No.705 of 2014, after a lapse of about four years from the date of passing of the order in the writ petition. Under Section 20 of the Contempt of Courts Act, contempt application shall be filed within a period of one year from the date of receipt of the order. However, the writ petitioner has filed the contempt application, after a lapse of about four years from the date of passing of the order. Thus, the first contempt application itself is time barred and liable to be rejected on the ground of laches. However, the contempt application



was taken up for hearing and an order was passed by this Court on 24.11.2017. Even in that order, the order passed in WP.No.24322/2010 dated 09.11.2010 was considered by this Court.

14. The learned counsel appearing for the petitioner argued the merits in that contempt application and the same was dealt with by this Court and an order was passed, closing the contempt application as the petitioner has not established any wilful contempt so as to initiate action against the respondents under the provisions of the Contempt of Courts Act. The writ petitioner made a mentioning and in order to give further opportunity to the writ petitioner, the case was heard once again by this Court and further order was passed on 18.12.2017 in the very same Cont.P.No.705/2014. In spite of the order passed by this Court on 24.11.2017, once again. On 18.12.2017, it was reiterated by this Court that no further orders are required and the order passed by this Court on 24.11.2017 was confirmed.

15. Under these circumstances, the writ petitioner has chosen to prefer the review petition against these two orders. A perusal of the grounds raised in the review application, this Court is of an opinion that the writ petitioner has not established any ground showing that there was an error apparent on the face of record so as to



consider the review petition. This apart, order passed by this Court dated 09.11.2010 in WP.NO.24322/2010 was dealt with, by this Court during earlier occasions. The first Contempt application itself was filed after a lapse of about four years.

16. This being the factum of the case, the review petitioner is unnecessarily filing petition after petition on the very same cause of action without any merit on the contentions. Thus, this petition is to be treated as unnecessary and to be construed as vexatious petition.

17. In this view of the matter, this Court is of an opinion that a cost of Rs.5,000/- (Rupees Five Thousand only) is to be imposed. Accordingly, the petitioner is directed to pay the cost of Rs.5000/- (Rupees Five Thousand only) to the Tamil Nadu Legal Services Authority, High Court, Madras, within a period of one week from the date of receipt of a copy of this order and produce the receipt to the Registrar (Judicial), High Court, Madras.

18. With these observations, the review application stands dismissed with costs.



WEB COPY

19. Post the matter after two weeks ''For Reporting Compliance''.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

SK

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

CO/04/10/2018

To

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 03.
2. The Revenue Officer,
Corporation of Chennai,
Zonal Office -II
No.47, Basin Bridge Road,
Chennai - 600 079.
3. The Assistant Revenue Officer,
Corporation of Chennai,
Zonal Office -II
No.47, Basin Bridge Road,
Chennai - 600 079.