

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.23013 of 2008

and

W.M.P.No.1 of 2009

P. Uthirapathi ... Petitioner
(Retd. Sub-Inspector of Police)

Vs.

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

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent in RC.No.184098/NGB I (2)/2006 dated 24.06.2008 and quash the same and direct the respondent include the petitioner's name in the 'C' list for Sub-Inspector of Police fit for promotion as Inspector of Police for the year 1997-98.

For Petitioner : Mr.M.S.Soundarajan

For Respondent : Mr.M.Inbanathan
Additional Government Pleader

O R D E R

The relief sought for in this writ petition is to call for the records pertaining to the order passed by the respondent in RC.No.184098/NGB I (2)/2006 dated 24.06.2008 and quash the same and direct the respondent include the petitioner's name in the 'C' list for Sub-Inspector of Police fit for promotion as Inspector of Police for the year 1997-98.

2. The learned counsel appearing on behalf of the petitioner made a submission that the petitioner was appointed as 'Grade II Police Constable' in the year 15.09.1969 and promoted as 'Sub-Inspector of Police' on 20.02.1986. However, his name was rejected for promotion as 'Inspector of Police' in the year 1997-98 panel, since in the year 1993, while he was in service, a charge memo was issued by the Deputy Inspector General of Police, in P.R.A1/5/3b/93 dated 17.05.1993, under 3(b) of the Tamil Nadu Police Service Standing (D & A) Rules, 1955 and received on 13.08.1993 and prior to the issuance of charge memo the petitioner was placed

under suspension from 27.11.1992 to 07.03.1993. A departmental enquiry was conducted by the Deputy Superintendent of Police, Tindivanam in the year 1998, who found two counts of charge as proved in his enquiry report dated 14.11.1999 in P.R.No.30 of 1997. Based on the enquiry report the Inspector General of Police, Armed Police, Chennai in-charge of Villupuram Range, Villupuram awarded punishment of removal from services by order dated 04.01.2000. Against which, the petitioner has preferred an appeal and the same was rejected on 18.03.2000 and thereafter, the petitioner has filed an Original Application before the Tamil Nadu Administrative Tribunal, in O.A.No.972 of 2000. The Tribunal set aside the order of punishment by order dated 13.02.2000 and directed the respondent to reinstate the petitioner with all monetary and other benefits. The respondent has implemented the said order and the petitioner was also reinstated in service as per C.No.AP1(2)/62523/02, of the Office of the Director General of Police, dated 03.09.2002 and subsequently monetary benefits were also granted.

3. The learned counsel for the petitioner would further submits that the petitioner was also awarded the punishment of 'Censure' in PR.No.29/98 on 15.07.1998 for one year. Criminal proceedings were also initiated against the petitioner in Crime No.144 of 1998 and he was placed under suspension from 25.01.1999. The petitioner was acquitted on 28.01.2004. A parallel departmental proceedings in PR.No.68 of 1999, came to be initiated against the petitioner and he was awarded the punishment of 'Reduction in time scale of pay for a period of one year without cumulative effect' on 06.04.2005. On 30.06.2005, the petitioner attained the age of superannuation and retired from service. Thereafter, the departmental proceedings was set aside by the Director General of Police by an order dated 07.03.2007, on the basis of order dated 30.06.2005, the petitioner preferred a writ petition in W.P.No.29418 of 2006.

4. As far as the present writ petition is concerned, the learned counsel for the petitioner would submit that when the WP No. 24918 of 2006 was taken up for hearing, it was argued on behalf of the petitioner that censure is not a punishment and it will not be a bar for including the name of the petitioner in the "C" list drawn for the years 1997 to 2005 fit for promotion to the post of Inspector of Police. By the order dated 07.03.2007, this Court directed the respondent to consider such claim of the petitioner and to pass appropriate orders thereon on merits. Pursuant to such direction issued by this Court, the respondent has passed the impugned order rejecting the petitioner's request for inclusion of his name in the panel for promotion to the post of Inspector of Police for the year 1997-98 by citing the punishments imposed on the petitioner as mentioned above.

5. The learned counsel for the petitioner drew my attention to G.O.(Ms).No.368, Personnel and administrative Reforms(Personnel-S) Department, dated 18.10.1993, which was amended by the Government Letter G.O.Ms.No.248, dated 20.10.1997, is extracted hereunder:

"3. Currency of Punishment:

Whenever an Officer is undergoing a punishment and there is currency of punishment on the crucial date the name should be passed over at the time of first consideration irrespective of the time of occurrence of irregularity. If the currency of that punishment continues at the time of subsequent consideration, for the next panel then the name may be included in the panel, on the basis that a name should not be passed over for the second time on account of the same punishment.

It is further clarified that charges framed under Rule 17(b) of Tamil Nadu Civil Services (D & A) Rules and any of the punishments awarded after the crucial date and till the date of issue of the panel, shall also be taken into consideration for assessing the suitability of the Officer for inclusion in the panel."

6. This letter was also further clarified on 10.06.1998, vide Letter No.25165/S/98-1 dated 10.06.1998, wherein it has been further clarified is extracted hereunder:

"The Government have examined in detail the norms prescribed under para 4 II (3) in the letter Second cited and now issue the following amendment.

Amendment

The existing para 4 II (3) shall be substituted as follow.

"The punishment of censure has no currency, whenever an officer is undergoing any punishment, other than censure, on the crucial date or on the date of consideration, then irrespective of the time of occurrence of the irregularity, his name should be passed over for that panel. If the currency of punishment continues at the time of subsequent consideration for the next panel(s), he should still be passed-over on the ground that an officer should not be considered for promotion or promoted during the currency of any punishment. After the complete of its currency no punishment should be held. Once again, against an official even it falls within the check period of any panel, if it has already been held against the official on any earlier occasion."

7. According to the petitioner, the two major punishments imposed on the petitioner have been set aside by the appellate authority. The only punishment which remain was censure awarded in PR.No.29 of 1998 of 15.07.1998. However, such punishment cannot come in the way of the petitioner for being considered for promotion to the post of Inspector of Police.

8. The learned counsel for the petitioner also drew my attention to the decision of the Hon'ble Supreme Court of India in the case of C.O.Arumugam and others vs. State of Tamil Nadu and others, reported in 1991 Supp (2) SCC 199, clarified in Paragraph No.5, is extracted hereunder:

"5. As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

9. A similar issue was considered by this Court in W.P.No.34217 of 2006 in the order dated 12.04.2010, following the above decision. Again, the Division Bench of this Court in W.A.(MD).No.350 of 2010, passed an order dated 10.08.2010 and it is extracted hereunder.

"11. The counsel for the respondent produced a copy of the letter No.25165/5/98-1, dated 10.06.1998 whereby the Government had amended the guidelines for preparation of panel for appointment by promotion. In the said letter, it has been stated that the punishment of 'Censure' has no currency.

12. Therefore from the above, it is clear that the punishment of censure could be construed only as a minor punishment and the petitioner could not be denied further promotion solely based on the said punishment. Further, the punishment of censure was subsequent to the crucial date for the preparation of the list of

Assistant Director of Local Fund Audit. That part, the Government also in the their letter cited above, stated that the punishment of censure has no currency.

13. Therefore we are of the considered view that the learned single Judge has rightly directed the first respondent to consider the name of the petitioner to be included in the panel for the promotion to the post of Assistant Director of Local Fund Audit for the year 2009, if he is otherwise qualified and eligible and not suffered with any major penalty. The learned single Judge also directed the first respondent to complete the said exercise within a period of twelve (12) weeks from the date of receipt of a copy of the order."

10. By placing reliance on the above decisions, the learned counsel for the petitioner would pray for allowing the writ petition as prayed for.

11. Per contra, the learned counsel appearing on behalf of the respondent drew my attention to G.O.Ms.No. 368 of 1993. As per the said G.O.Ms.No.368 of 1993 the petitioner is not entitled for notional promotion notwithstanding the fact that the two major punishments imposed on him have been set aside subsequently.

12. I heard the counsel for both sides and perused the materials placed. The only question for consideration in this writ petition is whether the punishment of censure imposed on the petitioner will operate as a bar against him for inclusion of his name in the "C" list for promotion to the post of Inspector of Police notionally. In the decisions relied on by the learned counsel for the petitioner, particularly in the decision of the Hon'ble Supreme Court of India in the case of C.O.Arumugam and others vs. State of Tamil Nadu and others, reported in 1991 Supp (2) SCC 199 as well as the Judgment of the Division Bench of this Court passed in W.A.(MD).No.350 of 2010 dated 10.08.2010, it was specifically held that punishment of censure is not a bar for promotion to further posts. In the light of the above, I am of the view that the impugned order passed by the respondent is liable to be set aside with a direction to the respondents to confer all the monetary benefits to the petitioner from the date on which he would have been appointed as Inspector of Police in the year 1997-98. Accordingly, the impugned order passed by the respondent is set aside. The respondent is directed to include the petitioner's name in the panel for promotion for Inspector of Police drawn in the year 1997-98, confer him promotion to

the post of Inspector of Police notionally with all consequential monetary benefits to him within a period of ten weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nmm/dss

To

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

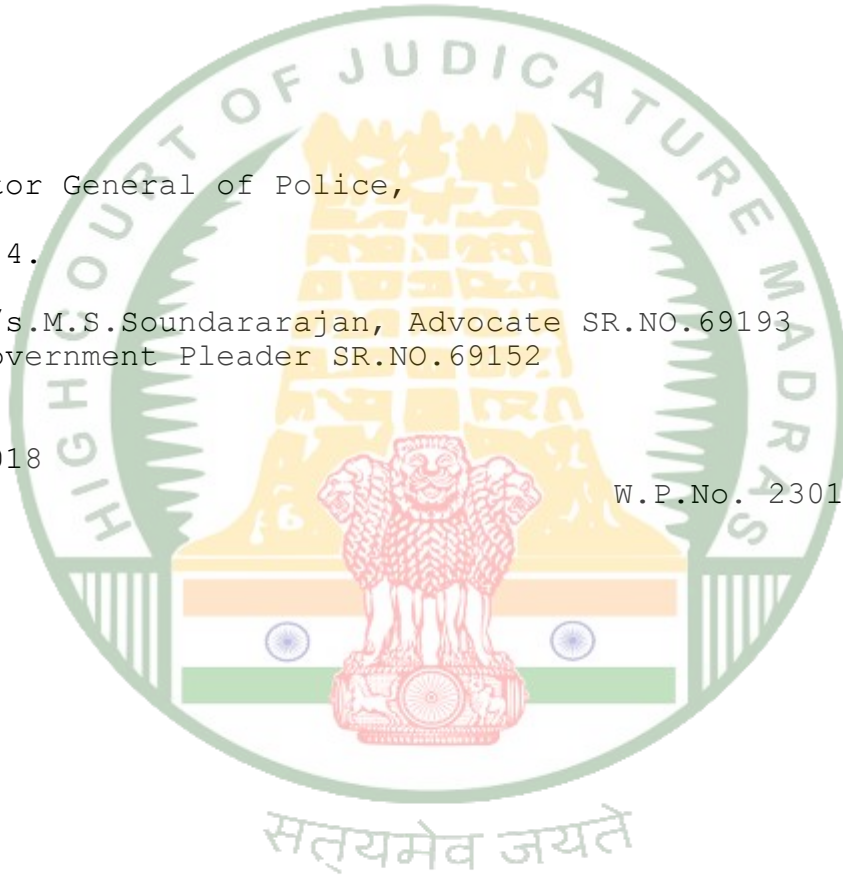
+1cc to M/s.M.S.Soundararajan, Advocate SR.NO.69193

+1cc to Government Pleader SR.NO.69152

VSNI(CO)

sm:2.11.2018

W.P.No. 23013 of 2008



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