

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.9854 of 2008

A.Subramanian

.. Petitioner

Vs.

The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai- 4.

.. Respondent

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for records of the respondent in connection with the order passed by the respondent in RC.No.230630/NGBIV(2)/2007 dated 10.03.2008 and quash the same and direct the respondent to consider the claim of the petitioner for upgradation as Special Sub-Inspector of Police for the year 2004 without reference to the punishment of black mark dated 09.08.2005 and upgrade the petitioner as Special Sub-Inspector of Police with all consequential service and monetary benefits.

For Petitioner : Mr.M.Muthappan

For Respondent : Mr.Thangavadhana Balakrishnan
Additional Government Pleader

ORDER

The petitioner has prayed for writ of Certiorarified Mandamus and to quash the order passed by the respondent in RC.No.230630/NGBIV(2)/2007 dated 10.03.2008 and further sought for directing the respondent to consider the claim of the petitioner for upgradation as Special Sub-Inspector of Police for the year 2004 without reference to the punishment of black mark dated 09.08.2005 and upgrade the petitioner as Special Sub-Inspector of Police with all consequential service and monetary benefits.

2.The case of the petitioner is that, he joined the service as a Grade-II Police Constable on 01.08.1973 and the petitioner has completed 25 years of service and out of the 25 years of service, he has served minimum 10 years of service as Head-Constable and eligible for upgradation as Special Sub-Inspector of Police on 01.06.2004. When the upgradation was ordered for the year 2004 on 11.09.2005 as per D.O.No.1046 of 2005 on the file of Superintendent of Police, Salem, the petitioner's claim was overlooked by number of juniors, who have been serving along with him, in Salem.

3.The learned counsel for the petitioner would submit that the petitioner has suffered a punishment of black mark imposed by Superintendent of Police in PR.No.124/H3/2004 dated 09.08.2005 and the punishment was well before the upgradation order passed on 11.09.2005 by the Superintendent of Police who had upgraded number of juniors to the post of Special Sub-Inspector of Police.

4.The learned counsel for the petitioner would submit that awarding black mark is not a punishment and as such, there was no currency of punishment at the time of crucial day when the upgradation was ordered on 11.09.2005. Hence, the petitioner made several representations and filed an appeal before the appropriate authority which resulted in passing the impugned order dated 10.03.2008 whereby the respondent has rejected the request of the petitioner on the ground that the request relating to the petitioner's upgradation was not considered for promotion for the year 2006 due to the currency of black mark imposed on him on 09.08.2005. His name was also not considered for the succeeding year 2007, due to the currency of black mark imposed in other PR.No.128/H3/2004 dated 08.02.2007. Under these circumstances the petitioner has approached this Hon'ble Court by filing this Writ Petition challenging the impugned order dated 10.03.2008.

5.In support of his contention, the learned counsel for the petitioner has referred to the decision of the Hon'ble Apex Court, reported in 2015 SCC Online Mad 4566, C.Ramachandran vs. The Inspector General of Police Armed Police and another.

6.The learned AGP appearing for the respondent has opposed the said prayer of the petitioner by filing a counter affidavit and the Additional Government Pleader urged this Court to dismiss the said writ petition on the ground that the petitioner has not issued with the orders of upgradations as Special Sub-Inspector of Police due to the pendency of the charges in PR.No.124/H3/2004 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 for the

delinquency of desertion. Hence, his junior batchmates were issued with upgradation as Special Sub-Inspector as per D.O.No.1046/2005 for the years 2004 and 2005 by the Superintendent of Police, Salem District.

7.The learned Additional Government Pleader would also contend that as per G.O.Ms.No.368, P & AR Department, the guidelines are stipulated as follows:-

"Pendency of Criminal Case (Charge sheet filed)/charges u/r 3(b) including TDP enquiry (Charge memo served) Promotion to be deferred till conclusion of the proceedings"

Hence, the petitioner's prayer has to be rejected as there was pendency of 3(b) Charges during the crucial time when the orders of upgradation of Special Sub-Inspector of Police passed.

8. The learned AGP would further submit that eventhough the petitioner has completed 25 years of service including 10 years of service as Head-Constable, he was not upgraded only due to the charges of desertion and punishment of black mark awarded by Superintendent of Police, Salem District dated 09.08.2005. As like 2004, he was not upgraded for the year 2005 as per G.O.Ms.No.368 which is as follows:-

"Any punishment other than "Censure" imposed within five years preceding the crucial date and "Censure" imposed within one year preceding the crucial date shall be held against the promotion of the Government servant only once. If the punishment was imposed for delinquencies which had taken place prior to the five years preceding the crucial date, it need not be held against the Government Servant. If currency of punishment (other than censure) continues, promotion shall be deferred till currency of punishment is over, irrespective of date of delinquency"

Hence, the prayer of the petitioner has to be rejected as there was pendency of 3(b) Charges during the crucial time of consideration for upgradation to the post of Special Sub-Inspector of Police.

9.The learned Additional Government Pleader would also contend that the black mark is also a punishment equivalent to "Censure" and both are having currency for a period of one year, according to the Government Order referred supra. The petitioner was rightly deferred for upgradation as Special Sub-inspector of Police during the year 2004, 2005, 2006 and 2007 and hence,sought for dismissal of the writ petition on the above stated grounds.

10. Heard, both the learned counsel for the petitioner and the learned AGP for the respondent and perused the available materials on record.

11. It could be seen from the records available and the averments made by the counsel on either side that the petitioner was not considered for the upgradation as Special Sub-Inspector of Police despite he have put in 25 years of service, in which the petitioner has served as Head-Constable for not less than 10 years, thus entitling him for the eligibility for upgrading as Special Sub-Inspector of Police. Admittedly the punishment of black mark seems to have been imposed by the respondent on 09.08.2005, which was in currency at the time when the selections were done. The "censure" for upgradation was ordered for the year 2004 on 11.09.2005 as per D.O.No.1046/2005. The currency of black mark will run for an year from the date of the award of the punishment. This Hon'ble High Court as well as the Hon'ble Supreme Court in several cases or in number of cases have held that the black mark is not a punishment and when the petitioner was awarded a punishment in the year 2004-2005, his batchmates were issued with upgradation default time, the petitioner imposed with a punishment of black mark on 09.08.2005. Currency of black mark thus will not be a bar for the petitioner for upgrading him from Head-Constable to Special Sub-inspector of Police as on 11.09.2005 wherein the upgradation of Special Sub-inspector of police order for the year 2004 was issued.

12. When the "black mark" is not considered to be a severe punishment, this Court is of the view that the petitioner is entitled for consideration for upgradation for the year 2004 as it may be construed that the "black mark" is not a punishment and so the petitioner has not suffered any punishment at all, during the crucial date. The respondent ought not to have denied the petitioner's right to get upgraded in view of the pendency of 3(b) Charges during the crucial time.

Under the above circumstances, this Writ Petition is allowed thereby setting aside the order passed by the respondent. The respondent is directed to upgrade the petitioner as Special Sub-Inspector of Police as ordered on 11.09.2005 for the year 2004. Since, the petitioner has already been Superannuated and he had been a senior citizen, his case has to be considered as expeditiously as possible and the monetary benefits as eligible under the law have to be paid to the petitioner, within a period of twelve weeks from the date of receipt of copy of this order. No costs.

nsd/vji

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

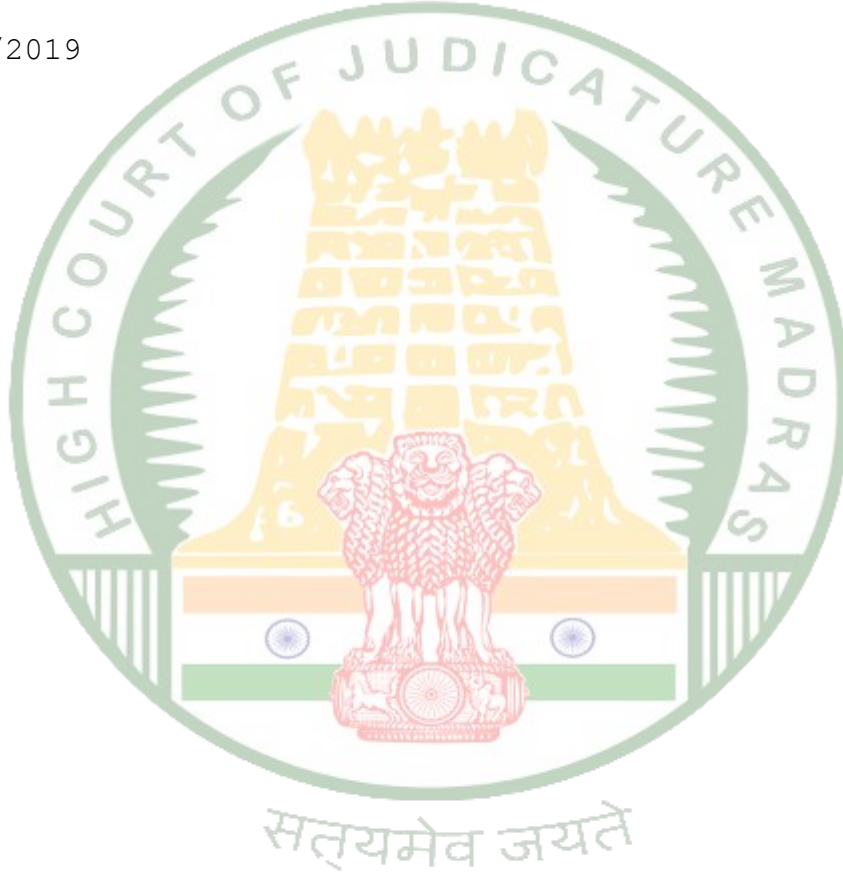
To

The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

+lcc to Mr.M.Muthappan, Advocate, S.R.No.76651
+lcc to the Government Pleader, S.R.No.76814

W.P.No.9854 of 2008

NA (CO)
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