

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.33229 of 2015 and
M.P.No.1 of 2015 & W.M.P.No.38227 of 2016

C.Mathiyalagan

... Petitioner

Vs

- 1.The Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
- 2.The Director General of Police,
Post Box No.601, Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for records of the order dated 19.01.2014 passed by the 2nd respondent in Rc.No.117066/Con3(2)/2006 and quash, consequently direct the respondents to include the name of the petitioner in the panel of Sub-Inspectors of Police fit for promotion as Inspector of Police for the year 2000-2001 issued in C.No.101202/NGB 1(1)/2000 dated 17.11.2000 at the appropriate place and promote the petitioner as Inspector of Police (Category I) from the date of promotion of his immediate junior and further direct the first respondent herein to promote the petitioner as Deputy Superintendent of Police with effect from 18.02.2005 together with all consequential service and monetary benefits.

For Petitioner Mr.Naveen Moorthy
for G.V.Mohankumar

For Respondents : Mr.A.Shrijayanthy
Special Government Pleader

O R D E R

The punishment of postponement of increment for two years without cumulative effect, dated 19.01.2014, imposed by the Director General of Police, is under challenge in this writ petition.

2. The writ petitioner joined the police service on 28.09.1987 and was working as Sub-Inspector of Police at Kodaikanal Police Station, Dindigul District. The petitioner was promoted to the post of Inspector of Police with effect from 18.02.2005. On account of certain allegations, a charge memo was issued to the writ petitioner, regarding the death of one Marimuthu on 23.06.1999. A criminal case was registered and the departmental disciplinary proceedings were simultaneously initiated against the writ petitioner. The writ petitioner was acquitted from the criminal charges by the Assistant Sessions Judge in the said criminal case on 27.02.2006 and all further actions in respect of departmental disciplinary proceedings against the writ petitioner were dropped, vide proceedings dated 25.03.2008.

3. The learned counsel for the writ petitioner states that after a lapse of five years from the date of dropping of the entire charges, the Director General of Police had initiated a suo motto review proceedings in official memorandum dated 28.11.2013. Pursuant to the initiation of the suo motto proceedings to reopen the charge memo, which was dropped on 25.03.2008, the writ petitioner submitted his explanation on 09.12.2013. However, an order of punishment was passed in his proceedings dated 19.01.2014 and challenging the same, the present writ petition has been filed.

4. The learned counsel for the writ petitioner states that the Director General of Police is empowered to initiate suo motto proceedings within a period of six months from the date of passing of the final order by the subordinate officials. Admittedly, the charges against the writ petitioner were dropped by the Additional Commissioner of Police, Chennai Police, Chennai, in proceedings dated 25.03.2008. Thus, the very initiation of the suo motto proceedings by the Director General of Police, after a lapse of five years, is in violation of the Rules in force.

5. The learned Special Government Pleader, appearing on behalf of the respondents states that the Government has got powers to initiate suo motto proceedings at any point of time. Thus, in the present case, the Government has delegated powers to the Director General of Police.

6. However, such an order delegating the powers to the subordinate officials, has not been produced before this Court. This apart, such a delegation is impermissible, in view of the fact that the rules provide that the Head of the Department may initiate suo motto proceedings within a period of six months, from the date of dropping of the charges and the same is to be initiated only by the competent authorities, in accordance with the rules in force.

7. In the present case on hand, the suo motto proceedings has been initiated by the Director General of Police and not by the Government. Therefore, the very initiation of the suo motto proceedings, after a lapse of five years from the date of dropping of the charges, is in violation of the rules, in view of the fact that the Head of the Department has no powers to initiate suo motto proceedings, after a lapse of six months from the date of passing of final orders in departmental disciplinary proceedings.

8. This Court is of an opinion that the impugned order of punishment is untenable and accordingly, the same is quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

9. In respect of other grievances including promotion, the writ petitioner is at liberty to submit a representation to the competent authorities and the same can be considered by the authorities competent, in accordance with rules and by following the procedures contemplated.

Sd/-
Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
- 2.The Director General of Police,
Post Box No.601, Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.

+2cc to Mr.G.Mohankumar, Advocate, S.R.No.66168

+1cc to the Government Pleader, S.R.No.66308

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W.M.P.No.38227 of 2016

GSP (03/10/2018)



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