

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.22009 of 2010

W.D.Sekaran

... Petitioner

Vs

The Deputy Inspector General of Police,  
Kancheepuram Range,  
Kancheepuram.

.... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the respondent herein passed in his C.No.A1/3541/2010, dated 06.09.2010 and quash the same and consequently, direct the respondent herein to promote the petitioner as Sub-Inspector of Police with effect from 01.04.1999 and further promote the petitioner as Inspector of Police from the date of promotion of his immediate junior with all consequential monetary and service benefits.

For Petitioner : Mr.Ravi Shanmugam

For Respondent : Mr.D.Venkatachalam,  
Additional Government Pleader

O R D E R

Heard Mr.Ravi Shanmugam, learned counsel for the petitioner and Mr.D.Venkatachalam, learned Additional Government Pleader appearing for the respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the respondent herein passed in his C.No.A1/3541/2010, dated 06.09.2010 and quash the same and consequently, direct the respondent herein to promote the petitioner

as Sub-Inspector of Police with effect from 01.04.1999 and further promote the petitioner as Inspector of Police from the date of promotion of his immediate junior with all consequential monetary and service benefits."

3. The case of the petitioner is as follows:-

The petitioner was appointed as Grade I Police Constable in Kancheepuram District on 15.04.1974. He was promoted as Head Constable on 08.12.1983. On 01.10.1994, the petitioner was transferred from Kancheepuram District to Vellore Range on public grounds. While the petitioner was at Vellore Range, his junior one Mr.Mohanagandhi was working as Head Constable in Kancheepuram District, was given promotion as Sub-Inspector of Police on 22.07.1996.

4. The petitioner was re-transferred to Kancheepuram District in Chengalpet Range, which was a parent District of the petitioner, on 03.09.1997. In 1998, the petitioner had approached the then Tamil Nadu Administrative Tribunal in O.A.No.7920 of 1998, to promote him as Sub-Inspector of Police, on par with his immediate junior Mr.Mohanagandhi. The original application before the then Tamil Nadu Administrative Tribunal came to be transferred to this Court and renumbered as W.P.No.35716 of 2006. However, in the meanwhile, the petitioner was promoted as Sub-Inspector of Police on 15.02.2007.

5. On 22.03.2010, this Court disposed of the W.P.No.35716 of 2006, directing the respondent to consider the petitioner's representation to promote him as Sub-Inspector of Police by taking into account his seniority on re-transfer to the Chengalpet Range. In pursuance of the direction passed by this Court, the order was passed by the respondent on 06.09.2010, rejecting the claim of the petitioner on the ground that at the time when his junior was considered for promotion as Sub-Inspector of Police, the petitioner was serving in Vellore Range and therefore, he could not be considered for promotion. The said order is put to challenge in the present writ petition.

6. The learned counsel for the petitioner would submit that he was not claiming promotion from the date when his junior Mr.Mohanagandhi was promoted, but, he was claiming the promotion only with effect from 01.04.1999. However, the respondent rejected the claim of the petitioner as he was claiming promotion from 1996, when he was serving in Vellore Range. Therefore, the respondent did not apply his mind properly to the claim of the petitioner, since his request for promotion was only from 1999.

7. Upon notice, learned Additional Government Pleader

appearing for the respondent, entered appearance and filed a counter affidavit. In the counter affidavit, the claim of the petitioner was sought to be resisted on the following averments as found in sub-paragraph 'C' of paragraph No.4, which is reproduced below:-

"1.....

2.....

3.....

4.....

a).....

b).....

c) The petitioner was allowed to appear for promotion test held on 26.10.1996 at Vellore Range while serving at Vellore District, but secured less than 10 marks (Minimum required). Hence, he was not called for further drill and viva voce test. He was dealt with on a charge u/r 3(b) in P.R.159/96 and awarded a punishment of postponement of increment for one year without cumulative effect w.e.f. 06.06.1997. Again, he was dealt with on a charge u/r 3(b) in P.R.259/97 and awarded a punishment of withholding of next increment of pay for one year without cumulative effect by Supdt. of Police, Kanchipuram on 06.02.1999."

8. The learned Additional Government Pleader would submit that even the claim for promotion as Sub-Inspector of Police with effect from 01.04.1999, cannot be granted, in view of the punishment imposed on the petitioner viz., withholding of next increment of pay for one year without cumulative effect on 06.02.1999 and the punishment will be in effect till 2000 and therefore, the question of promotion from 1999, does not arise at all.

9. At this, learned counsel for the petitioner would submit that after 1999, the Range Promotion Board was dispensed with and promotion to the post of Sub-Inspector was made only on the basis of seniority of the police personnel working in the feeder category. Therefore, in any event, the petitioner was entitled to be promoted in 2000, after the penalty of withholding of increment was over. Therefore, he would submit that the respondent while passing the order, did not take this aspect into consideration and had chosen to reject the claim of the petitioner on erroneous ground as if the petitioner was claiming promotion from 1996 in Vellore Range.

10. This Court having considered the rival submissions of the learned counsels on either side, is of the view that the authority has to take into consideration the above facts while addressing the claim of the petitioner. It appears that there is

some force in the contention put forth by the learned counsel for the petitioner that after conclusion of the 2<sup>nd</sup> penalty in 2000, the petitioner was entitled to be considered for promotion as Sub-Inspector of Police on the basis of seniority, since admittedly his junior Mr.Mohanagandhi was promoted in 1996. However, the petitioner could not be promoted, in view of the averments as extracted supra and therefore, there was no bar for considering the petitioner for promotion after the penalty period in 2000.

11. In the above circumstances, this Court is of the view that the respondent is to be directed to reconsider the entire issue afresh and pass detailed order after taking note of the averments contained in the affidavit filed in support of the writ petition as well as the counter affidavit filed by the Department. The respondent is directed to pass orders within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands disposed of. No costs.

Sd/-  
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

gsk

To

The Deputy Inspector General of Police,  
Kancheepuram Range,  
Kancheepuram.

+lcc to Mr.Ravishanmugam, Advocate SR.No.17960  
+lcc to Government Pleader SR.No.18119

KAN(CO)  
GN(27/03/2018)

W.P.No.22009 of 2010