

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4203 of 2015

Gnana.Sivakumar

.. Petitioner

-vs-

1. The Secretary to Government
Home (Police) Department
Fort St.George
Chennai 600 009

2. The Director General of Police
Mylapore
Chennai 600 004

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned letter issued by the first respondent in Letter No.105232/Pol-8/ 07-2 dated 12.2.2008 and quash the same and consequently direct the respondents to extend the benefit of the award of accelerated promotion to the petitioner also in terms of G.O.Ms.No.1346 Home (Police VIII) Department dated 06.12.2004.

For Petitioner :: Mr.P.Muthukrishnan

For Respondents :: Mrs.Narmadha Sampath
Additional Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
Special Government Pleader

ORDER

This writ petition is directed against the impugned letter No.105232/Pol-8/07-2 dated 12.2.2008 passed by the Secretary to Government, Home (Police) Department rejecting the request of the petitioner for giving accelerated promotion, citing a reason that the petitioner had not served in the Special Task Force, therefore, he was not eligible for the benefit requested by him.

2. Learned counsel for the petitioner submitted that the petitioner is a directly recruited Sub Inspector of Police and considering his young age, he was posted to Bargur Police Station in the erstwhile Periyar District, which is a hilly police station within the operational area of the deceased sandalwood smuggler Veerappan. Accordingly, the petitioner took over the challenging assignment on 18.6.90 and he was also discharging his duties to the satisfaction of his superiors till 18.11.91. During his service, he had arrested the absconding accused who attacked the police personnel during the combing operation at Puliamarathu Anai at Kongadai forest. Again on 21.9.90, while the combing up operation was on in Uosimalai forest, the police party headed by the petitioner came under attack of the forest brigands and his party retaliated the fire, as a result all the accused escaped and a case in Crime No.55 of 1990 was also registered on the file of Bargur Police Station. He had also arrested the notorious sandalwood smuggler Raja, who was a close associate of the forest brigand Veerappan. The record shows that he was effectively involved in the combing up operations against the forest brigand Veerappan. Subsequently, when the said forest brigand was killed by the Special Task Force, the Government also announced the accelerated promotion for the Special Task Force personnel. But the petitioner was alone denied the benefit. When repeated requests were made, the impugned order has been wrongly passed stating that he was not even a member of the Special Task Force, which is wholly incorrect.

3. It is at this point of time, the learned Additional Advocate General for the respondents, in support of the impugned order, submitted that the petitioner was not at all a member of the Special Task Force constituted to eliminate the forest brigand Veerappan. Therefore, he has no locus to rely upon the G.O.Ms.No.1252, Home (Pol.VIII) Department dated 29.10.2004 and G.O.Ms.No.1346 Home (Police VIII) Department dated 06.12.2004., more particularly, paragraph-5(e) giving accelerated promotion to the personnel of the Special Task Force who were involved in the operational area of the deceased sandalwood smuggler Veerappan, as the said paragraph-5(e) has been subsequently deleted by the Government by issuing another G.O.Ms.No.1396, Home (Pol.IA) Department dated 3.10.2007. Aggrieved by the said deletion, several writ petitions were filed before a learned single Judge of this Court unsuccessfully and when the matter was taken up on appeal, the Hon'ble Division Bench also affirmed the order of the learned single Judge holding that the Government is well within its power in deleting paragraph-5(e) in G.O.Ms.No.1252, Home (Pol.VIII) Department dated 29.10.2004 by the clarification issued in the subsequent G.O.Ms.No.1396, Home (Pol.IA) Department dated 3.10.2007. Moreover, this issue also has been threadbare discussed and answered against the

personnel like that of the petitioner by this Court by the order dated 21.12.2017 passed in a batch of writ petitions in W.P.Nos.17534 and 18725 of 2013 etc., batch (S.Prabakaran v. State of Tamil Nadu represented by its Principal Secretary to Government, Home Department and others). Therefore, this writ petition is wholly devoid of any merit and the same is liable to be dismissed.

4. I also find merits on the submissions made by the learned Additional Advocate General for the respondents. Since the issue as to whether the police personnel is entitled to get any accelerated promotion, while challenging the deletion of paragraph-5(e) in G.O.Ms.No.1252, Home (Pol.VIII) Department dated 29.10.2004 and in G.O.Ms.No.1346, Home (Pol.VIII) Department dated 6.12.2004, as clarified in G.O.Ms.No.1396, Home (Pol.IA) Department dated 3.10.2007, has been already decided by this Court holding against the said request that no police personnel is entitled to get any accelerated promotion against the statute, in W.P.Nos.35716 of 2008 etc., batch dated 14.10.2009 and confirmed by the Hon'ble Division Bench in W.A.Nos.849 to 854 of 2010 dated 5.4.2013, which orders have been followed by me in a batch of writ petitions in W.P.Nos.17534 and 18725 of 2013 etc., batch (S.Prabakaran v. State of Tamil Nadu represented by its Principal Secretary to Government, Home Department and others) dated 21.12.2017, the petitioner is not entitled to get the benefit of accelerated promotion. The relevant paragraphs of the order dated 21.12.2017 passed by me read as follows:-

"7. Again, the entire gamut of the issue was taken up and after elaborate discussion made by both sides, the Hon'ble Division Bench confirmed the order passed by the learned Single Judge, making it clear that the accelerated promotion given by issuing a Government Order by the Government is not based on any statutory rule. On this core, it is further held that executive instructions cannot override the statutory rules. If the accelerated promotees are given seniority in the higher cadre, it will affect the promotion of the person senior to the accelerated promotees in the lower cadre and it will lead to the situation of reduction of rank of their seniors in the lower category and the same is contrary to General Rule 35[a] and 35[aa]. As a result, the natural justice will also affect the morale of the entire police force.

8. The Hon'ble Apex Court in Govind Prasad Vs. R.G.Prasad and Others reported in [1994(1) SCC 437] held that executive order

cannot be made operative with retrospective effect. By following the said judgment, the Hon'ble Division Bench of this Court in the above referred cases has confirmed the order passed by the learned Single Judge of this Court by reiterating the same legal position that the executive power of the State cannot be exercised in the field which is already occupied by the laws made by the legislature.

9. In view of the above, G.O.Ms.No.1396, Home (Pol.IA) Department, dated 03.10.2007, was issued deleting paragraph No.5(e) in G.O.Ms.No.1252, Home Department, dated 29.10.2004, as a result, G.O.Ms.No.1346, Home (Pol.VIII) Department, dated 06.12.2004, has been upheld reiterating the power of the State Government that the Government is well within its power in deleting paragraph No.5(e) in G.O.Ms.No.1252, Home (Pol.VIII) Department, dated 29.10.2004 and this has been clarified in G.O.Ms.No.1396, Home (Pol.IA) Department, dated 03.10.2007.

10. Subsequently, the Government have also come forward with a Notification dated 14.12.2013 by carrying out the amendment to the Special Rules giving retrospective effect from 19.03.1996 in G.O.Ms.No.550, Home (Pol.2) Department, dated 24.07.2013. Aggrieved by the same, other police officers have filed Writ Petition Nos.24461, 26276 and 26365 of 2013, whereby, the learned Single Judge of this Court has granted interim stay of the above referred Notification on 29.08.2013. Thus, the net result is that the order passed by the Hon'ble Division Bench in W.A.Nos.849 to 854 of 2010 has been made absolute now."

5. Since the issue raised in the present writ petition is no longer res integra and decided against the petitioner, this writ petition stands dismissed as devoid of any merit. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

SS

To

1. The Secretary to Government
Home (Police) Department
Fort St.George
Chennai 600 009
2. The Director General of Police
Mylapore
Chennai 600 004

+1cc to the Government Pleader, S.R.No. 13689

+1cc to Mr.P.MUTHUKRISHNAN, Advocate, S.R.No. 13200

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RJ(CO)
TR(13/03/2018)



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