

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Writ Petition No.17478 of 2018
& WMP No.20752 of 2018

Mrs. Vishnu Priya

.. Petitioner

- Vs -

State of Tamil Nadu, Rep. by its Secretary,
Home (Police II) Department,
Secretariat, Chennai - 9.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records and quashing the order of the respondent, vide G.O. 2D No. 358 Home (Police 2) Department, dated 06.07.2016, imposing the punishment of stoppage of increment for a period of 6 months without cumulative effect on the petitioner initiated under Rule 3(a) of Tamil Nadu Police subordinate Services (Discipline and Appeal) Rules 1955 in P.R. No. 44/2015 and consequently direct the respondent to promote the petitioner as Inspector of Police from the year 2016-17 on par with her batch-mates with inter-se-seniority together with all attendant benefits within time frame.

For Petitioner : Mr. K.Ravi Anantha Padmanaban

For Respondent : Mr. A.N.Thambidurai, Spl.G.P.,

सत्यमेव जयते
O R D E R

This writ of certiorarified mandamus has been filed directing the respondents to quash the order dated 06.07.2016 imposing the punishment of stoppage of increment for a period of six months without cumulative effect and consequently to direct the respondent to promote the petitioner as Inspector of Police from the year 2016-17 on par with her batch-mates.

Brief facts:-

2. The petitioner was serving as Sub-Inspector of Police belonging to Land Grabbing Cell, attached to DSPs office, during 2011. While functioning so, two charges were framed against her. Charge No.1 was that on 11.11.2011, she visited the house

of the accused at early morning 03.00 am and forcibly brought him to DSPs office. Charge No.2 was that on the very same day, she took the accused persons and others in a police van, by misusing the departmental vehicle, for the purpose of effecting cancellation of two deeds.

3. So far as Charge No.1 was concerned, it was dropped based on the statement of the accused and his wife that some other male Sub Inspector of Police was the person, who took them at 03.00 am. So far as Charge No.2 is concerned, the punishment of stoppage of increment for six months was given.

4. A perusal of paragraph 2 of the order in respect of the charge No.2 would go to show that a CD has been produced in order to substantiate that in the vehicle belonging to the Government, those people were not taken, but that CD has not been accepted on the ground that it is privately taken and it is not officially taken. This is evident from page 26 of the typed set of papers, which is the enquiry report.

5. The learned counsel appearing for the petitioner would also point out that the Sub-Registrar, the accused persons as well as their son, Mr.Ashwin, a practising lawyer in the High Court, have given statement that it was some other male Sub-Inspector of Police, who took the accused persons in the Police van and that the petitioner herein informed the Sub-Registrar asking him to wait for the arrival of the Police team with the accused persons, for cancellation of the deeds.

5.1. It is also pointed out that the combined effect of the evidence of the CD as well as the oral evidence of the witnesses only lead to the inevitable conclusion that there is no basis for the finding that the petitioner herein is guilty of charge No.2. Hence, it is prayed that the report of the Enquiry Officer has to be set-aside.

6. As the evidence does not substantiate the charge, the punishment imposed has to be set-aside and it is set-aside accordingly.

7. Even assuming that the charge No.2 is proved even then there is no justification on the part of the respondent in denying promotion for both the years, i.e., 2016-17 and 2017-18. The punishment of stoppage of increment has been imposed on 06.07.2016. It has been served on the petitioner on 22.07.2016. The Department should have implemented the order from the date on which it is served on the petitioner. In that event, it starts from 22.07.2016 and it should be over by 22.01.2017. Therefore, the respondent ought not to have waited till the next

increment date i.e., from 01.07.2017. In support of the said contention, the learned counsel relied upon the decision of this Court, reported in the case of A.Theerthagiri v. The Principal Secretary to Government and Ors., (W.P.No.21774 of 2014), dated 09.03.2015, wherein it has been held as follows:-

"15. The amended Rules very clearly provide that punishment would take effect from the date on which it was served on the concerned member of service. The first respondent has virtually flouted this order passed by the Government by rejecting the claim made by the petitioner for implementation of punishment. The rules are applicable not only to the petitioner but equally so, to the first respondent. When the Statute says that punishment would be implemented from the date on which it was served on the employee, the first respondent cannot be heard to say that he would follow only the letter issued by the Government, which has no statutory force...."

7.1. This Court is of the opinion that the said decision squarely applies to the facts of this case.

8. It was further submitted by the learned counsel appearing for the petitioner that the crucial date of promotion for the post of Inspector of Police was on 01.06.2017; on 01.06.2017, there was no currency of punishment.

8.1. The learned counsel for the petitioner relied upon Rules 17 and 18 to Schedule XI of Section 7 (1) of the Tamil Nadu Government Servant Conditions of Service Act, 2016, which is reproduced hereunder for convenient reference:-

"SCHEDULE-XI [Section 7 (1)] PART-A

(17) Any punishment imposed on a member of service under rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over.

(18) The performance of a member of service for promotion or appointment shall be assessed on the basis of the Annual Confidential Report or Record Sheet written for a period of five years prior to the crucial date. If any adverse remarks are recorded against a member of service in the Annual Confidential Report or Record Sheet within a period of five years prior to the crucial date, his name shall not be considered for inclusion in

the approved list. Any adverse remarks relating to a period of five years prior to the crucial date which have not been shown to and acknowledged by the member of service shall be ignored and his name shall be considered for inclusion in the approved list."

8.2. A perusal of the above Rules would clearly go to show that the currency of punishment was only from 22.07.2016 to 22.01.2017. Therefore, the denial of promotion to the post of Inspector of Police to the petitioner has no basis.

8.3. This issue has been discussed, as the matter has been argued on this point. This decision has only academic value, so far as this case is concerned, as there is a finding that charge No.2 is also not proved and consequently, the punishment imposed has been set-aside.

9. In the result, this writ petition is allowed. The respondent is directed to consider the claim of the petitioner and to promote her as Inspector of Police, from the year 2016-17, as claimed in the writ petition. The said exercise shall be completed by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WMP is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

The Secretary, State of Tamil Nadu,
Home (Police II) Department,
Secretariat, Chennai - 9.

+lcc to Mr.K.Ravi Anantha Padmanaban, Advocate Sr.89168

W.P.No.17478 of 2018
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srg 22/01/2019