

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.1799 of 2018

M.Chinnadurai

.. 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
 3. The Deputy Inspector General of Police
Villupuram Range
Villupuram
- .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the second respondent to consider the claim of the petitioner promotion as Inspector of Police on par with his junior without reference to the pending criminal case in Cr.No.02/2009 (RCS.03/2014) on the file of Judicial Magistrate, Thittakudi and to promote him as Inspector of Police and grant him all consequential service and monetary benefits.

For Petitioner :: Mr.S.Sivakumar

For Respondents:: Mr.V.Kadhirvelu
Special Government Pleader

ORDER

This writ petition has been filed seeking a mandamus, directing the Director General of Police, Chennai, the second respondent herein to consider the claim of the petitioner for promotion as Inspector of Police on par with his junior, without reference to the pending criminal case in Cr.No.02/2009 (RCS.03/2014) on the file of Judicial Magistrate, Thittakudi, and grant him all the consequential service and monetary benefits.

2. Learned counsel for the petitioner contended that the petitioner was a directly recruited Sub Inspector of Police and entered the service on 22.5.2000. After eight years of his service, he received a complaint from one Mr.Subramanian with regard to the theft of his lorry. Therefore, he registered a case and investigated the matter from 15.10.2008. While so, one Mr.Sampath has given a complaint on 1.1.2009 to the Superintendent of Police, Cuddalore making certain allegations against the petitioner stating that he has demanded a sum of Rs.40,000/- from Tmt.Selvi, W/o Sampath at Thittakudi Police Station for releasing him from illegal custody and for not foisting case against him and also for obtaining a bribe of Rs.1,00,000/-. Based on the said complaint preferred by the said Mr.Sampath, the petitioner was suspended from service by an order passed by the Deputy Inspector General of Police, Villupuram Range, the third respondent herein on 6.2.2009 followed by the order of suspension on 17.3.2009. The Deputy Inspector General of Police, Villupuram Range also initiated departmental proceedings against the petitioner in P.R.No.21 of 2009 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules on 17.3.2009 slapping with the following three charges:-

"Charge No.1: Grave misconduct and abuse of power in keeping Thiru N.Sampath, S/o Nagarajan, No.53-B, Annai Nagar, Bharathidasan Street, Perambalur under his illegal custody from 22.00 hrs on 23.11.2008 to 19.00 hrs on 26.11.2008 and unleashing violence on Thiru N.Sampath and also keeping Thiru P.Selvaraj S/o Palanisamy, No.135, Chavadi Street, R.P.Pudur, Namakkal under his illegal custody from 22.00 hrs on 25.11.2008 to 19.00 hrs on 26.11.2008 and unleashing violence on him.

Charge No.2: Grave misconduct in assisting Thiru V.M.Kumarabalan, Inspector of Police, Tittakudi Circle to demand Tmt.Selvi W/o Sampath to pay bribe of Rs.40,000/- at Tittakudi P.S., at about 11.00 hrs on 24.11.2008 for releasing Thiru Sampath from illegal custody and for not foisting case against him and to obtain the bribe of Rs.40,000/- from her at Tittakudi PS at about 22.00 hrs on 25.11.2008 and to pay a further bribe of Rs.1,00,000/- for releasing Thiru Sampath and returning two lorries and to accept bribe of Rs.1,00,000/- from her at Tittakudi PS at about 18.00 hrs on 26.11.2008.

Charge No.3: Grave misconduct in conniving with Thiru V.Subramanian (complainant in Tittakudi PS Cr.No.190/2008 u/s 379 IPC) on a

day in the last week of November 2008 and making false documents in the revenue stamp affixed blank papers signed by Thiru P.Selvaraj on 26.11.2008 as if the lorry TN 46 C 1002 was purchased by Thiru Gopinathan S/o Subramanian from Thiru P.Selvaraj by paying an advance of Rs.6 lakhs on 19.11.2008 and as if the lorry TN 28 AD 4685 was purchased by Thiru Senthil S/o Subramanian from Thiru P.Selvaraj by paying an advance of Rs.6 lakhs on 19.11.2008."

3. Simultaneously, a criminal case was also registered against him and other police officials by the District Crime Branch in Crime No.2 of 2009 and the same has been subsequently transferred to the CBCID, Villupuram in the year 2009. Thereafter, the enquiry officer also, on completion of the enquiry, submitted his report holding that the charges levelled against the petitioner have not been proved. But the copy of the enquiry report has not been till date furnished to the petitioner. In the meanwhile, the CBCID, Villupuram also filed the final report in Crime No.2 of 2009 as mistake of fact proposing to drop further action, on 13.1.2015. Taking into account the final report filed by the CBCID, the petitioner gave his representation on 4.1.2017 with a prayer to promote him as Inspector of Police without reference to the pending criminal case and also the departmental proceedings. As there is no response, the petitioner has been advised to come to this Court. Again referring to the decision of the Apex Court in the case of State of Punjab and others v. Chaman Lal Goyal, (1995) 2 SCC 570, the learned counsel submitted that in similar circumstances, considering the long delay for completing the enquiry, pending departmental proceedings, a direction was given to give promotion. Therefore, applying the same ratio, the prayer of the petitioner may be allowed, he pleaded.

4. However, the learned Special Government Pleader for the respondents submitted that even clause II(3) of the Schedule XI (See Section 7(1)) of Part A of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act No.14 of 2016) makes it clear that pendency of the charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules against a member of the service shall be a bar for inclusion of his name in the approved list.

5. I also find merits in the submissions made by the learned Special Government Pleader for the respondents. First of all, the Apex Court in the aforementioned judgment, while dealing with the delay of 5½ years in initiating departmental proceedings, has come to the conclusion that the respondent therein should be considered for promotion without reference to and without taking into account the charges or the pendency of the enquiry, solely on the ground that the framing of charges

and of the order appointing the enquiry officer made after 5½ years was not warranted in the facts and circumstances of the case and they also made in clear that the decision is made in the particular facts and circumstances of the case, though they were aware that the rules and practice normally followed in such cases may be different. Therefore, the said judgment cannot be made applicable to the present case. Secondly, in the present case also, when a serious charge memo has been issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules on 17.3.2009, the petitioner is facing an embargo for getting his promotion, till he is cleared from the said charges. Moreover, the laying of the final report by the CBCID in Crime No.2 of 2009 on 13.1.2015 as mistake of fact, has nothing to do with the pending departmental proceedings, where only the principle of preponderance of probability alone will be the criteria. Leave alone the pendency of the criminal case where the CBCID has filed the final report, since the petitioner is facing the departmental proceedings initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules on 17.3.2009, as the said proceedings have not come to an end, the petitioner is not entitled to approach this Court. Hence, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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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

3. The Deputy Inspector General of Police
Villupuram Range
Villupuram

+1cc to M/s.S.Sivakumar, Advocate Sr.no.6931
+1cc to Government Pleader Sr.No.7430

NRI (CO)
sm:15.2.2018

W.P.No.1799 of 2018