

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.1814 of 2018

K.Vanmathi

...Petitioner

Versus

1. The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai-4.

2. The Deputy Inspector General of Police,
Salem Range, Salem.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 15.09.2017 on merits within a time fixed by this Court.

For Petitioner : Mr.L.Mouli

For Respondents : Mr.R.S.Selvam, Govt. Advocate

O R D E R

The Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 15.09.2017 on merits within a time fixed by this Court.

2. The case of the petitioner is that while he was discharging his duty as Sub-Inspector of Police at Malliyakarai Police Station, Salem District, she has registered an accident case against one Manikandan in Crime No.78 of 2009 for offences under Sections 279 and 337 of IPC based on the complaint lodged by one Karthick and since the Mini Door Vehicle bearing TN-30-A-8178 involved in the accident did not have valid documents and the Motor Vehicle Inspector directed to detain the vehicle in police custody till paying the fine imposed by the Court, the same was retained in the police station. But, one Panneerselvam, claiming to be the owner of the vehicle lodged a

complaint with the Vigilance and Anti-Corruption Department stating that she has demanded and accepted Rs.2000/- for the release of the vehicle and based on the said complaint, a case in Crime No.5/AC/2009 under Sections 7 and 13(2) read with 13(1) (d) of Prevention of Corruption Act was registered against her and one Ganesan, Head Constable. Pursuant to the same, disciplinary proceedings were initiated against her and a charge memo was also issued and a case is TDP.No.7/2010 before the Tribunal for Disciplinary Proceedings, Coimbatore is pending against her.

3. The further case of the petitioner is that at present, the petitioner is working as Assistant Law Instructor at Police Recruitment School. Now the respondents have prepared Seniority List dated 22.6.2017 of directly recruited Women Sub-Inspector of Police for the year 2001-2002 for promoting them as Inspector of Police and the petitioner is placed in 416th place in the said Seniority List. Though her promotion as Inspector of Police is due in the year 2014, till date she has not been promoted. Further, according to the communication dated 28.12.1989 issued by the Government, pendency of an enquiry either in the form of charges framed or contemplated should not be the sole reason for overlooking person for promotion or appointment for higher post. Hence, the petitioner has sent a representation dated 15.9.2017 to the respondents herein, but till date the same has not been considered. Hence the present Writ Petition.

4. Heard the learned Counsel for the petitioner and Mr.R.S.Selvam, learned Government Advocate appearing for the respondents.

5. At the outset, it is not in dispute that a criminal case and a departmental enquiry are pending against the petitioner in respect of an allegation of demanding and accepting a bribe of Rs.2,000/- from one Panneerselvam for return of a vehicle involved in an accident case in Crime No.78 of 2009 for offences under Sections 279 and 337 of IPC. But according to the petitioner, the communication dated 28.12.1989 issued by the Government and as per Rule 39(d) of the Tamil Nadu State and Subordinate Service Rules, 1955, if it is necessary to promote an officer against whom an enquiry into allegation of corruption or misconduct is pending, the appointing authority may promote him temporarily pending enquiry into the charges against him and therefore, pendency of an enquiry either in the form of charges framed or contemplated should not be the sole reason for overlooking person for promotion or appointment for higher post. But in my considered view, it is not so. A perusal of the said rule 39(d) reveals that the competent authority can exercise their discretion in suitable cases only and not in all cases and that apart, when the respondents have thought it fit to prosecute the petitioner both departmentally and criminally that shows that the petitioner is unfit to be considered for promotion to the post of Inspector of Police at this stage.

6. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai-4.

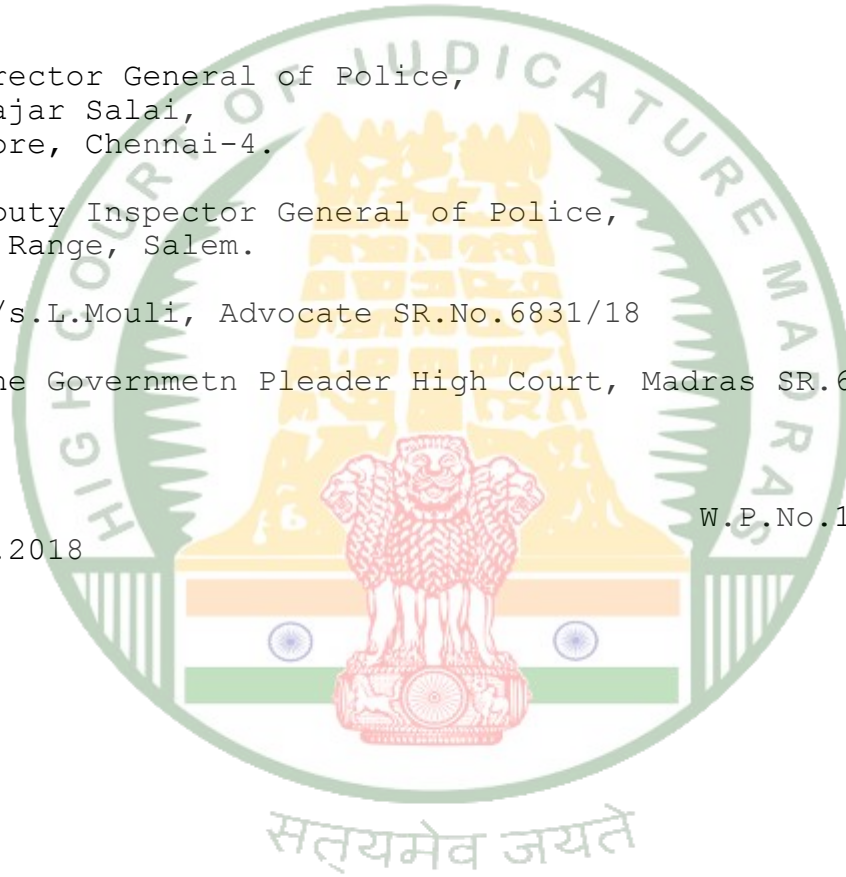
2. The Deputy Inspector General of Police,
Salem Range, Salem.

+1cc to M/s.L.Mouli, Advocate SR.No.6831/18

+1cc to the Governmetn Pleader High Court, Madras SR.6953

SDR 19.02.2018

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