

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.09.2018
CORAM
THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI
W.P.No.18584 of 2018
and
WMP.No.21931 of 2018

Mrs.P.Renuga Devi ...Petitioner

..vs..

The Additional Director of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai -4. ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records and quashing the impugned order dated 16.02.2016 vide R.C.No.130159/NGBI (1)/2015 of the respondent rejecting to grant promotion to the petitioner to the post of Inspector of Police and consequently direct the respondent to promote the petitioner from the post of Sub-Inspector of Police to the post of Inspector of Police from the year 2014-15 on par with her batch mates with all attendant benefits within the time frame without reference to the pendency of prosecution in Old CC.No.115/2012 renumbered as C.C.No.92 of 2017 on the file of Chief Judicial Magistrate, Tiruppur.

For Petitioner : Mr.K.Ravi Anantha Padmanaban

For Respondent : Mrs.R.Janaki

Additional Government Pleader

O R D E R

The case of the petitioner in this writ petition is that she was appointed as woman Sub-inspector of Police and while discharging her duty in Thudialur Police Station, Coimbatore District, she was indicted in a criminal case, due to which she was put under suspension. It is further stated that on completion of ten years of service as Sub Inspector of Police, one is eligible to be promoted as Inspector of Police. When the turn of the petitioner came, she was ignored and her junior has been promoted, on account of pendency of criminal case. Subsequently, the suspension order was revoked against the petitioner. The petitioner as such filed a Writ Petition before this Court in W.P.No. 23770 of 2015, seeking to promote her as Inspector of Police by including her name in [C] list for the year 2014-2015, which was disposed of with a direction to the concerned authority to consider the representation of the petitioner, in accordance with law. Such representation of the petitioner was rejected vide order dated 16.02.2016. Challenging the same and also for a direction to the respondent to grant promotion to the petitioner as Inspector of Police from the year 2014-2015, on par with her batch mates with all attendant benefits within the time frame without reference to the pendency of criminal case, this Writ Petition is filed. An interim prayer was also made seeking for a direction to the respondent to temporarily promote the petitioner forthwith to the post of Inspector of Police from the year 2017-2018 with similar conditions that were imposed on her batch mates by order dated 14.04.2018.

2. I have heard the learned counsel for the petitioner as well as learned Additional Government Pleader appearing for the respondents.

3. The learned counsel for the petitioner submits that the indictment of the petitioner in the criminal case is no bar on the part of the respondent to promote him temporarily as it is being well settled. The statutory provisions Tamil Nadu Government Servants (Conditions of Service) Act, 2016 also permits the Government to promote the person notwithstanding the pendency of a disciplinary proceeding, temporarily in the exigency in the public interest. Taking note of the same, this Court also in many occasions have directed to promote the persons who are also involved in criminal cases, temporarily notwithstanding their indictment in such criminal cases. This Court also in the case of A.Subramani Vs., The Secretary to Government (W.P.No.5437 of 2014) in similar facts and situation, placing reliance in the decisions of the Apex Court in the case of State of Punjab and Others Vs. Chaman Lal Goyal reported in (1995) 2 SCC 57 and also in some other cases of this court, that is, decisions in rendered in W.P.No.9529 of 2013 (S.Saravanan Vs. The Principal Secretary to Government of Tamil Nadu, Highways and Minor Ports (HK.1) Department) and also in W.P.No.8771 of 2013 (R.Manohar Vs. The Principal Secretary to government of Tamil Nadu, Highways and Minor Ports (HK.1) Department), directed for temporary promotion to the next higher post notwithstanding the pendency of the departmental proceeding / criminal cases. The petitioner in this case is involving a petty offence under Section 323 of IPC. The offence is not one of moral turpitude. The same arose during a fight with the local lawyers while she was on duty. Considering the pendency of the criminal case and it is not known when the same is going to be concluded, therefore this Court in the aforesaid facts and situations, direct the respondent to temporarily promote the petitioner subject to outcome of the criminal case.

4. The learned counsel appearing for the State however, submits that the petitioner being indicted in a criminal case while charge has already been filed and cognizance has already been taken, the same is a disqualification for promotion of the petitioner. The earlier prayer of the petitioner to consider the representation was also rejected on the ground that the petitioner was then not within the zone of consideration and also criminal case was pending against her. The petitioner has come to challenge the same in this writ petition seeking her promotion for the panel year 2014-2015 by then she was in no manner qualified to be included in the 'C' list, therefore her prayer was rejected. No doubt the petitioner is presently seeking promotion but due to her indictment in the criminal case she being disqualified to be considered for promotion, the writ petition filed by her liable to be dismissed. Hence, the same be dismissed, submits the learned Additional Government Pleader.

5. As it appears that the petitioner in this case has challenged the rejection of her representation made to promote her to the post of Inspector vide the order dated 16.02.2016 from the year 2014-2015. The petitioner was not qualified to come under the zone of consideration then. The petitioner had also admittedly disqualification to consider for promotion being indicted in a criminal case. However, during the course of hearing, the petitioner has sought for promotion temporarily notwithstanding her aforesaid disqualification placing reliance in the decision of this Court rendered in the case of A.Subramani (supra). Needless to say that the case of A.Subramani (supra), this Court taking into the fact that the criminal case was pending against the A.Subramani for last three years and the same was not finalised for which the promotion could not be taken up placing reliance in the case of State of Punjab and Others Vs. Chaman Lal Goyal (supra), wherein pendency of a charge which is also disqualification for promoting a person, this Court directed temporary promotion of the A.Subramani. The same was also done taking note of the law laid down in the case of S.Saravanan(supra), wherein this Court taking into consideration the long pendency of the criminal case for more than twelve years to promote the petitioner, so also in the case of R.Monohar(supra) also similar orders were passed. But as it appears in all those cases considering the long pendency of the criminal cases, this Court had directed to accord the temporary promotion to the petitioner therein. However from the facts and situations it appears to this Court that when the petitioner made representation for consideration of his promotion notwithstanding the pendency of the criminal cases she was in normal course of thing not qualified to be included in the 'C' list bereft of

his involvement in the criminal case. Hence, the representation made by the petitioner in this writ petition was rejected vide the impugned order. Such rejection being not suffers from any illegality, this Court is not inclined to allow the prayer of the petitioner in this writ petition. According, the writ petition stands dismissed. But while parting with this case, the petitioner in the alternative had made the prayer to direct the respondent to consider her promotion from the year 2017-2018, this Court observe that since the petitioner has been indicted in a criminal offence which is trivial in nature and involves no moral turpitude notwithstanding the involvement of petitioner in a criminal case is a disqualification for according promotion, and this Court, in many occasions, had directed to consider promotion when the same has resulted in undue hardship to the public servant due to the dragging of the criminal case on account of docket explosion in criminal courts for which the accused persons had been compelled to run to the Court for years together with the Democles sword hanging on their head, it is hope and trust that the concerned respondent, if a representation is made for temporary promotion by the petitioner, shall consider the case of the petitioner in proper perspective, more particularly when the petitioner stated to have been involved in a trivial criminal offence under Section 323 of IPC, and the petitioner though otherwise qualified to be promoted but for pendency of the criminal proceeding, his case has been ignored and his juniors have been promoted. Such representation if made has to be disposed of, within a period of two months by the respondent concerned. However, the aforesaid should not be treated as a mandate of this Court to dispose of such representation in any particular manner.

6. With the aforesaid observation and the order, this writ petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

06.09.2018

Index :yes/No

Internet : Yes/No

Speaking Order / Non speaking order

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To

The Additional Director of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai -4.

SATRUGHANA PUJAHARI, J

arr

W.P.No.18584 of 2018

04.09.2018