

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.01.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.28389 of 2012

S.Subramanian

... Petitioner

Vs

- 1.The Secretary to Government,
Home (Police IX) Department,
Fort St.George, Chennai-9.
- 2.The Additional Director General of Police,
Armed Police, Chennai-40.
- 3.The Inspector General of Police,
Armed Police, Chennai-10.
- 4.The Deputy Inspector General of Police,
Armed Police, Chennai-10.
- 5.The Commandant,
TSP IX Battalion,
Manimuthar, Tirunelveli District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the 5th respondent in connection with the impugned orders passed by him in B.O.613/2011 in C.No.A1/10627/2010 dated 22.08.2011 and quash the same and further direct the respondents to promote the petitioner as Inspector of Police (Adjutant) in pursuance of inclusion of his name in the panel for promotion of Inspector of Police fit for promotion as Inspector of Police (Adjutant) for the year 2011-2012 published by the 2nd respondent in Rc.No.A1/9610/2011 in R.O.No.225/2011 dated 18.07.2011 and promote him as Inspector of Police(Adjutant) and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani for
Mr.M.Muthappan
For Respondents : Mr.D.Venkatachalam
Additional Government Pleader

O R D E R

Heard Mr.K.Venkataramani, learned counsel for the petitioner and Mr.D.Venkatachalam, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to

<https://hcservices.ecourts.gov.in/hcservices/> call for the records of the 5th respondent in

connection with the impugned orders passed by him in B.O.613/2011 in C.No.A1/10627/2010 dated 22.08.2011 and quash the same and further direct the respondents to promote the petitioner as Inspector of Police (Adjutant) in pursuance of inclusion of his name in the panel for promotion of Inspector of Police fit for promotion as Inspector of Police (Adjutant) for the year 2011-2012 published by the 2nd respondent in Rc.No.A1/9610/2011 in R.O.No.225/2011 dated 18.07.2011 and promote him as Inspector of Police (Adjutant) and grant him all consequential service and monetary benefits. "

3. The case of the petitioner is as follows:-

The petitioner was originally appointed as Grade II Police Constable in TSP IV Battalion on 26.12.1985 at Kovaipudur, Coimbatore. He was upgraded as Grade I Police Constable in 1995 and he was further upgraded as Havildar in 1997 and further promoted as Sub Inspector in the year 2000. Finally, the petitioner was promoted as Inspector of Police (RT) on 18.03.2005 and transferred to TSP IX Battalion, Manimutharu.

4. According to the petitioner, he has received 42 rewards for his meritorious service and had not come to any adverse notice throughout his carrier. According to the petitioner, while he was serving as Inspector of Police (RT), he was fully eligible for consideration for promotion as Inspector of Police (Adjutant) in the C list of the year 2011-12. The crucial date for the preparation of the panel was 1st June 2011. The third respondent after conducting the Range Promotion Board and also based on the recommendation of the Chairman, Armed Police, Range Promotion Board, approved the panel containing 7 Inspectors of Police, fit for promotion as Inspectors of Police (Adjutant) for the year 2011-12. In the said panel, the petitioner's name was included at Serial No.2 .

5. In pursuance of the selection of the petitioner, he was issued with the promotion order on 05.08.2011. The promotion order reads as follows:

"Promotion and Posting of Inspector (RT) to
Inspector (Adj) - Ordered

In accordance with the orders issued in Range Order NO.260/2011 in RC No.A1/9610/2010 dated 01.08.2011 of the Additional Director General of Police, Armed Police, Chennai, Tr.S.Subramanian, Inspector of Police (RT) of this Battalion who has been included in the C list of Inspector (RT) fit for promotion as Inspector of Police (Adj) for the year 2011-12 is promoted as Inspector of Police (Adj) and posted to RC, Avadi.

2. The Deputy Commandant, TPS IX Bn.Manimuthar is instructed to relieve the above Inspector of

Police (RT) with instructions to report before the Commandant, RC, Avadi and inform his date of relief to this Office.

3.The Commandant, Regimental Centre, Avadi is requested to inform the date of joining of the above Inspector of Police (RT) in the new post to this Office."

6. Pursuant to the promotion order, when the petitioner was awaiting for posting, an other order was issued on 22.08.2011, stating that the promotion of the petitioner was kept in abeyance for administrative reasons. At that time, the petitioner was at the loss to understand as to why his promotion was kept in abeyance, since admittedly the petitioner was fully qualified to be appointed as Inspector of Police (Adjutant) and on the basis of the selection by the Range Promotion Board, he was empaneled and placed at Serial No.2.

7. Thereafter, the petitioner came to know that the first respondent amended the Rule 2 of special rules for Police Subordinate Service in G.O.Ms.No.734, Home (Pol.I) Department dated 08.11.2011, wherein, rules had been amended for promotion to the post of Inspector of Police (Adjutant). According to the amended rule, persons working as Inspector of Police in the general line alone were eligible for consideration for promotion to the post of Inspector of Police (Adjutant). The rules were admittedly amended only from the date of issue of Government Order on 08.11.2011, whereas, the petitioner was in fact promoted as Inspector of Police (Adjutant) on 05.08.2011, much prior to the issue of the said Government Order.

8. The learned senior counsel for the petitioner would contend that amending of the rules by G.O.Ms.No.734, Home (Pol.I) Department dated 08.11.2011, cannot have retrospective application, particularly, in view of the fact that the petitioner was indeed selected and promoted by order dated 05.08.2011, by the competent authority. He would therefore submit that subsequent amendment in the rules cannot take away the accrued right of the petitioner who was fully qualified under the unamended rules and was rightly promoted so.

9. In any event, the learned senior counsel would submit that for the anticipation of amendment, the promotion already granted to the petitioner cannot be put on hold and eventually canceled. Such action on the part of the authority concerned is clearly unreasonable, arbitrary and the same is violative of the Article 14 of the Constitution of India.

10. Upon notice, learned Additional Government Pleader appearing for the respondents entered appearance and filed a detailed counter affidavit. In the counter affidavit, the reasons which were stated were to the effect that in view of

the amendment of the rules vide G.O.Ms.No.734, Home (Pol.I) Department, dated 08.11.2011, the petitioner became ineligible for consideration. According to the counter affidavit, in view of the selection of the petitioner on the eve of the amendment, the administration thought that the promotion ought to be kept in abeyance, in furtherance of fulfillment of the object behind the amendment.

11. The above contention put forth by the learned counsel for the respondents, cannot be countenanced in law as the same is preposterous and unreasonable and also legally unacceptable when the selection was set in motion for the year 2011-12. The petitioner having been selected by the Range Promotion Board and the promotion order was also issued much prior to the amendment of the rule, the administration cannot snatch away the promotion from the petitioner on the basis of the subsequent amendment which was admittedly came into force only on the date of issue of the Government Order i.e., on 08.11.2011. The contention of the learned counsel that the anticipation of amendment, the promotion was kept in abeyance and subsequently canceled, cannot be a legally acceptable argument and the same has to be rejected outright as being unreasonable and invalid submissions.

12. It is not the case of the respondents that the petitioner was otherwise ineligible for promotion as Inspector of Police (Adjutant). The non posting of the petitioner as Inspector of Police (Adjutant) is only on the basis of the subsequent amendment introduced in the rules by way of G.O.Ms.No.734, Home (Pol.I) Department dated 08.11.2011 and subsequent amendment cannot take away the valuable right accrued to the petitioner who was otherwise eligible in all respects under the unamended rule.

13. In this case, admittedly the selection was conducted prior to the amendment and the panel was drawn up prior to the amendment and the promotion order was also issued prior to the amendment. That being the case, this Court does not find any justification for not granting posting order to the petitioner on the basis of the promotion ordered to the petitioner vide order dated 05.08.2011.

14. In the above circumstances, this Court has no hesitation in setting aside the order in B.O.613/2011 in C.No.A1/10627/2010 dated 22.08.2011 for keeping the promotion in abeyance. The respondents are therefore directed to promote the petitioner as Inspector of Police (Adjutant) for the year 2011-12 and grant him all consequential service benefits as applicable to the post. The direction shall be complied with by the respondent competent authority within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home (Police IX) Department,
Fort St.George, Chennai-9.
- 2.The Additional Director General of Police,
Armed Police, Chennai-40.
- 3.The Inspector General of Police,
Armed Police, Chennai-10.
- 4.The Deputy Inspector General of Police,
Armed Police, Chennai-10.
- 5.The Commandant,
TSP IX Battalion,
Manimuthar, Tirunelveli District.

+lcc to Government Pleader SR.No.4088

+lcc to Mr.M.Muthappan, Advocate SR.No.4150

sm:19.2.2018

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W.P.No.28389 of 2012

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