



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2018

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.1953 of 2014

and

M.P. (MD) No.1 of 2014

Jayachandran

... Petitioner

Vs.

1. The State of Tamil Nadu rep. by
Principal Secretary to Government,
Home (Pol.1) Department,
Fort St. George, Chennai - 9.

2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, calling for the records of the 1st respondent in connection with the impugned order passed by him in G.O.Ms.No.1396 (Pol.1A) Department dated 03.10.2007 and quash the same insofar it substituted para 5(e) of G.O.Ms.No.1252 Home (Pol.VIII) Department dated 29.10.2004 and further direct the respondents to fix the seniority of the petitioner by including his name in the appropriate place in the "C" list of the year 2003-04 in the cadre of Inspector of Police based on his date of promotion w.e.f.30.10.2004 and grant him all consequential service and monetary benefits and grant such other further relief.

For Petitioner : Mr.Veera.Kathiravan, senior
counsel for Mr.T.Ayngaraprabhu

For Respondents : Mr.S.Srimathy, Spl.G.P.

**ORDER**

The writ petitioner entered service as a directly recruited Sub Inspector of Police in the year 1996. The petitioner was part of the police team, which was involved in the successful operation against a dreaded terrorist and his gang on 29.09.2002 at Bangalore. In recognition of the diligent work of the police personnel involved in the said team, the Government issued G.O.Ms.No.1359, Home Department dated 06.12.2004 granting accelerated promotion of one stage from their present rank to the promotion post. As many as 13 police personnel were granted such accelerated promotion. The writ petitioner was figuring at Sl.No.5. He was promoted from the post of Sub Inspector of Police to the rank of Inspector of Police.

2.The system of granting accelerated promotion to persons, who display conspicuous merit and devotion of duty of a high order has always been there. Persons, who are granted such accelerated promotion are placed at the bottom of the seniority list of the respective category existing on the date of their joining in the promoted post. The writ petitioner joined duty as Inspector of Police on 04.04.2005. In fact, the petitioner was granted regular promotion few months later.

3.The grievance of the writ petitioner is that in view of G.O.Ms.No.1396, Home Department dated 03.10.2007, the Government amended its earlier policy and notified that mere grant of accelerated promotion will not give the concerned individual accelerated consequential seniority. It is this that is under challenge in this writ petition.

4.The Government has filed a detailed counter affidavit opposing the prayer made in the writ petition. The learned Special Government Pleader reiterated the stand set out in the counter affidavit. In particular, it was pointed out that there was an amendment of the relevant rule in the year 2013 and that the same has been challenged in a batch of writ petitions and that the Principal Bench of this Court has granted interim stay and that the litigation is still pending. It was therefore submitted that the request of the writ petition could not be taken up for consideration as the subject matter is subjudice before the Principal Bench of this Court. It was also further contended that the writ petitioner deserves to be dismissed on the ground of laches. The Government Order in question was issued in the year 2007. The writ petitioner obtained regular promotion and on the strength of the same, he has also been promoted to the post of Deputy Superintendent of Police. The doctrine of acquiescence must be put against the writ petition.



5. The learned senior counsel appearing for the petitioner would rebut the argument of subjudice by contending that the moment he was granted accelerated promotion in the year 2004 and placed at the bottom of the seniority list of the Inspectors, his rights stood crystallized. The substantive right accrued in favour of the writ petitioner cannot be taken away by a subsequent government order. These are not matters of procedure. When substantive rights are involved, there cannot be a retrospective application of the government orders. He also contended that the writ petitioner has been submitting one representation after another. The litigation in this regard was going right up to the year 2013. When he filed this writ petition, he was only an Inspector of Police. It is not as if the writ petitioner obtained promotion to the post of Deputy Superintendent of Police based on his regular promotion to the post of Inspector and thereafter challenged the impugned government order.

6. I find considerable force in the submission made by the learned senior counsel for the writ petitioner. It is also seen from the materials on record that accelerated promotion was given to the members of the team involved in the underground operation against Imam Ali and his gang. They were 13 in number. Inspectors were promoted as Deputy Superintendents of Police. The petitioner was the only Sub Inspector of Police in the team. He was given accelerated promotion to the post of Inspector. Others belonged to the Constabulary.

7. As already pointed out, the Government of Tamil Nadu has been giving accelerated promotion to police personnel who display exemplary courage during operations. When their seniority ranking in the promoted post was sought to be downgraded by invoking G.O.Ms.No.1369, Home Department, dated 03.10.2007, the aggrieved individuals went to Court. W.P.(MD) Nos.10290 and 12725 of 2009 were filed by one M.Chandrasekaran. This Court by order dated 30.10.2009 allowed the writ petitions. Likewise, one K.Mohan filed W.P.(MD) NO.17312 of 2008 seeking similar relief. His writ petition was also allowed by order dated 30.10.2009 and the authorities were directed to consider inclusion of his name in the promotion panel without reference to G.O.Ms.No.1396 dated 03.10.2007. Yet another order dated 30.10.2009 in W.P.(MD) No.8886 and 14366 of 2008 is also enclosed in the typed set of papers. The learned senior counsel would submit that all these orders were duly implemented by the government also. There is absolutely no reason to take a different view in this case. The substantive right of the writ petitioner cannot be taken away by subsequent government orders. The respondents are directed to fix the seniority of the writ petitioner by including his name in the appropriate place in the "C" list of the year 2003-04 in the cadre of Inspector of Police based on the date of promotion i.e.



06.12.2004 and grant him consequential service and monetary benefits, within a period of eight weeks from the date of receipt of a copy of this order.

8. The writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home (Pol.1) Department,
Fort St. George, Chennai - 9.
2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 4.
3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

+ 1 CC TO M/s. VEERA ASSOCIATES, IN SR No. 44380
+ 1 CC TO Mr. D. SIVARAMAN, ADVOCATE IN SR No. 44483

ARUL

TE/SKN-RSK/SAR-4 : 05/02/2018 : 4P/6C

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M.P. (MD) No. 1 of 2014
25.01.2018