

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2019

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.10740 of 2013

and

M.P.No.1 of 2013

K.Selvakumar

... Petitioner

Vs.

1. The Secretary to Government,
Home Department,
Fort St. George,
Chennai 600 009.

2. Director General of Police,
Chennai 600 004.

3. Superintendent of Police,
District Police Office,
Cuddalore,

... Respondents

Prayer:

This Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the first respondent herein in his proceedings G.O.Ms.No.499 Home (Police-5) Department dated 02.07.2012 and quash the same and consequently direct the respondents herein to include the name of the petitioner in the panel of Superintendents fit for appointment by recruitment by transfer as Personal Assistant (Administration) in Police Department for the year 2010-2011 issued in G.O.Ms.No.290 Home (Pol.V) Department dated 26.05.2011 at Sl.No.52A i.e. in between Sl.No.52. K.Thanislaus and Sl.No.53 M.Suriamurthy and promote the petitioner as Personal Assistant (Administration) with all consequential service and monetary benefits in the light of G.O.(4D) No.94 Home (Police.15) Department dated 24.12.2009 within a time frame as deem fit and proper by this court or issue any other appropriate writ, order, direction in the nature of a Writ or another appropriate relief as this Court may deem fit in the circumstances of the case.

For Petitioner : Mr.G.Bala and Daisy

For Respondents : Mr.J.Ramesh,
Additional Government Pleader

O R D E R

Challenging the order passed by the Government in G.O.Ms.No.499, Home (Police-V) Department dated 02.07.2012, the petitioner has filed this writ petition.

2. The case of the writ petitioner is as follows.

The writ petitioner was originally appointed as Junior Assistant in the Police Department, Cuddalore on 28.08.1982 under compassionate ground and he was promoted as Assistant on 02.08.1987. The petitioner was in continuous service of 8 years. However, he was terminated from service on 04.12.2000, based on the representation made by one Pachaiammal, the first wife of the petitioner's father. Aggrieved over the above said termination order, the petitioner had filed an application in O.A.No.572 of 2001 before the Tamil Nadu Administrative Tribunal and the Tribunal vide its order dated 16.06.2003 allowed the application by setting aside the termination order and directed department to reinstate the petitioner in the service.

2.1. The first respondent had issued an order in G.O.Ms.No.1280 Home (Pol-XV) Department dated 25.11.2003 by accepting the order passed by the Administrative Tribunal and directed the 2nd respondent to send necessary proposal for regularization, increment and promotion due to the petitioner. Accordingly, the 2nd petitioner had sent a proposal dated 20.01.2006 and thereafter, the first respondent vide its order in G.O.(4D) No.10 Home (Police.15) Department dated 23.01.2008, regularized the petitioner's service with effect from 28.08.1982. The petitioner's name was placed in the seniority list between his immediate senior Mr.Thanislaus and his immediate junior Mr.Suriyamoorthy and thereafter, he was promoted as Superintendent on 08.09.2001. Though the petitioner is fully eligible for promotion to the post of Personal Assistant (Administration) for the year 2010-2011, without taking into account the orders dated 23.01.2008 in G.O.(4D) No.10 Home (Police.15), the respondent has deliberately omitted the name of the petitioner in the panel of Superintendents fit for appointment as Personal Assistant (Administration) in the Police Department for the year 2010-2011 issued under G.O.Ms.No.290 Home (Pol.V) Department dated 26.05.2011 and denied the promotion to the petitioner as Personal Assistant. Hence, the petitioner filed a writ petition in W.P.No.13833 of 2011 and this court vide its order dated 16.11.2011 directed the

first respondent to consider the representation of the petitioner dated 20.09.2011 and pass an appropriate orders on merits and in accordance with law, within a period of 8 weeks. Accordingly, the 3rd respondent vide its order dated 09.05.2012, granted Selection Grade to the petitioner in the post of Superintendent and his pay was fixed w.e.f. 08.09.2011.

2.2. In the above circumstances, the first respondent passed an order dated 02.07.2012 rejecting the claim of the petitioner for promotion to the post of Personal Assistant (Administration) on the ground that the petitioner had not completed 2 years of service in the post of Superintendent and, as per Class 29 Rule 3 of the Tamil Nadu General Service Special Rules, two years of service of the employee in the post of Superintendent is required for the promotion to post of Personal Assistant (Administration) in the Police Department. Hence, the petitioner has filed the present writ petition seeking relaxation under Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules and prayed retrospective promotion and seniority.

3. The learned counsel appearing for the writ petitioner submitted that in pursuant to the orders passed by the Tamil Nadu Administrative Tribunal dated 16.06.2003 in O.A.No.572 of 2001, the service of the petitioner was regularized vide order dated 25.11.2003 in G.O.Ms.No.1290 Home (Police-XV) Department and therefore, the petitioner is entitled to the inclusion of his name in the panel of Superintendents fit for appointment as Personal Assistant (Administration) in the respondent police Department and the order of rejecting the claim of the petitioner passed by first respondent is arbitrary and illegal and hence the same is liable to be quashed.

4. The learned Additional Government Pleader appearing for the respondents contended that pursuant to the orders passed by the Tribunal and followed by the orders passed by the Government dated 25.11.2003 in G.O.Ms.No.1280 Home (Police-XV) Department, the petitioner was promoted as Superintendent. However, on the crucial date i.e. on 01.09.2009, the petitioner cannot be considered to include his name in the panel of Superintendent fit for promotion as Personal Assistant (Administration) for the year 2010-2011 in the Police Department, since the petitioner had assumed charge of the post of Superintendent only on 05.02.2010 vide Chief Office Memorandum in C.No.17885/NGB(VI).1/2009 dated 05.01.2010 and hence, he has not satisfied the condition stipulated in Rule 3 of the Special Rules, under Class XXIX of the Tamil Nadu General Service. He further contended that the petitioner's name was recommended and included in the panel for the year 2013-2014 and was promoted as Administrative Officer and he was reported

duty on 03.03.2014. Therefore, he prayed for dismissal of the writ petition.

5. The contention of the writ petitioner is that pursuant to the Government Order dated 24.12.2009 in G.O.(4D) No.94 (Revision of Seniority), his service was regularized and hence, he is fit for promotion to the post of Personal Assistant (Administration) for the year 2010-2011. However, the claim of the writ petitioner cannot be considered, since the petitioner had assumed charge of the post of Superintendent only on 05.02.2010 vide Chief Office Memorandum in C.No.17885/NGB(VI) 1/2009 dated 05.01.2010 and he has not completed his two years of service in the post of Superintendent on the crucial date 01.09.2009, as per Rule 3 of the Special Rules, under Class XXIX of the Tamil Nadu General Service Rules.

6. At this juncture, it is relevant to extract the above said Rule

3. Qualification: - No person shall be eligible for appointment to this class unless he has put in a service of not less than two years in the category of Superintendents in the Police Department.

The above said Special Rule clearly stated that the person, who is in the category of Superintendent shall put in a service of not less than two years in the above category for promotion to the post of Personal Assistant (Administration) in the Police Department. Admittedly, the petitioner was elevated to the post of Superintendent on 05.02.2010 and hence, he has not completed his two years of service in the category of Superintendent on the crucial dated 01.09.2009. Therefore, there is no illegality or arbitrary in the orders passed by the Government in G.O.Ms.No.499, Home (Police-V) Department dated 02.07.2012 and I do not see any reason to quash above said order.

7. In the result, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar
//True Copy//

Sub Assistant Registrar

mst

To

1. The Secretary to Government,
Home Department,
Fort St. George,
Chennai 600 009.
2. Director General of Police,
Chennai 600 004.
3. Superintendent of Police,
District Police Office,
Cuddalore,

+1cc to Mr.G.Bala and Daisy, Advocate, S.R.No.105362
+1cc to the Government Pleader, S.R.No.105269

W.P.No.10740 of 2013 and
M.P.No.1 of 2013

SR(CO)
CS/10/02/2020



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