

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.32628 of 2007

M.Ravichandran

...Petitioner

Vs

1. The Tamil Nadu Government
rep. by its Secretary,
Home Department,
Secretariat, Chennai-9.

2. The Director General of Police,
Office of the Director General of Police,
Mylapore, Chennai-4.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent herein made in Rc.No.12585/NGB VII(2)/2007 dated 9.4.2007, quash the same and direct the respondents herein to give benefits to the petitioner as prayed for in his representation dated 26.2.2005.

For Petitioner : Mr.S.Balasubramanian

For Respondents : Mr.K.Ravikumar, A.G.P.

O R D E R

This Writ Petition has been filed questioning the correctness of the impugned order dated 09.04.2007 passed by the 2nd respondent, namely, the Director General of Police, Chennai, thereby refusing the request of the petitioner to grant him accelerated promotion citing a reason that the petitioner failed to qualify for promotion or for other benefits as per the yardsticks followed for conferring certain benefits for STF Personnel.

2. When the matter is called, the learned Additional Government Pleader appearing for the respondents submitted that the request for granting of accelerated promotion for all those police constables who involved in the search operation against

Sandalwood Smuggler Forest Brigand Veerappan and his gang is no longer res integra since the said issue has already been decided by a Division Bench of this Court in W.A.Nos.849 to 854/2010 by judgment dated 05.04.2013.

3. I am also accepting the statement made by the learned Additional Government Pleader for the respondents that no police personnel involved or participated in the search operation against Sandalwood Smuggler Forest Brigand Veerappan and his gang is entitled to get any accelerated promotion and the said decision has been duly followed by me in W.P.No.4203 of 2015 dated 21.02.2018. The relevant portion is extracted here under :

"4. I also find merits on the submissions made by the learned Additional Advocate General for the respondents. Since the issue as to whether the police personnel is entitled to get any accelerated promotion, while challenging the deletion of paragraph-5(e) in G.O.Ms.No.1252, Home (Pol.VIII) Department dated 29.10.2004 and in G.O.Ms.No.1346, Home (Pol.VIII) Department dated 6.12.2004, as clarified in G.O.Ms.No.1396, Home (Pol.IA) Department dated 3.10.2007, has been already decided by this Court holding against the said request that no police personnel is entitled to get any accelerated promotion against the statute, in W.P.Nos.35716 of 2008 etc., batch dated 14.10.2009 and confirmed by the Hon'ble Division Bench in W.A.Nos.849 to 854 of 2010 dated 5.4.2013, which orders have been followed by me in a batch of writ petitions in W.P.Nos.17534 and 18725 of 2013 etc., batch (S.Prabakaran v. State of Tamil Nadu represented by its Principal Secretary to Government, Home Department and others) dated 21.12.2017, the petitioner is not entitled to get the benefit of accelerated promotion. The relevant paragraphs of the order dated 21.12.2017 passed by me read as follows:-

"7. Again, the entire gamut of the issue was taken up and after elaborate discussion made by both sides, the Hon'ble Division Bench confirmed the order passed by the learned Single Judge, making it clear that the accelerated promotion given by issuing a Government Order by the Government is not based on any statutory rule. On this core, it is further held that executive instructions cannot override the statutory rules. If the accelerated promotees are given seniority in the higher cadre, it will affect the promotion of the person senior to the accelerated

promotees in the lower cadre and it will lead to the situation of reduction of rank of their seniors in the lower category and the same is contrary to General Rule 35[a] and 35[aa]. As a result, the natural justice will also affect the morale of the entire police force.

8. The Hon'ble Apex Court in Govind Prasad Vs. R.G.Prasad and Others reported in [1994(1) SCC 437] held that executive order cannot be made operative with retrospective effect. By following the said judgment, the Hon'ble Division Bench of this Court in the above referred cases has confirmed the order passed by the learned Single Judge of this Court by reiterating the same legal position that the executive power of the State cannot be exercised in the field which is already occupied by the laws made by the legislature.

9. In view of the above, G.O.Ms.No.1396, Home (Pol.IA) Department, dated 03.10.2007, was issued deleting paragraph No.5(e) in G.O.Ms.No.1252, Home Department, dated 29.10.2004, as a result, G.O.Ms.No.1346, Home (Pol.VIII) Department, dated 06.12.2004, has been upheld reiterating the power of the State Government that the Government is well within its power in deleting paragraph No.5(e) in G.O.Ms.No.1252, Home (Pol.VIII) Department, dated 29.10.2004 and this has been clarified in G.O.Ms.No.1396, Home (Pol.IA) Department, dated 03.10.2007.

10. Subsequently, the Government have also come forward with a Notification dated 14.12.2013 by carrying out the amendment to the Special Rules giving retrospective effect from 19.03.1996 in G.O.Ms.No.550, Home (Pol.2) Department, dated 24.07.2013. Aggrieved by the same, other police officers have filed Writ Petition Nos.24461, 26276 and 26365 of 2013, whereby, the learned Single Judge of this Court has granted interim stay of the above referred Notification on 29.08.2013. Thus, the net result is that the order passed by the Hon'ble Division Bench in W.A.Nos.849 to 854 of 2010 has been made absolute now."

4. In the result, since the issue raised in this Writ Petition is no longer res integra and decided against the petitioner, the petitioner is not entitled to get accelerated promotion because there is no provision therefor and accordingly, the Writ Petition fails and the same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Tamil Nadu Government,
Home Department,
Secretariat, Chennai-9.
2. The Director General of Police,
Office of the Director General of Police,
Mylapore, Chennai-4.

+1cc to Government Pleader, in S.R.No.20926

W.P.No.32628 of 2007

SJ(CO)
CS/01/04/2019

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