

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 27.04.2019

Delivered on : 30.04.2019

CORAM:

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.37094 of 2006

M.Sivalinga Sekar

... Petitioner

Vs.

The Director General of Police,
D.G.P's Office,
Mylapore, Chennai-4.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the Respondent to include the Petitioner's name in the 'C' List of Inspectors with the appropriate seniority.

For Petitioner : Mr.M.Manoj
for G.Jeremiah

For Respondents : Mr.K.S.Suresh
Government Advocate

ORDER

This Writ Petition is filed for a Writ of Mandamus to direct the Respondent to include the Petitioner's name in the 'C' List of Inspectors with the appropriate seniority.

2.The case of the Petitioner is that he was directly recruited as a Sub-Inspector of police in the year 1997 and, as per seniority, he was in line to be included in the 'C' list of Inspectors. However, when the said 'C' list was prepared, his name was not included. He further states that while serving in the Government Railway Police at Trichy, he was served with two charge memos in P.R.No.126/02 and P.R.No.43/2004. In P.R.No.126/02, by Order dated 10.06.2003, a punishment of reduction of pay by one stage for one year was issued. The said order was implemented and, by proceedings dated 14.12.2005, his original pay was restored. In P.R.No.43/04, the Disciplinary Authority, by Order dated 10.06.2004, passed an order of censure

and the appeal of the Petitioner against the said order was rejected by the Appellate Authority by order dated 01.12.2004. According to the Petitioner, in view of undergoing punishment based on orders issued in the disciplinary proceedings, there was no impediment for the inclusion of his name in the 'C' list of Inspectors. The Petitioner also states that on the crucial date when the list was drawn up, he was not undergoing punishment and disciplinary proceedings were not pending against him. Nonetheless, as stated above, the Petitioner's name was not included in the 'C' list. This Writ Petition was filed in the said facts and circumstances.

3.The case of the Respondent is that the Petitioner entered the zone of consideration for inclusion in the 'C' list of Sub-Inspectors, who are fit for promotion as Inspector, in the year 2006-2007 but the Petitioner was not considered in view of the punishments that were awarded on 09.05.2003 and 04.07.2003. According to the Respondent, as per G.O.Ms.No.368, P & A.R. Department, dated 18.10.1993, and subsequent amendments thereto, a Government servant who enters the zone of consideration for the first time would be evaluated based on service records in the preceding five years. If the said Government servant had been awarded a punishment during the said check period, other than censure, he would not be included in the 'C' list. The Respondent further states that the crucial date for drawing up the 'C' list for 2006-2007 was 01.06.2006, and, therefore, the performance of the Petitioner was assessed from 01.06.2001. In view of the fact that the Petitioner had undergone two punishments during the check period mentioned above, he was not considered for inclusion in the 'C' list. Therefore, the Respondent states that the Writ Petition is liable to be dismissed.

4.At the hearing, the learned counsel for the Petitioner submitted that in the DEPUTY INSPECTOR GENERAL OF POLICE Vs. RANI VS. RANI, 2011 (3) CTC 129, a Full Bench of this Court held that G.O.Ms.No.368 does not have statutory force because it was not issued under the proviso to Article 309 of the Constitution of India. Consequently, it was held that the embargo on the Government servant in respect of consideration for promotion for a period of five years by way of check period is illegal and impermissible under the statutory rules.

5.In response, the learned counsel for the Respondent produced a copy of G.O.Ms.No.22 dated 24.02.2014, whereby, in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, amendments were made to the General Rules for the Tamil Nadu State and Subordinate Services. In specific, the learned counsel for the Respondent pointed out that amendment (3) (e) is deemed to have come into force on 27

August 2003. He also pointed out that Schedule VII was amended by, inter alia, inserting 1-HH, which provides as under:

"any punishment (other than censure) imposed on a member of service within a period of five years prior to the crucial date and a punishment of censure imposed within a period of one year prior to the crucial date shall be held against a member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including censure imposed on a member of service after the crucial date but before actual promotion or appointment shall be held against a member of service and he shall not be given promotion or appointment."

6. Based on the above amendment to the statutory rules, the learned counsel for the Respondent submitted that the Full Bench judgment of this Court is no longer a deterrent for the enforcement of the five year check period. In particular, he submitted that the Full Bench judgment was pronounced on the basis that G.O.Ms.No.368, i.e. the Government Order in question therein, was not issued under the proviso to Article 309 of the Constitution of India. By contrast, he submitted that the current G.O.Ms.No.22 is issued under the proviso to Article 309 and, therefore, has statutory force with retrospective effect from 27.08.2003.

7. The affidavit, counter affidavit, documents on record and the oral submissions of the two parties were carefully considered.

8. There is no doubt that G.O.Ms.No.22 is issued under the proviso to Article 309. Therefore, the learned counsel for the Respondent is correct in contending that the Full Bench judgment is not a deterrent for the implementation of the check period. On facts, there is no doubt that the Petitioner was within the check period when the 'C' list for the year 2006-2007 was prepared. Consequently, the Respondent is entitled to refuse to include the Petitioner's name until completion of the check period. Thus, the Petitioner is not entitled to a Writ of Mandamus. It is also relevant to state, in this regard, that the Petitioner was promoted upon expiry of the said check period.

9. In the result, the Writ Petition is dismissed but there shall be no order as to costs.

Sd/-

Assistant Registrar (CF Conf)

//True Copy//

Sub Assistant Registrar

rrg

To

The Director General of Police,
D.G.P's Office,
Mylapore, Chennai-4.

+lcc to the Government Pleader, S.R.No. 43238

W.P.No.37094 of 2006

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