

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.03.2019

CORAM

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No.442 of 2019

1. The Secretary to Government,
Home (Police-IX) Department,
Fort St. George,
Chennai - 09.
 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. ..Appellants
Vs.
- S. Subramanian ..Respondent

Prayer: Writ Appeal as against the order dated 18.01.2018
in W.P. No. 28389 of 2012.

Prayer in W.P. No. 28389 of 2012:

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, calling 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 dt 22.8.2011 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 dt 18.7.2011 and promote him as Inspector of Police (Adjutant) and grant him all consequential service and monetary benefits.

For Appellants :: Mrs. Narmada Sampath,
Additional Advocate General
assisted by
Mrs.A. Srijayanthi,
Special Government Pleader

For Respondent :: Mr.K.Venkatramani,
Senior Counsel
for Mr.R. Jayaprakash Narayanan

J U D G M E N T

(Judgment of the Court was delivered by K.K. SASIDHARAN, J.)

INTRODUCTION:

The respondent was denied promotion to the post of Inspector Adjutant on the ground that he was not in the General Category (Regular Line) fit for promotion in view of the amendment made to the Tamil Nadu Special Police Subordinate Service Rules, 1978. The learned Single Judge having found that the particular amendment was incorporated only on 8th November, 2011, allowed the writ petition and issued a mandamus to give the respondent promotion to the post of Inspector Adjutant for the year 2011-2012 and grant him all consequential service benefits. Feeling aggrieved by the said order, the appellants have come up with this intra court appeal.

BRIEF FACTS:

2. The respondent was initially appointed as a Grade II Police Constable. He opted to serve in the Radio Telephone (Signal Wing). The option was given in 1987. The respondent was given further promotion and ultimately, he was promoted as Inspector of Police (Radio Telephone) on 18.03.2005. The respondent was qualified for promotion as Inspector of Police Adjutant in the 'C' list for the year 2011-2012.

3. The Inspector General of Police (Armed Police) approved the names of 7 Inspectors of Police including the respondent for promotion as Inspector of Police Adjutant for the year 2011-2012. Based on the said order passed by the Inspector General of Police, he was given promotion and posting. However, by proceedings dated 22.08.2011, the order was kept in abeyance.

4. The respondent challenged the order dated 22.08.2011 before the Writ Court on the ground that the subsequent amendment made to the Rules would not apply to him.

5. The writ petition was opposed by the appellants herein by filing counter affidavit. The Joint Secretary to Government, Home P&E Department, in the counter affidavit contended that the Government made amendments to Rules 7 and 24 of Tamil Nadu Special Police Subordinate Service Rules, 1978 as per order in G.O.(Ms) No. 1710 Home (Pol.9) Department dated 23.11.2007. Similarly, amendments were also made to the Rules as per order in G.O. (Ms) No. 734 Home (Pol-1) Department dated 08.11.2011. According to the Police Department, in view of the amendments made to the Rules, the Inspectors of Police from the General Category (Regular Line) alone are entitled for promotion to the post of Inspector Adjutant. It was further contended that the respondent who was serving in the specialized category of Radio Telephone has to secure a place in the General Line to compete for the post of Inspector Adjutant. In short, it was the contention of the appellants before the Writ Court that the respondent being an officer in the specialised category is not entitled for promotion to the post of Inspector Adjutant.

6. The learned Single Judge found that the promotion given to the respondent as Inspector of Police Adjutant was before the amendments made to the Rules by G.O. (Ms) No. 734 Home (Pol-1) Department dated 08.11.2011. According to the learned Single Judge, it was not open to the Government to take away the valuable right accrued to the respondent on account of the subsequent amendment made to the Rules. The learned Single Judge therefore directed the appellants to give all the service benefits to the respondent taking into account the order dated 18.07.2011 promoting him to the post of Inspector Adjutant.

SUBMISSIONS:

7. The learned Additional Advocate General appearing on behalf of the State contended that in view of the amendment made to Tamil Nadu Special Police Subordinate Service Rules, 1978, as per G.O.(Ms). No. 1710 Home (Pol-9) Department dated 23.11.2007 and G.O.(Ms) No. 734 Home (Pol-1) Department dated 08.11.2011, the respondent has no justifiable claim for promotion to the post of Inspector of Police Adjutant. The learned Additional Advocate General by placing reliance on the substituted entry namely, "promotion from Sub Inspectors (General Category) (Regular Line)" contended that the respondent having not given

option pursuant to 2007 amendment is not entitled for promotion to the post in question.

8. We have also heard the learned Senior Counsel for the respondent.

9. The core question is as to whether the respondent is eligible for promotion to the post of Inspector Adjutant notwithstanding the fact that he is from a specialised category and not a member of the General Category (Regular Line).

DISCUSSION:

10. The Tamil Nadu Special Police Subordinate Service Rules, 1978 contain detailed provisions with regard to appointments and promotions. Rule 7, before the amendment in 2007, provided that the post of Inspector Adjutant would be filled up by promotion from Inspectors or if no qualified and suitable Inspector is available, by direct recruitment or recruitment by transfer from any other service. The post of Inspectors would be filled up by promotion from Sub Inspectors and if qualified and suitable candidates are not available, by direct recruitment or recruitment by transfer from any other service. This rule was amended as per Government Order in G.O.(Ms) No. 1710 Home (Pol-9) Department dated 23.11.2007. As per the amendment, the appointment to the post of Inspectors is by promotion from Sub Inspectors (General Category) (Regular Line). Sub-rule (f) was incorporated in Rule 24 which provides that any person serving in any post in specialised category (other than regular line) may opt for transfer to General Category (Regular Line) and on transfer to the General Category, such person shall take his seniority immediately above his junior serving in any post in General Category, if he is otherwise qualified to hold the post.

11. Rule 7 was amended subsequently as per the order in G.O.(Ms) No. 734 Home (Pol-1) Department 08.11.2011. The amendment, which was notified on 30th November, 2011 provided that the promotion to the post of Inspector Adjutant was confined to the Inspectors (General Category) (Regular Line). Therefore, it is clear that with effect from 30th November, 2011, Inspectors in the specialised category are not eligible for promotion to the post of Inspector Adjutant.

12. The question here is as to whether the Rule would apply retrospectively thereby denying the chances of

promotion even to those Inspectors, who have already been promoted.

13. There is no dispute that the respondent was eligible for promotion to the post of Inspector Adjutant as he had already been promoted to the post of Inspector.

14. The learned Additional Advocate General took up a contention that the respondent ought to have given an option immediately after the amendment made to the Tamil Nadu Special Police Subordinate Service Rules, 1978 by order in G.O.(Ms) No. 1710 dated 23.11.2007. There is absolutely no merit in the said contention. By way of the said amendment, the feeder category for promotion to the post of Inspectors was notified as Sub Inspectors (General Category) (Regular Line). There was no requirement for giving option by the Inspectors of Police who have already been promoted as such.

15. The respondent was promoted as Inspector of Police on 18.03.2005. Therefore, it is clear that as on the date on which amendment was made to Tamil Nadu Special Police Subordinate Service Rules as per order in G.O.Ms. No. 1710 dated 23.11.2007, the respondent was working as Inspector of Police. There was no requirement for him to give an option so as to make him eligible for promotion from General Category.

16. The respondent was eligible for promotion to the post of Inspector Adjutant as per the then existing rules. The respondent was therefore rightly given promotion by including his name in the panel as on 1st June, 2011. The panel was prepared before making further amendment to the Tamil Nadu Special Police Subordinate Service Rules, 1978 as per the order in G.O.(Ms) No. 734 dated 08.11.2011. After including the name of the respondent in the "C" list of Inspectors of Police fit for promotion to the post of Inspector Adjutant for the year 2011-2012, the Additional Director General of Police, Armed Police, Chennai, by order dated 12.08.2011 kept the order granting promotion in abeyance. The Commandant, TSP IX Battalion, Manimuthar, by communication dated 22.08.2011 informed the respondent that the order promoting him to the post of Inspector of Police Adjutant is kept in abeyance on administrative reasons.

17. The appellants would be justified in denying promotion to the respondent, in case, the amendment made in 2011 was given retrospective operation. The amendment was made as per order in G.O. (Ms) No. 734 dated 08.11.2011 and

it was published in the Government Gazette only on 30th November, 2011. There was no amendment in the 2007 Rules taking away the right of the Inspectors in the General Category for promotion to the post of Inspector Adjutant. Even after the amendment made to Rule 7, as per order in G.O.Ms. NO. 1710 dated 23.11.2007, the method of promotion viz. promotion from Inspector of Police to the post of Inspector Adjutant remained the same. There was no corresponding amendment in the matter of promotion to the post of Inspector Adjutant. It was only by the subsequent amendment as per order in G.O.(Ms) No. 734 dated 08.11.2011, the promotion post of Inspector Adjutant was earmarked specifically to Inspectors of Police (General Category). Therefore, it is clear that only from 30.11.2011, the promotional chances of Inspectors of Police in the specialised category were taken away. In short, with effect from 30.11.2011, the Inspectors in the General Category (Regular Line) alone are eligible for promotion to the post of Inspector Adjutant.

18. However, in the subject case, the respondent was given promotion to the post of Inspector of Police as early as on 18.03.2005. There was no requirement at that point of time that he should exercise his option for further promotion. This shows that the respondent was promoted to the post of Inspector of Police even before the amendment made as per G.O.Ms. No. 1710 dated 23.11.2007. The next avenue of promotion was to the post of Inspector Adjutant. The respondent was eligible for such promotion and as such, his name was rightly included in the 'C' list for the year 2011-2012. The amendment in question made as per order in G.O.(Ms) No. 734 dated 08.11.2011 took effect only from 30.11.2011. By the time the said amendment was notified, the respondent was promoted to the post of Inspector Adjutant. It is true that the order of promotion was kept in abeyance. Even then, it cannot be said that he was not eligible for promotion to the post of Inspector Adjutant as on the date on which he was promoted. The crucial date is 1st June, 2011. The respondent was fully eligible for promotion to the post of Inspector adjutant as on 1st June, 2011 since the amendment came only on 08.11.2011, the appellants are not correct in denying promotion to the respondent. We are therefore of the view that the learned Single Judge was justified in allowing the writ petition.

19. The learned Single Judge directed the appellants to promote the respondent as Inspector Adjutant for the year 2011-2012 and grant him all consequential service benefits. We make it clear that though the respondent would be entitled to all service benefits including seniority

taking into account the cut off date, he would not be entitled for backwages for the period in question. We are justified in taking such a view as the order granting promotion to the respondent was kept in abeyance as per proceedings dated 22.08.2011. In short, the respondent would be given all service benefits which would not include the differential salary for the period in question.

20. The intra-court appeal filed by the State is dismissed with the above clarification. No costs.

Sd/-

Assistant Registrar(CS iv)

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Sub Assistant Registrar

nv

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Home (Police-IX) Department,
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+1cc to Mr.R. Jayaprakash Narayanan , Advocate SR.No. 23660
+1 cc to Government Pleader SR.NO. 23598

Writ Appeal No. 442 of 2019
Giving Directions etc as
stated within.

A.SK(11/04/2019)

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