

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.8456 of 2017

S.Sumathy

... Petitioner

Vs.

1.The Director General of Police,
Santhome,
Chennai - 600 004.

2.The Commissioner of Police,
Coimbatore City.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the first respondent vide Rc.No.57654/NGB-1[2]/2016 dated 25.03.2017 and to quash the same and consequently direct the first respondent to permit the petitioner to join duty as Inspector of Police for the year 2011-12.

For Petitioner : Mr.S.Sivakumar
for Mr.G.Ilamurugu

For Respondents : Mrs.R.Janaki
Additional Government Pleader

O R D E R

The petitioner is a Sub-Inspector of Police. Her right to promotion to the post of Inspector of Police is denied on the ground of disciplinary proceedings initiated against her, after the release of promotion panel.

2.The short point raised and argued by the learned counsel appearing for the petitioner is that, the petitioner was included in the 'C' list for promotion from the post of Sub-Inspector of Police (Taluk) to Inspector of Police (Taluk) for the year 2011-2012 at Sl.No.67 of the list. She was promoted and posted to the Railways under order dated 04.08.2012, passed by the Director General of Police, the 1st respondent herein. While this is so, it appears that, an investigation of Crime No.1114 of 2011 under Sections 406 and 420 IPC was on-going in D2 Selvapuram Police Station. A First Information Report that

has been filed in that case was altered on 31.08.2012, by including the name of the petitioner as accused No.5. This sequence of dates and events is corroborated by the status report filed today by the Commissioner of Police, Coimbatore City, the 2nd respondent, before me.

3. There are several decisions of the Division Bench of this Court (See orders in *E.Pitchaimari v. The Special Commissioner and Transport Commissioner* [W.A.No.115 of 2008, dated 10.04.2008]; *T.Chandramohan v. The Director General of Police and others* [W.P.No.3405 of 2014, dated 07.02.2014] and confirmed in W.A.No.1406 of 2014, dated 26.06.2015), where the law laid down is very clear. A departmental proceeding is ordinarily said to be initiated, as laid down by the Supreme Court in the case of *Coal India Ltd. and Others v. Saroj Kumar Mishra* [2007 AIR (SC) 1706], only when a charge-sheet is issued.

4. In the present case, there is no quarrel or dispute in regard to the position that the First Information Report has itself been altered, by including the name of the petitioner as 5th accused, only on 31.08.2012. The Charge-sheet in this case is dated 05.09.2013. Thus, on the admitted facts, as confirmed by the Commissioner of Police, the impugned order has no legs to stand. For clarity, when questioned, Mrs.R.Janaki, learned Additional Government Pleader, appearing for the respondents, would reiterate the fact that the impugned order has been passed only on the ground of, and consequent to the inclusion of the name of the petitioner as 5th accused and her subsequent charge-sheeting.

5. Schedule-XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, refers to the procedure for preparation of approved list and consideration of members for inclusion in the approved list. The only embargo as set out in Sub-Clause 5 is the 'framing of specific charges or filing of charge-sheet'. This, in the present case, has been done only on 05.09.2013. Sub-clause 5 of Schedule-XI reads thus :

'(5) Mere filing of cases in Courts by the appropriate Investigating Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list.'

6. In the light of the above discussion, I have no hesitation in allowing this writ petition. The impugned order is set aside. The 2nd respondent is directed to pass orders in the light of the promotion panel dated 04.08.2012, within a

period of four weeks from the date of receipt of a copy of this order.

7.It is brought to my notice that, proceedings that have been initiated before the Judicial Magistrate Court No.V, Coimbatore, are on-going and summons have been issued to the petitioner to appear before the said Court on 27.03.2019. It is made clear that, those proceedings shall go on, till logical conclusion, in accordance with law. Nothing stated in this order shall have any impact with reference to the issue pending for resolution before the Judicial Magistrate Court No.V, Coimbatore.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

mkn

To

1.The Judicial Magistrate No.V,
Coimbatore.

2.The Director General of Police,
Santhome,
Chennai - 600 004.

3.The Commissioner of Police,
Coimbatore City.

+1 CC to Govt. Pleader sr 26273.

+1 CC to Mr.S.Sivakumar, Advocate sr 25838.

सत्यमेव जयते

W.P.No.8456 of 2017

RJI (CO)
SP(03/04/2019)

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