



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.12.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD**

W.A. [MD]No.342 of 2012

and

M.P. No.2 of 2012

1.The State of Tamil Nadu,
Rep. by its Secretary
Home Department
St. George Fort,
Chennai.

2.The Director General of Police,
Tamil Nadu,
Chennai - 4

: Appellants

Vs.

A.Ravichandar
Inspector of Police,
Elumalai circle
Madurai District.

: Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 03.08.2010 passed in W.P(MD)No.8098 of 2010.

Prayer in WP(MD) . 8098/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS directing the respondents to consider representation of the petitioner for promotion to the post of Deputy Superintendent of Police taking into account of his seniority on temporary basis under Rule 39 of General Rule for Tamil Nadu State and Subordinate Service Rules and without reference to the pendency of criminal case in C.C.No. 3 of 2006 on the file of the VIth Additional Sessions Court, Chennai.

For Appellants : Mr.V.R.Shanmuganathan

For Respondent : Mr.H.Mohammed Imran
for M/s.Ajmal Associates



JUDGMENT

[Judgment of the Court was delivered by

The Hon'ble Chief Justice]

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Heard learned counsel for the appellants State and learned counsel for the respondent petitioner.

2. The writ petition filed by the respondent petitioner for being promoted in spite of the pendency of the criminal case against him came to be allowed holding that the respondent petitioner had a right to get temporarily promoted in terms of Rule 39 (d) of the Tamil Nadu State and Subordinate Services Rules.

3. The appellants State has questioned the correctness of the order on the ground that the learned single Judge has allowed the writ petition without taking into account the provisions of Section 39(a)(i) of the said Rules, which provides for temporary promotion only in cases of emergency and does not confer any right on a claimant to seek promotion compulsorily.

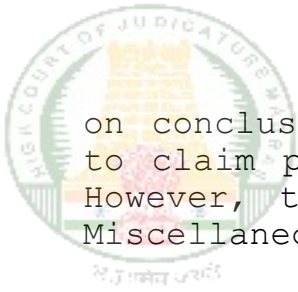
4. After hearing, we also find that Division Bench, which had entertained the appeal, had granted interim stay on 26.04.2012 staying the operation of the impugned order.

5. We have considered the submissions raised and bereft of the considerations aforesaid, we find that even though a right to promotion may not be a fundamental right, but right to be considered for promotion has been declared to be a fundamental right by the Apex Court in large number of decisions. (For reference: **Union of India Vs. Sangram Keshari Nayak [2007 (6) SCC 704]**)

6. Accordingly, even if the respondent petitioner was eligible, but not entitled for promotion on account of the pendency of a criminal case against him, the course open to the appellant State was to consider his claim for promotion and keep it in a sealed cover for being opened after the respondent was exonerated of the charges or otherwise was punished.

7. We, therefore, find that the impugned order dated 03.08.2010 deserves to be modified, as the argument raised on behalf of the appellant to the extent on Rule 39 of the said Rules cannot be pressed into service, deserves to be accepted.

8. The Writ Appeal is, therefore, partly allowed modifying the impugned order to the effect that the claim of the respondent petitioner for promotion shall be considered and kept in a sealed cover in view of the law laid down in the case of **Union of India Vs. K.V. Janakiraman (AIR 1991 SC 2010)**, and the outcome of the proceedings against the respondent petitioner shall be awaited and



on conclusion thereof, the respondent petitioner shall be entitled to claim promotion in the event, he is exonerated of the charges. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Secretary
State of Tamil Nadu,
Home Department, St. George Fort,
Chennai.

2.The Director General of Police,
Tamil Nadu, Chennai - 4.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-105469[F] 17/12/2019)

+1 CC to M/s.Special Government Pleader (SR-105591[F] 18/12/2019)

JUDGMENT MADE IN
W.A. [MD] No.342 of 2012
16.12.2019

SDS/06.01.2020/2P-5C