



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE. R.MAHADEVAN

W.P. (MD) No.1206 of 2019

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I.Jayaveeranan

.. Petitioner

Vs.

The Commissioner of Police,
Madurai City, Madurai.

.. Respondent

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a writ of mandamus directing the respondent to include my name in the upgradation list for upgradation of Grade I police Constables as Head Constable in Taluk without reference to the criminal case in Crime No.397/2016 on the file of Sellur Police station and without reference to P.R.No.40/2017 and pass orders upgrading the petitioner as Head Constable.

For Petitioner : Mr.Abudukumar Rajaraman
for Mr.F.Deepak

For Respondent : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader

ORDER

This writ petition has been filed seeking a direction to the respondent to include the petitioner's name in the upgradation list for upgradation of Head Constable, without reference to the criminal case in Crime No.397/2016, on the file of Sellur Police station and P.R.No.40/2017 initiated against him.

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

3.The case of the petitioner is that he was recruited as Grade I Police Constable on 01.12.2003 and after continuous service, he was placed under various capacities. The petitioner's claim for upgradation from Grade I Police Constable to Head Constable was not considered, for the reason that a case in Crime No.397 of 2016 on the file of Sellur Police Station was registered against him and pursuant to the same, departmental proceedings, followed by a charge memo under Section 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules was also initiated. Hence, this writ petition.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The learned counsel appearing for the petitioner submitted that the further proceedings in Crime No.397 of 2016 had



already been stayed by this Court in CrI.O.P(MD)No.6202 of 2016 and the departmental proceedings were also ordered to be kept in abeyance vide order of this Court made in WP(MD)No.13316 of 2017. The relevant portion of the said order reads as under:

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"2.The learned counsel appearing for the petitioner submitted that the petitioner has been prosecuted both departmentally and criminally. He further submitted that FIR has been filed alleging similar charges levelled against the petitioner under Sections 294(b), 323, 324 and 506(i) of IPC. He further submitted that the petitioner filed CrI.M.P(MD)No.3087 of 2016 in CrI.O.P(MD) No.6202 of 2016 before this Court for questioning the correctness of the registration of the FIR and in the said CrI.O.P. This Court granted an order of interim stay. Therefore, it is the claim of the petitioner that this Court in the aforesaid CrI.O.P. prima facie having satisfied has granted an order of interim stay of operation of criminal proceedings in Crime No.397 of 2016 on the ground that the allegations levelled against the petitioner are all after thought and the very same similar charges cannot be proceeded departmentally, when final conclusion is reached in the pending CrI.M.P(MD)No.3087 of 2016 in CrI.O.P(MD)No.6202 of 2016. A reading of the charge memo issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, clearly shows that the charges levelled against the petitioner in the FIR are repeated. Therefore, the respondents are directed to keep the departmental proceedings in abeyance, till the conclusion of the criminal proceedings."

5.Further, the learned counsel for the petitioner relying upon the procedure for preparation of approved list as per Schedule - XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2015, submitted that there is no bar for inclusion of the petitioner's name in the list for upgradation. Hence, he sought appropriate direction to the respondent in favour of the petitioner.

6.At this stage, it is apposite to extract the relevant provisions of Schedule - XI, which reads as follows:

"(2)If the disciplinary proceedings under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules pending against a member of service are merely stayed by a Court, his case shall be deferred till the judicial proceedings are concluded, unless a contrary order is passed by the Court and it is decided not to challenge the same. If the Court quashes the charge memo, then the name of the member of service concerned shall be considered for inclusion in the approved list for



promotion or for appointment, if he is otherwise qualified.

(3) ...

(4) ...

(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."

7. Admittedly, the criminal proceedings initiated against the petitioner was stayed by this Court. Further, the departmental proceedings was also ordered to be kept in abeyance. The provisions of law also stipulate that mere filing of cases against the member of service, shall not be a bar for inclusion of his name in the approved list. In such circumstances, it is not justifiable on the part of the respondent to avoid the inclusion of the petitioner's name in the upgradation list, as rightly pointed out by the learned counsel for the petitioner. Hence, this Court deems it appropriate to issue suitable direction to the respondent.

8. Accordingly, the respondent is directed to include the name of the petitioner and prepare the list afresh and proceed further in the manner known to law. However, it is made clear that the outcome of the criminal proceedings pending against him will have its impact on the claim of the petitioner.

9. The writ petition is disposed of on the above terms. No costs.

Sd/-

Assistant Registrar (Cr1.Side)

// True Copy //

Sub Assistant Registrar (CS)

To

The Commissioner of Police,
Madurai City, Madurai.

+1cc to Mr.F.Deepak, Advocate, SR.No.57258

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SP/23.04.2019/3P/3C