



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.7698 of 2019

and

W.M.P (MD) No.6119 of 2019

WEB COPY

D.Jeyaseelan Koilraj Mathew,
S/o.Y.Devaraj,
Sub Inspector of Police,
Security Branch CID,
Chennai.

... Petitioner

/vs./

1.The Secretary to Government,
Home (Police-3) Department,
Fort St George, Chennai-9.

2.The Director General of Police,
Law & order,
Mylapore, Chennai-04.

3.The Deputy Inspector General of Police,
Madurai Range, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the third respondent in connection with the impugned charge memo issued by him in P.R.No.67/2007 dated 25.05.2007 and the subsequent rejection order passed by the second respondent in Rc.No.174082/NGB I(2)/2018 dated 25.02.2019 and quash the same and further direct the respondents to promote the petitioner as Inspector of Police on par with his junior with all consequential service and monetary benefits.

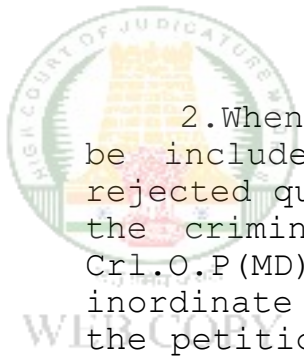
For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.M.Jeyakumar

Additional Government Pleader.

ORDER

The petitioner herein has been proceeded under 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules in P.R.No.67/2007 stating that the petitioner had misused his official capacity and indulged in brutal attack of one Ganesan and two others. Along with the petitioner, four other co-delinquents were also proceeded with simultaneously in connection with same occurrence and similar charges. The criminal proceedings were also initiated as against the petitioner and other co-delinquents in Crime No.367 of 2004.



2. When the petitioner was of the view that he was entitled to be included in the panel in the year 2012, his promotion was rejected quoting the pendency of the criminal proceedings. However, the criminal case initiated against him came to be quashed in CrI.O.P(MD)No.4423 of 2015 dated 26.04.2018, on the ground of the inordinate delay in concluding the disciplinary proceedings. When the petitioner had sought for promotion to the post of Inspector of Police temporarily with reference to the pending departmental action, the respondent herein had quoted Rule 17(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules and stated that he is not eligible for promotion as Inspector of Police, in view of the pendency of the departmental proceedings, through the impugned proceedings dated 25.02.2019, which is under challenge in the present writ petition.

3. The short ground on which the writ petition deserves to be allowed is that when one of the co-delinquent namely V.S.Ilangovan who was proceeded in P.R.No.69/2007 dated 25.05.2007 had approached this Court seeking to quash the disciplinary proceedings, this Court by an order dated 28.11.2016 passed in W.P.(MD) No.9386 of 2012 had quashed the disciplinary action on the ground of inordinate delay in concluding the disciplinary proceedings. The relevant portion of the said order reads as follows:-

9. Today, when the matter is taken up for hearing, the learned counsel for the petitioner submitted that the departmental proceedings has not been completed and no progress was reported.

10. In support of his submissions, the learned counsel for the petitioner relied on the decision in State of Tamil Nadu, Rep. by its Secretary to Government, Personnel and Administrative Reforms (Q) Dept., Chennai Vs. T.Ranganathan reported in 2010 (3) MLJ 625 wherein it is held that

"a charge memo issued to the petitioner was not maintainable after time granted by the Tribunal expired without any extension of time applied for by the department."

11. It is the contention of the learned counsel that the outer time limit fixed by the Court of Law without taking any extension of time by giving sufficient reasons, the respondents cannot maintain the charge memo.

12. In the present case, it is seen that for the past seven years, the respondents have not proceeded with the departmental enquiry pursuant to the charge memo issued to the petitioner other than the appointment of the enquiry officer. Thus, it is a ground for quashing the charge memo for delay. More so, after setting out a outer limit for conclusion of the proceedings, the respondents have not move forward and it would amount to deliberate delay and therefore, the impugned charge memo shall be quashed. Accordingly, the impugned charge memo is quashed.



4.The said order has also been confirmed in W.A(MD) No.908 of 2017, dated 25.09.2019. It is not in dispute that the charges levelled against V.S.Illangovan is similar to that of the petitioner herein and arises out of the same occurrence. While that being so, when this Court had concluded the disciplinary proceedings on the ground of inordinate delay in concluding the same, this Court is unable to take a different view. The fact remains that the disciplinary proceedings that was initiated in the year 2007 is yet to be concluded. While that being so, it would not be appropriate to subject the petitioner to the departmental proceedings after all these years.

5.The petitioner's request for promotion to the post of Inspector of Police has been rejected through the order dated 25.02.2019 quoting the pendency of the disciplinary proceedings against him. Now that this Court is of the view that the proceedings itself cannot be sustained, he would automatically be eligible for promotion.

6.At this juncture, the learned Additional Government Pleader appearing for the respondents would submit that as against the order passed in W.A(MD) No.908 of 2017 dated 25.09.2019, they have filed review petition which is yet to be numbered. It is needless to point out that in case, the respondents obtain favorable order in the review petition, it is always open to them to workout their remedies in accordance with law.

7.In the light of the above, the impugned departmental proceedings in P.R.No.67/2007 dated 25.05.2007 stand quashed. Consequently, the rejection order of the second respondent in Rc.No.174082/NGB I(2)/2018 dated 25.02.2019 also stands quashed. In view of the same, there shall be a direction to the respondents to promote the petitioner as Inspector of Police on par with his immediate junior, with all consequential service and monetary benefits. The second respondent shall endeavor to issue such promotion order as expeditiously as possible, in any event, within a period of eight weeks from the date of receipt of a copy of this order.

8.With the above directions, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



cp

To:-

- 1.The Secretary to Government,
Home (Police-3) Department,
Fort St George, Chennai-9.
- 2.The Director General of Police,
Law & order,
Mylapore, Chennai-04.
- 3.The Deputy Inspector General of Police,
Madurai Range,
Madurai.

+1 CC to Mr.S.SIVAKUMAR, Advocate (SR-106095[F] dated 19/12/2019)

Order made in
W.P. (MD)No.7698 of 2019
and
W.M.P (MD) No.6119 of 2019
18.12.2019

MK (07.01.2020) 4P 5C