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W.A.(MD)No.792 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.792 of 2019

and

C.M.P. (MD)No.6981 of 2019

The Director General of Police,
Office of the Director General of Police,
Mylapore, Chennai-4.

... Appellant

Vs.

R.Jeyachandran

... Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order dated 20.03.2019 made in W.P.(MD)No.8404 of 2016.

Prayer in WP(MD). 8404/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the Respondent in Rc.No.105101 / NGB 1 (1) / 2015 dated 24.12.2015 and quash the same and consequently Direct the Respondent to promote the Petitioner as Inspector of Police in Virudhunagar District retrospectively with effect from the date on which his immediate junior was promoted to the post of Inspector of Police with arrears of pay.

For Appellant : Mr.A.K.Baskara Pandian
Special Government Pleader

For Respondent : Mr.M.Saravanakumar

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.A.K.Baskara Pandian, learned Special Government Pleader for the appellant and Mr.M.Saravanakumar, learned counsel for the respondent.

2. This appeal filed by the Director General of Police is directed against the order made in W.P.(MD)No.8404 of 2016, dated 20.03.2019.

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



3. The said writ petition was filed by the respondent herein to quash the order passed by the appellant, dated 24.12.2015, by which the request for promotion made by the respondent was rejected. The reason for rejection is that an enquiry in TDP.No.36/2012 and TDP No.37/2012 on the file of the Tribunal for Disciplinary Proceedings, Nagercoil is pending. The case has had a checkered history and the following dates will clearly show that the order passed by the learned Single Bench was justified:-

(i) The respondent was arrayed as third accused in FIR registered on 17.06.2009. Defence raised by the respondent is that he was never present in the alleged scene of occurrence and he was at Chennai for shooting practice at the time of alleged occurrence. After full-fledged investigation, the criminal case registered against the respondent was dropped on 06.07.2011. In the meantime the respondent was placed under suspension on the ground that he is involved in a criminal case in Crime No.9 of 2009 on the file of the Vigilance and Anticorruption, Nagercoil. However, the appellant department thought fit to revoke the order of suspension on 09.07.2012 and as on date the respondent is continuing to discharge his duties as a Member of the Force. The question, which fell for consideration before the writ Court, was whether the temporary promotion could have been denied to the respondent subject to the outcome of the proceedings pending in Tribunal for Disciplinary Proceedings, Nagercoil. From the material placed before the writ Court, we find that there was no substantial progress in the matter, though the matter was referred for enquiry to the Tribunal on 25.04.2012. In the counter affidavit filed by the appellant in the writ petition i.e., in the year 2017, it has been stated that the last enquiry fixed by the Tribunal was 28.09.2016.

4. Therefore, it is clear that there has been no effective progress of the proceedings before the Tribunal. Considering these facts, the learned Writ Court disposed of the writ petition by directing the appellant to promote the respondent subject to filing of an affidavit of undertaking by the respondent that in the event of his failure in the criminal case, he can be reverted to the lower post. In issuance of such direction, the Court referred to the decision of this Court made in W.P.(MD)Nos.29999 and 30000 of 2010 and 1984 of 2011 dated 24.02.2011.

5. Considering these facts as set out, we find that the order and direction issued by the writ Court is reasonable and there can be no error attributed to it.

6. The learned Special Government Pleader appearing for the appellant strenuously contended that from the recent communication received from the Commissioner of the Tribunal, dated 13.08.2019, it is seen that the respondent is not extending his cooperation to the continuation of the enquiry by the Tribunal.



7. The copy of the said proceedings of the Commissioner of the Tribunal shows the current state of affairs. But we look into what had occurred earlier and what had happened before the Tribunal after 25.04.2012. No doubt, in the year 2019, there appears to be some progress and the respondent is bound to cooperate for the disposal of the case by the Tribunal at the earliest. However, taking note of the fact that the respondent has been denied promotion temporarily for a considerable length of time, we are of the view that the directions issued by the learned writ Court, is fully justified, considering the peculiar facts and circumstances of the case.

8. The learned counsel appearing for the respondent has drawn the attention of this Court to an order passed by the appellant, dated 04.06.2019 granting temporary promotion to the Sub Inspector of Police, Coimbatore District, who is also arrayed as an accused in a criminal case. Though the writ petition filed by her in W.P.(MD) No.18584 of 2018 was dismissed by order dated 06.09.2018, there was an observation to consider the representation that may be made by the said Sub Inspector of Police.

9. In the case on hand, the criminal complaint, which was registered against the respondent, after the detailed enquiry, has been dropped as early as on 06.07.2011. Thereafter, the order of suspension passed against the respondent was revoked on 09.07.2012. Therefore, we find that the directions issued by the writ Court is appropriate and the respondent should comply with the undertaking directed to be given by the writ Court stating that in the event the Tribunal for Disciplinary Proceedings holds the respondent guilty of charge, then the appellant will be entitled to revert the respondent to the lower post. As pointed out by us earlier, the respondent should not drag on the proceedings before the Tribunal, because we are inclined to confirm the order passed in the writ petition. We direct the respondent to proceed with the proceedings before the Tribunal and appear for cross examination of the witnesses examined by the prosecution without seeking any adjournment. With the above observation, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl. Side)

/TRUE COPY/

Sub Assistant Registrar

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To

The Director General of Police,
Office of the Director General of Police,

<https://hmc.mca.gov.in/services> - 4.



W.A.(MD)No.792 of 2019

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-88877[F] dated 24/09/2019)

+1 CC to M/s.GP (SR-89393[F] dated 25/09/2019)

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ORDER MADE IN

W.A. (MD) No.792 of 2019

24.09.2019

JM/14.10.2019/4P/4C