



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos.13020 and 14734 of 2011

WEB COPY

S.Sivabalan

... Petitioner in both Writ Petitions

-Vs-

1. The Deputy Inspector General of Police,
Tiruchirappalli Range,
Tiruchirappalli-20.

2. The Superintendent of Police,
Tiruchirappalli.

... Respondents 1 and 2
in both Writ Petitions

3. The Deputy Superintendent of Police,
Armed Reserve, Trichi,
Tiruchirappalli District.

... 3rd Respondent
in W.P. (MD) No.13020 of 2011

Prayer in W.P. (MD) No.13020 of 2011: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order of the second respondent bearing DC.No.858/2011, C.No.81/35345/2011, dated 09.11.2011 reverted the petitioner from the post of Sub-Inspector of Police to Head Constable (Armourer) and quash the same.

Prayer in W.P. (MD) No.14734 of 2011: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the respondents to promote the petitioner as Sub-Inspector (Armourer) on regular basis.

For Petitioner : Mr.S.Siva Thilagar
(in both Writ Petitions)

For Respondents : Mr.M.Jeya Kumar,
Additional Government Pleader.
(in both Writ Petitions)

COMMON ORDER

The impugned order passed by the second respondent in proceeding date 09.11.2011, reverting the writ petitioner from the post of Sub-Inspector of Police to Head Constable (Armourer) is sought to be quashed.

<https://hcservices.ecourts.gov.in/hcservices/> 2. The writ petitioner was initially appointed as Police Constable in Armed Reserve and thereafter, promoted to the post of Head Constable (Armourer). The writ petitioner was temporarily



promoted to the post of Sub-Inspector of Police and he was working in Trichy District. The writ petitioner admits that the charge memo was issued by the first respondent under Rule 3(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 07.12.2006. The allegation against the writ petitioner was that he was assaulted one woman Police Constable 850 Subhajayini of AR, Trichy District in an inebriated mood and forcibly taken her and other charges were also framed against the writ petitioner. Enquiry was conducted and accordingly, punishment of reduction in time scale of pay by three stages for three years was imposed. In view of the fact that the writ petitioner was working as Sub-Inspector of Police, reduction could not be given effect to. Thus, the mandatory value of Rs.1,07,136/- equivalent to the reduction in time scale of pay was recovered by way of equal monthly instalments. Therefore, another memo was issued under Rule 3(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in respect of the allegations of absence from duty without getting prior permission from the higher officials. The writ petitioner submitted his explanations and the authorities competent imposed a punishment of censure on 19.03.2010. The first respondent published C-list for promotion to the post of Sub-Inspector of Police on regular basis for the year 2010. The promotion was given based on the seniority in the feeder category. The name of the writ petitioner was not considered on the ground that currency of punishment of censure was in force during the crucial date and the names of his juniors were included in the C-list for promotion to the post of Sub-Inspector of Police. Under these circumstances, the writ petitioner was reverted back to the post of Head Constable (armour) in proceeding dated 09.11.2011.

3.The learned counsel appearing on behalf of the writ petitioner states that the said order amounts to double punishment, which is not permissible under law. It is further stated that the writ petitioner was already imposed with an order of punishment of reduction in time scale of pay and therefore, the equivalent amount was also recovered from the salary by way of instalments. In respect of other charges, punishment of censure was imposed. Thus, the impugned order of reversion is untenable.

4.The learned Additional Government Pleader appearing on behalf of the respondents disputed the contentions by citing that the writ petitioner was suffering from punishment and at the time of preparation of C-list for promotion to the post of Sub-Inspector of Police, he was found ineligible, as the writ petitioner was suffering from currency of punishment. The writ petitioner was awarded with a punishment of censure on 11.08.2010 in PR.27/H3/10 for the delinquency of absent for duty without getting prior permission from the higher officials. The claim of the writ petitioner was not recommended for regular promotions as Sub-Inspector of Police (Armourer) for the reason that he was undergoing currency of punishment on the crucial date. Thus, the juniors of the writ petitioner were recommended for inclusion in the C-list for



promotion. Accordingly, the writ petitioner was reverted to the post of Head Constable (Armourer).

5. It is further stated that the writ petitioner was enlisted as Grade II Police Constable on 01.03.1995. With reference to the order issued in Chief Office Memo dated 18.05.1998, the writ petitioner was transferred to Trichy District from Trichy City and reported at Trichy District AR on 05.06.1998. The petitioner had attended 18th batch Armourer basic course held at R/C Avadi from 12.02.1997 to 11.12.1997 and scored 123 marks out of 200 marks. Thereafter, he promoted as Head Constable (Armourer) on regular basis on 15.03.2002. Thereafter, he was promoted as temporary Sub-Inspector of Police as per Range Office order dated 10.10.2005 of the Deputy Inspector General of Police, Trichy Range, Trichy with the following terms and conditions. The order of temporary promotion was communicated to the writ petitioner in proceeding dated 19.10.2005, which is extracted hereunder:-

"(i) He will be reverted if he comes to any adverse notice while serving as temporary Sub-Inspector of Police (Armourer).

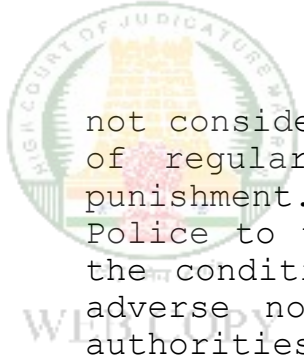
(ii) He should not claim any seniority for the period of Temporary promotion as Sub-Inspector of Police (Armourer).

(iii) He should not file any case before the Court in future claiming seniority for the post of temporary promotion."

6. The writ petitioner had also given an undertaking to that effect and assumed charge as temporary Sub-Inspector of Police (Armourer) on 24.10.2005. The statement made by the writ petitioner that he had been working as Sub-Inspector of Police from the year 2005 is not correct, he was holding the post of Sub-Inspector of Police on temporary basis and the promotion itself was on temporary basis on certain terms and conditions. Thus, the temporary promotions does not confer any advantage on his seniority.

7. The terms of the temporary promotions, which was accepted and signed by the writ petitioner reveals that the writ petitioner will be reverted, if he comes to any adverse notice while serving as Sub-Inspector of Police (Armourer). It is further clarified that the writ petitioner should not claim any seniority for the period of temporary promotion. The third condition cannot be accepted, in view of the fact that filing of case before the Court below is the fundamental right. Thus, the condition imposed by the committee that the writ petitioner should not file any case before the Court below is void in the eye of law.

8. This Court is of the considered opinion that the undisputed fact regarding the imposition of punishment on the writ petitioner twice as well as temporary promotion granted to him on certain terms and conditions reveals that the writ petitioner was



not considered for inclusion in the C-list for promotion to the post of regular Sub-Inspector of Police, on account of currency of punishment. Reversion from the temporary post of Sub-Inspector of Police to the post of Head Constable was granted with reference to the conditions imposed in the order of temporary promotion. When adverse notice was considered by the competent authorities, the authorities had taken a decision to cancel the temporary promotion granted to the writ petitioner as Sub Inspector of Police (Armour).

9. Temporary promotions granted on certain terms and conditions would not confer any right on the employee to claim regular promotion, when the temporary promotion itself was granted subject to certain terms and conditions, more specifically, maintain of clean records of service. There is no reason to interfere with the order of reversion, which is now impugned in the present Writ Petition. Admittedly, the writ petitioner was suffering from punishment for two separate departmental disciplinary proceedings. The allegations are also seems to be serious. This apart, at the time of preparation of C-list, the writ petitioner was suffering from currency of punishment. The Government guidelines as well as the judgments of the Courts states that the currency of punishment is a bar for promotion. Thus, the writ petitioner cannot claim that non-consideration of his name for regular promotion to the post of Sub-Inspector of Police is double punishment. Such a concept is unacceptable and contrary to the legal principles settled by Constitutional Courts including the Hon'ble Apex Court of India.

10. In view of the facts and circumstances of the case, this Court has no hesitation in coming to the conclusion that the writ petitioner during the relevant point of time was not fit for promotion to the post of Sub-Inspector of Police and after the expiry of the currency of punishment, the case of the writ petitioner is to be considered for regular promotion on merits and in accordance with promotion rules. It is made clear that the case of the writ petitioner shall be considered, if there is no other impediment to consider his name.

11. Accordingly, the order impugned in W.P.(MD)No.13020 of 2011 passed by the second respondent in proceeding dated 09.11.2011 stands confirmed and both the Writ Petitions stand disposed of. No costs.

sd/
Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar(CS)

To

1. The Deputy Inspector General of Police,
Tiruchirappalli Range,
Tiruchirappalli-20.



2. The Superintendent of Police,
Tiruchirappalli.

3. The Deputy Superintendent of Police,
Armed Reserve, Trichi,
Tiruchirappalli District.

+1 CC to SPL GP (SR-68326[F] dated 12/06/2019)
+1 CC to Mr.S.SIVA THILAKAR, Advocate (SR-67956[F] dated
11/06/2019)

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11.06.2019

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