

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.10520 OF 2013

AND

M.P.NO.1 OF 2013

R.Sukumaran

... Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by the Secretary to Government,
Home Department, Secretariat,
Chennai 600 009.

2. The Director General of Police,
Chennai 600 004.

... Respondents

Prayer: This writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or Mandamus or any other appropriate writ order or direction in the nature of writ to call for the records pertaining to the impugned G.O.Ms.No.1396(Pol.1A) Department dated 03.10.2007 passed by the 1st respondent herein in so far as the petitioner is concerned and quash the same and consequently direct the respondents 1 and 2 to promote the petitioner to the next higher post in pursuance of orders existing prior to the issuance of the impugned orders.

For Petitioner : Mr.R.Dhamodaran

For Respondents : Mr.J.Ramesh, Addl.Gov. Pleader
(for R1 and R2)

ORDER

Challenging the order passed by the 1st respondent in G.O.Ms.No.1396(Pol.1A) Department dated 03.10.2007, the petitioner has filed this writ petition.

2. The case of the writ petitioner is that he was working as a Head Constable in the year 1996 and he was given accelerated promotion to the post of Sub Inspector of Police along with seven others, as per the G.O. Ms.No.575 Home (Police

III) Department dated 22.04.1997 and he joined duty on 11.06.1997 in Tambaram Police Station. However, he was not considered for promotion as Inspector of Police, as per G.O.Ms.No.1396 Home (Pol.1A) Department dated 03.10.2007 and challenging the above said Government order, he filed this writ petition.

3. In the G.O.Ms.No.1396 dated 03.10.2007 at paragraph No.2, it is stated as follows.

" The issue of fixation of seniority among the accelerated promotees has been examined in detail. It is clear that in G.O.Ms.No.1252, Home (Pol.VIII) Department dated 29.10.2004 and in G.O,Ms.No.1346, Home (Pol.VIII) Department, dated 06.12.2004, " one stage accelerated promotion" has been given to certain Police personnel by virtue of General Rule 36(b) (ii)(2) of the Tamil Nadu State and Subordinate Services. The said General Rule provides for giving special promotion for conspicuous merit and ability to the members of the said service. As such, giving accelerated promotion is possible for persons in Sub-ordinate Service as well as in State Service. Seniority of a person has to be determined as per General Rule 36 of the Tamil Nadu State and Subordinate Services Rules unless otherwise provided in the Special Rules. As per the said General Rule 35, Seniority of a person shall, unless he has been reduced to lower rank, as punishment be determined either by the rank obtained by him in the list or approved candidates drawn up by the Tamil Nadu Public Service Commission or other appointing authorities as the case may be or the date of appointment. Further, giving consequential seniority to accelerated promotees may lead to a situation of reduction in rank of their seniors, in the lower category for no fault of the persons who have not been given accelerated promotion. It is a well settled principle that executive orders will not prevail over statutory rules, since the accelerated promotion is only for one stage, it would not be in order to provide them with accelerate consequential seniority in higher stages also, for the reason that there is no provision in this regard in the Special Rules as well as in the General Rules. The question therefore of placing the accelerated promotees in higher category over their seniors in the lower category does not arise."

4. The learned Additional Government Pleader placed an order dated 14.10.2009 passed by this court in W.P.Nos.35716, 365553, 33375, 37136 to 37141 of 2007, 15231, 8417, 3455, 8855, 3905, 10760, 2939 of 2008, which were filed against the G.O.Ms.1396 (Pol.1A) Department dated 03.10.2007 by the similarly placed persons. In the above writ petitions, this court has elaborately discussed and dismissed the same upholding the orders passed by the Government. He also placed an another order passed by a Division Bench of this court in W.A.No.849 to 854 of 2010 and 2066 of 2010, which were filed against the orders passed in the writ petitions, upholding the above said Government order. The above said writ appeals also dismissed on 05.04.2013 by the Division Bench of this Court, confirming the orders passed by the Government.

5. Therefore, there is no merit in the writ petition and in the light of the above covered judgment rendered by the Division Bench of this court, this writ petition is liable to be dismissed.

6. Accepting the submission made by the learned Addl. Gov. Pleader and following the decisions rendered by the Division Bench of this court dated 05.04.2013 in W.A.No.s.849 to 854 of 2010 and 2066 of 2010, this court is inclined to dismiss the writ petition, as there is no merit in this writ petition.

7. In the result, the writ petition is dismissed. No costs. Consequently, the miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Secretary to Government,
The State of Tamilnadu, Home Department, Secretariat,
Chennai 600 009.
2. The Director General of Police, Chennai 600 004.

+1cc to Mr.R.Dhamodaran, Advocate in sr.no.667

W.P.No.10520 of 2013 and
M.P.No.1 of 2013

SPD(CO)
CS/02/03/2020