

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.02.2020
CORAM
THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR
W.P.No. 12008 of 2013

Gandhimathi Nathan

..Petitioner

Vs

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

2. The Director General of Police,
Chennai -4.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection with the impugned order passed in RC.No.49418/NGB 1 (2)/2012 dated 19.03.2013 and quash the same and direct the respondents to include the name of the petitioner in the C list of Sub Inspectors fit for promotion as Inspector of Police, Taluk for the year 2001-2002 and promote him as Inspector of Police notionally and grant him all consequential service and monetary benefits.

For Petitioner : Mr. K.Venkataramani, SC
For M/s. M.Muthappan
For Respondents : Mr.S.Thangavel, Spl.GP

O R D E R

The prayer sought for in the Writ Petition is to call for the records of the 2nd respondent in connection with the impugned order passed in RC.No.49418/NGB 1(2)/2012 dated 19.03.2013 and quash the same and direct the respondents to include the name of the petitioner in the C list of Sub Inspectors fit for promotion as Inspector of Police, Taluk for the year 2001-2002 and promote him as Inspector of Police notionally and grant him all consequential service and monetary benefits.

2. Heard the learned Senior Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the documents available on record.

3. According to the petitioner, the petitioner entered the service as a directly recruited Sub Inspector of Police on 28.09.1987. The petitioner has attained sufficient seniority for consideration of claim for promotion as Inspector of Police by including his name in the C list for the year 1998-99, his turn did not reach. But for the C list of the year 1999-2000, the claim of the petitioner was overlooked on the ground that the petitioner suffered a punishment of reprimand in PR.80/98. The said punishment was subsequently cancelled on 24.08.2007. The claim of the petitioner was again overlooked in the 'C' list for the year 200- 2001 and 2001 - 2002 due to the pending Disciplinary Proceedings initiated against the petitioner u/r 3 (a) of TNPSS Rules in PR No. 4/2000. The said proceedings ended in awarding punishment of postponement of increment of 3 years without cumulative effect by an order dated 05.05.2000 by the Superintendent of Police, Pudukottai District. The said punishment was modified into stoppage of increment for a period of one year without cumulative effect by order of the Government in GO (2D) No. 358 Health & Family Welfare Department dated 21.06.2010. Before the modification of punishment, the petitioner's name was included in the 'C' list for the year 2003-2004 and he was promoted on 09.06.2004.

4. According to the petitioner, his name has to be included in the C list for the year 2001-02 itself, but the department has rejected his request to include his name in the said panel on the sole ground that at the time petitioner was suffered with currency of punishment, but the crucial date for preparation of panel in 01.06.2001. In view of the order of this Court in W.P.NO. 29297 of 2006 etc., batch dated 20.02.2002, a person's claim cannot be overlooked for the 2nd time for the sole reason that the said punishment is to be given effect from the date on which it is communicated and it cannot be extended to the next panel. Hence, in view of the aforesaid order of this Court, the respondents have to include the name of the petitioner in the C list for the year 2001-2002 and promote him as Inspector of Police notionally and grant him all benefits.

5. The learned Special Government Pleader submitted that the respondents have rightly rejected the promotion of the petitioner, therefore, there is no warrants in the aforesaid order.

6. On a perusal of the impugned order passed by the 2nd respondent dated 19.03.2013, it is seen that the petitioner's request was rejected by holding that his name in the C list of SIs (Taluk) for promotion as Inspector of Police for the year

2001-2002 is not feasible for consideration, since he had currency of punishment on the crucial date of preparation of the said panel.

7. The impugned order passed by the respondent is contrary to the decision of this Court held in W.P.No. 29297 of 2006 etc., batch dated 20.02.2002. The relevant paragraphs 13 to 19 of the said order is extracted below;

13. In the writ petition in W.P.No.34829 of 2006, the original punishment of stoppage of increment without cumulative effect for one year was from 06.04.2005, which was communicated on 23.04.2005, the same was modified by subsequent order dated 09.05.2006 as that of stoppage of increment for 6 months without cumulative effect. As contended by Mr.K.Venkataramani, there is absolutely no difficulty to construe that the said modified punishment dated 09.05.2006 should be deemed to come into effect from the original date of punishment, namely, 06.04.2005. By applying that from 06.04.2005 the punishment of 6 months of stoppage of increment without cumulative effect came to an end on 23.10.2005. However, the respondents take the stand that the increment falls due in respect of the petitioner was only on 01.01.2006, therefore, it was from that date, namely, 01.01.2006 even though, the punishment was communicated as early as 23.04.2005 and therefore, the petitioner should wait till 30.06.2006 for completion of 6 months period from 01.01.2006 for next promotion. Even thereafter, for the subsequent year 2006-2007 also the name of the petitioner was not included for which also the respondents relied upon the latter of clarification of the Government dated 28.04.2006 only.

14. On the otherhand, a reading of the counter affidavit categorically shows and admits that as far as the punishment is concerned, the punishment is to be undergone from the date of awarding of punishment till the period of punishment granted. But it is only for the purpose of granting the next promotion, the respondents has taken stand that the punishment should be deemed to have commenced from the next increment dated and thereafter, till the period of punishment, the delinquent's claim should be passed over. In this regard, it is relevant to point out the contents of the latter of the Government dated 28.04.2006, which runs as follows:

" I am to state that in the Government letter cited clarifications have been issued that an order imposing any punishment including withholding of increment takes effect from the date on which the said order is communicated to Government servant concerned. This does not mean that the punishment will be over after expiry of the period reckoning from the date of receipt of the orders of punishment. The punishment will continue till the actual period of punishment is completed. Currency of punishment is therefore continued till the punishment is over.

2. It is said that according to the said letter dated 05.07.2001 if an order inflicting a punishment of stoppage of increment for a period of one year without period cumulative effect was communicated on 30.01.2003 then the period of currency of the punishment is taken from 30.01.2003 to 29.01.2004 irrespective of the date of next increment of the individual as the same will vary from individual to individual. With a view to make the intention clear, it is hereby clarified that the currency of punishment (including withholding of increment) begins when the punishment is communicated to the concerned Government servant and concludes when the actual period of punishment is over.

3. The above procedure may be followed uniformly in all such cases."

15. While this letter categorically states that the punishment period should commence from the date of imposing punishment till the end of the period of punishment, irrespective of the date of next increment due to individual since the same vary from individual to individual. But while clarifying the same by way of example, it shows that apart from the punishment to be undergone from the date of punishment till the end of the punishment, the claim of the next promotion should not be considered on the basis that punishment should be construed to continue from the date of the falling of the next increment due to the delinquent, till the completion of period of punishment, irrespective of the fact that the punishment has already been suffered by the delinquent. The illustration given in the said letter is mere force. When the letter itself categorically states that the punishment period shall be undergone as imposed by the punishing authority, merely taking into account the date of falling of the increment due, which in my considered view is not only extending

the period of punishment beyond the period given by the punishing authority but also a total misnomer. As far as the case in W.P. No. 34829 of 2006 is concerned, even assuming that the stand taken by the respondents is correct, it is seen unfortunately, even for the year 2006-2007 the petitioner's name has not been considered. In the light of the letter of the Government dated 06.07.2001 clarifying that imposing of any punishment including withholding the increment shall take effect from the date on which the order was communicated to the concerned government servant, which letter runs as follows:

"2. The matter has been examined in detail by the Government.

3. I am to clarify that an order imposing any punishment including withholding of increment takes effect from the date on which the said order is communicated to the concerned Government Servant."

16. This stand is also admitted in the counter affidavit by the respondents as also in the letter of the government dated 28.04.2006, however, unfortunately by taking advantage of the misnomer given in the example, given by the Government letter, the period of punishment given in these cases are extended, to which the respondents have no right or jurisdiction. It is also seen in these cases, it is no in dispute that the punishment period has been undergone by these petitioners and there is absolutely no other legal impediments excepting the letter of the Government dated 28.04.2006.

17. In view of the above facts and circumstances of the case, I have no hesitation to come to the conclusion that the reliance placed on by the respondents on the letter of the Government dated 28.04.2006 has no basis whatsoever, since the said letter is a total misnomer, inasmuch as the effect of such letter is not only to extend the period of punishment beyond the period given by the punishing authority but also to deny the claim of the delinquents, who have already completed the period of punishment undergone especially in cases where there has been stoppage of increment.

18. In view of the above facts and circumstances of the case the example given the Government letter dated 28.04.2006 cannot be taken as a ruse device for

the respondents in denying the petitioner's due promotion beyond the period of their punishment.

19. In the result, these writ petitions stand allowed, with a direction to the respondent to consider the claims of the petitioners for next promotion without being influenced by the illustration given by Government letter dated 28.04.2006 and pass appropriate orders regarding promotion of the petitioners, which order shall be passed within a period of four weeks from the date of receipt of a copy of this order. These writ petitions stand allowed with cost of Rs.1000 to be paid by the respondents to each of the petitioner. Consequently, connected miscellaneous petitions are closed.

8. Following the aforesaid order of this Court, yet another order was passed by this Court in W.P. No. 4640 of 2016 dated 27.09.2016 on the same line.

9. The decisions rendered in the aforesaid two orders of this Court is squarely applies to the facts of the present case. Hence this Court with no hesitation, inclined to pass the following order;

(i). Impugned order passed by the 2nd respondent in RC.No.49418/NGB 1(2)/2012 dated 19.03.2013 is quashed.

(ii). The 2nd respondent is directed to re-consider the petitioner's request to include his name for promotion as Inspector of Police for the year 2001-2002 and pass appropriate orders on merits and in accordance with law by taking note of the decisions rendered by this Court stated supra.

(iii). The said exercised shall be completed within a period of twelve weeks from the date of receipt of a copy of this Order.

With the above directions, the writ petition is disposed of. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

2. The Director General of Police,
Chennai -4.

+1 cc to Mr.Muthappan Advocate sr12058

+1 cc to Government Pleader sr13063

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