

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.17218 of 2013

R.Paramasivam

.. Petitioner

- Vs -

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

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

... Respondents

Writ petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the respondents to consider the claim of the petitioner for inclusion of the petitioners name in the panel of Inspector of Police fit for promotion as Deputy Superintendent of Police Cat I for the year 2009-2010 at par with his junior and promote the petitioner as Deputy Superintendent of Police Cat I and grant the petitioner all consequential service and monetary benefits.

For Petitioner : Mr.Alaya Gowtham for
M/S.M.Muthappan

For Respondents: Mr.A.N.Thambidurai, Spl.G.P.

ORDER

The petitioner has filed this writ petition, to direct the respondents to consider the claim of the petitioner for inclusion of the petitioners name in the panel of Inspector of Police fit for promotion as Deputy Superintendent of Police Cat I for the year 2009-2010 at par with his junior and promote the petitioner as Deputy Superintendent of Police Cat-I and grant the petitioner all consequential service and monetary benefits.

2.The case of the petitioner is that the petitioner has entered the service as a directly recruited Sub Inspector of Police in the year 1987 and thereafter he was promoted as

Inspector of Police on 05.08.1998. The petitioner has received more than 100 rewards and has not come to adverse notice. It is averred by the petitioner that he has attained sufficient seniority and merit for consideration of his claim for promotion as Deputy Superintendent of Police Category-I, which is the next avenue of promotion for which panel was drawn for the year 2009-10 and crucial date for the preparation of the panel was 01.06.2009 and the panel published on 08.07.2010, consisting of as many as 120 names. However the petitioner's name was not included, on the ground that the petitioner suffered a punishment of censure in PR.No.69/2010. Thereafter, the petitioner has filed an appeal, challenging the said order of punishment before the Secretary to Government, the 1st respondent herein, and the 1st respondent leniently considered the issue and observed that the petitioner belongs to 1987 batch and he is due for promotion and considering the entitlement for promotion, the order of punishment was set aside by the Appellate Authority by order dated 26.07.2012. Immediately thereafter, the petitioner made a representation to the 2nd respondent herein for promotion with effect from the date of promotion of his junior and the said representation was considered by the 2nd respondent on 29.03.2013 and rejected on the ground that the Government is the competent authority for making appointment to the post of Deputy Superintendent of Police Cat-I, and the matter has to be taken up with the Government for passing appropriate orders. Aggrieved by the said rejection, the present petition has been filed.

3.Though very many grounds have been raised in the writ petition, however, when the matter is taken up, learned counsel appearing for the petitioner submitted that it would suffice if this Court may issue appropriate direction to the 1st respondent to consider the petitioner's promotion.

4.Per contra, learned Special Government Pleader on the basis of the counter filed, contended that as per memo dated 23.09.2009 of the Director General of Police, Chennai, the recommendation roll for the Inspector of Police (Category-I) fit for promotion as Deputy Superintendent of Police (Category I) has been called for from the Director General of Police Chennai. However the petitioner's name was not considered for inclusion in the panel of Inspector of Police fit for promotion to the said post. At that time, the punishment of Censure dated 02.08.2011 was inflicted on him in Dindigul District P.R.No.69/2010 and he was also facing one another charge in P.R.No.129/2012 of Kanniyakumari district. Hence his name was not considered for the promotion as Deputy Superintendent of Police (category-I). He further contended that though the punishment of Censure dated 02.08.2011 inflicted on the petitioner has been set aside, he was facing one another charge

under rule 3(b) of Tamil Nadu Police Subordinates Services (Discipline and Appeal) Rules in P.R.No.129/2012 of Kanniyakumari District. Hence he is not eligible for promotion to the said post. As per rule 4(a) of the General Rules for Tamil Nadu State and Subordinate Services pendency of charges under rule 17(b) of the Tamil Nadu State Civil Services (Discipline and Appeal) Rules shall be a bar for inclusion of his name in the approved list. As per the above the petitioner is not eligible for promotion as Deputy Superintendent of Police (Cat-I) and the same was already informed to the petitioner vide endorsement dated 21.06.2013 of the Director General of Police, Chennai and he has also acknowledged the receipt of the endorsement on 18.08.2013. Accordingly he prays for dismissal of the petition.

5.This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and perused the materials available on record.

6.The facts in issue are not in dispute. The petitioner was promoted as Inspector of Police in the year 1998, as per memo dated 23.09.2009 of the Director General of Police. Further, names for promotion of persons to the post of Deputy Superintendent of Police, Category I, was called for from the Director General of Police, Chennai in which the petitioner's name does not find a place. The preparation of panel was for the year 2009-2010. The name of the petitioner was not considered for promotion on the ground that punishment of censure was inflicted vide order dated 02.08.2011 and that he was also facing one more charge in P.R.No.129/2012.

7. However, it is to be pointed out that though the respondents are entitled to decline the promotion on the ground of currency of punishment at the relevant point of time, however, in view of the punishment having been set aside by the 1st respondent in the year 2012, and the petitioner not facing any charge on the crucial date, and the charge memo in PR.No.129/2012 is only subsequent to the drawal of panel for the year 2009-2010, the said charge memo cannot be held against the petitioner to deny the petitioner of his rightful promotion in the panel for the year 2009-2010. Similar issue has been considered by different co-ordinate Benches and Division Benches of this Court as well as Full Bench of this Court, wherein it has been held that fixing check period after the currency of punishment cannot be held against the delinquent/employee.

8. For the reason aforesaid, this Court is inclined to issue a direction to the 1st respondent to consider the petitioner's representation dated 22.08.2012 and the Director General of Police, 2nd respondent herein is directed to forward

the said representation along with the proposal to the 1st respondent and the 1st respondent is directed to pass appropriate orders in accordance with law and the said exercise shall be completed within a period of 3 months from the date of receipt of copy of this order.

9. With the above direction, the present Writ Petition is disposed of. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to M/s.M.Muthappan, Advocate, Sr.No.29083
+1cc to the Government pleader, Sr.No.28980

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