

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.07.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 34549 OF 2013

AND

M.P. NO. 1 OF 2013

A.R.Amanullah

.. Petitioner

- Vs -

1. The Director General of Police
Dr.Radhakrishnan Salai
Chennai 600 004.

2. The Superintendent of Police
Coimbatore District, Coimbatore.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 1st respondent to consider the case of the petitioner for promotion to the post of Sub Inspector of Police with effect from 2000 when promotions were made pursuant to Promotional Board results with all consequential monetary and other service benefits taking into consideration his updated ACR.

For Petitioner : Mr. Silambanan,
SC for M/s.Profexs Associates

For Respondents: Mr. .N.Thambidurai, Spl. GP

ORDER

The petitioner was initially appointed as Grade-II Police Constable on 25.10.84 and, thereafter, promoted as Head Constable and subsequently promoted and working as Sub Inspector (Armed Reserve). It is the case of the petitioner that he appeared in the Promotion Board Test in the year 1991, 2000 and 2005 and came out successful, yet his name was not considered for promotion. It is the further case of the petitioner that persons junior to him were promoted, whereas he was denied promotion. Only in the year 2005, on the basis of the proceeding of the Assistant Commissioner, Salem, the petitioner

came to know that ACR pertaining to him was not updated since 1989 to 2000 and, therefore, direction was given to him to have his ACRs updated. It is the case of the petitioner that since the ACRs for the above period was not updated, he was not awarded the requisite marks, which was earmarked for the ACRs due to which he was not promoted. In this regard, the petitioner made a representation to the Director General of Police on 28.6.10. Repeated representations thereafter only culminated in the order of rejection of the representation of the petitioner by the Director General of Police on the ground that he had not come out successful in the Promotion Board Test.

2. It is the further case of the petitioner that the non-filling of the ACR was the reason for denial of requisite marks, which was the reason for him being unsuccessful and the fault for non-filling of ACR is only on the department and for their fault, the petitioner cannot be penalised. Though various efforts was taken by the petitioner through representation and filing application under the Right to Information Act to know about the marks obtained in the Promotion Board Test, however, the petitioner was informed that either the marks are untraceable or that the same have been destroyed. In the above backdrop, the petitioner filed W.P. No.2076913 praying a direction to the respondents therein to pass orders on his appeal petition within a particular time frame and the said writ petition was dismissed by this Court vide order dated 30.7.13. In the above backdrop, the present petition has been filed by the petitioner on the averment that the fault of the department cannot be a cause for the petitioner to suffer from non-grant of promotion and, therefore, prayed for promotion from the year 2000 along with all consequential monetary and service benefits.

3. Learned senior counsel appearing for the petitioner while reiterating the submissions as raised in the grounds in support of his plea, stressed that the lacunae on the part of the department in not maintaining the ACR and also non-filling the ACR cannot be put against the petitioner to deny him promotion, when persons junior to the petitioner have been granted promotion. The rejection of the representation by the Director General of Police is only on the ground that he has been unsuccessful in the Promotion Board Test, which is not borne out by record, as the records are not available with the respondents. Therefore, not considering his case on the said premise is wholly unsustainable. The petitioner cannot be made to suffer for no fault of his and, therefore, prayed for suitable directions as sought for by allowing the petition.

4. Learned Special Government Pleader appearing for the official respondents, while sought to sustain the impugned order, however, submitted that the petitioner had filed W.P. No.20769/13 for similar relief, which was rejected by this Court vide order dated 13.6.13 and the present petition is a second round of litigation, which is per se impermissible. It is therefore prayed that this Court may not accede to the prayer as made by the petitioner.

5. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. The facts in issue are not in dispute. Equally, the order passed by this Court in the earlier round of litigation in W.P. No.20769/13 is also not in dispute. Vide the above order, the prayer of the petitioner for a direction to the respondent therein to consider his appeal petition dated 13.6.13 was dismissed on the ground that it is not open to the petitioner to have his name included in the promotion panel for the year 1991 after a lapse of 22 years. True it is that the materials placed on record by the petitioner shows that the marks scored by the petitioner in the Promotion Board Test are not available with the respondents. But, that cannot be a ground to hold that the claim of the petitioner that marks have not been awarded to him for ACR could be sustained. It may be that the claim of the petitioner may have some substance, but without the necessary documentary materials, it would not be prudent for this Court to hold that the petitioner's unsuccessfulness could only be attributable to the marks not being awarded for the ACR. Further, it is also to be pointed out that the petitioner cannot feign ignorance stating that he was not aware about the importance of having the ACR duly filled up, when thrice he has attended the Promotion Board Test. The petitioner, belonging to a diligent force, once finds that his juniors have been promoted even in the year 1991, ought to have taken steps to find out why he his candidature has not been considered. The petitioner kept silent from 1991 to 2005, though he attended three Promotion Board Tests, and at this belated hour, he cannot plead ignorance of not knowing that no marks were awarded to him for the ACR. This Court, on an overall appreciation of things could only sympathise with the petitioner and could go no further, in the light of the earlier dismissal of his writ petition for similar relief by this Court vide order dated 30.7.13 in W.P. No.20769/13. The petitioner is barred from invoking the jurisdiction of this Court for the very same relief, which has already been rejected by this Court.

7. For the reasons aforesaid, this Court is not inclined to grant the relief as sought for by the petitioner. Accordingly, this writ petition sans merit and the same is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

GLN

To

1. The Director General of Police
Dr.Radhakrishnan Salai
Chennai 600 004.

2. The Superintendent of Police
Coimbatore District
Coimbatore.

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