

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04-12-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAIVANAN

Writ Appeal Nos. 1911, 1912, 1913, 1914 and 3325 of 2019

--

(Heard through Video Conferencing)

W.A. No. 1911 of 2019

1. The Government of Tamil Nadu
represented by the Secretary to Government
Home Department
Fort St. George
Chennai - 600 009
 2. Director General of Police
Tamil Nadu
Chennai - 600 004
 3. Additional Director General of Police
Law & Order
Tamil Nadu, Chennai - 600 004
 4. Deputy Inspector General of Police
Coimbatore Range
Coimbatore
- .. Appellants/Respondents

Versus

D. Ammadurai .. Respondent/Petitioner

W.A. No. 1912 of 2019

1. The Government of Tamil Nadu
represented by the Secretary to Government
Home Department
Fort St. George
Chennai - 600 009

2. Director General of Police
Tamil Nadu
Chennai - 600 004

3. The Deputy Inspector General of Police
Thanjavur Range
Thanjavur

4. The Superintendent of Police
District Police Office
Thanjavur

.. Appellants/Respondents

Versus

D. Ammadurai

.. Respondent/Petitioner

W.A. No. 1913 of 2019

1. The Government of Tamil Nadu
represented by the Secretary to Government
Home Department
Fort St. George
Chennai - 600 009

2. Director General of Police
Tamil Nadu
Chennai - 600 004

3. The Additional Director General of Police
Law & Order
Tamil Nadu, Chennai - 600 004

4. The Deputy Inspector General of Police
Thanjavur Range
Thanjavur

5. The Deputy Inspector General of Police
Coimbatore Range
Coimbatore

.. Appellants/Respondents

Versus

D. Ammadurai

.. Respondent/petitioner

W.A. No. 1914 of 2019

1. The Government of Tamil Nadu
represented by the Secretary to Government
Home Department

Fort St. George
Chennai - 600 009

2. Director General of Police
Tamil Nadu
Chennai - 600 004

3. The Deputy Inspector General of Police
Coimbatore Range
Coimbatore

4. Superintendent of Police
District Police Office
Coimbatore

.. Appellants/Respondents

Versus

D. Ammadurai .. Respondent/Petitioner

W.A. No. 3325 of 2019

1. The Government of Tamil Nadu
represented by the Secretary to Government
Home Department
Fort St. George
Chennai - 600 009

2. The Director General of Police
Tamil Nadu
Chennai - 600 004

.. Appellants/Respondents

Versus

D. Ammadurai .. Respondent/Petitioner

Writ Appeals filed under Clause 15 of The Letters Patent against the common Order dated 21.12.2018 passed in WP Nos. 30189,30184,30192,30899 and 30181 of 2018 on the file of this Court.

WP.No.30189 of 2018:Petition filed under Article 226 of the Constitution of India seeking for the issuance of writ of Mandamus to call for the records pertaining to the impugned order passed by the third respondent herein in his proceedings Rc.No.62689/Con.II(1)/2016 dated 15.02.2017 and the order of the second respondent in his proceedings Rc.No.099104/AP.I(1)/2017 dated 19.02.2018 and quash the same and consequentially direct the respondents herein to promote the petitioner as Deputy Superintendent of Police Category-I without reference to the impugned order

WP.No.30184 of 2018:Petition filed under Article 226 of the Constitution of India seeking for the issuance of writ of Mandamus To call for the records pertaining to the impugned order passed by the fourth respondent herein in his proceedings P.R.No.36/2017 u/r.3(a) of TNPSS rules dated 21.09.2017 and order of the third respondent herein in his proceedings C.No.B2/Appeal-10/2018 dated 25.07.2018 and quash the same and consequentially direct the respondents herein to promote the petitioner as Deputy Superintendent of Police Category-I without reference to the impugned order

WP.No.30192 of 2018:Petition filed under Article 226 of the Constitution of India seeking for the issuance of writ of Mandamus To call for the records pertaining to the impugned order passed by the fourth respondent herein in his proceedings Na.Ka.No.B1/Sa.A/P.R.26/2015 in Range Office order No.318/2015 dated 11.12.2015 and third respondent herein in his proceedings Rc.No.036348/AP.I(1)/2016 dated 24.06.2016 and the order of modification of the second respondent in his proceedings Rc.No.037588/AP.I(1)/2017 ated 07.05.2018 and quash the same and consequentially direct the respondents herein to promote the petitioner as Deputy Superintendent of Police Category-I without reference to the impugned order

WP.No.30899 of 2018:Petition filed under Article 226 of the Constitution of India seeking for the issuance of writ of Mandamus to call for the records pertaining to the impugned order passed by the fourth respondent herein in his proceedings C.No.D2/2862/2015 dated 24.07.2015 and quash the same and consequentially direct the respondents herein to promote the petitioner as Deputy Superintendent of Police Category I without reference to the impugned order.

WP.No.30181 of 2018:Petition filed under Article 226 of the Constitution of India seeking for the issuance of writ of Mandamus Directing the respondents herein to include the name of the petitioner in the panel of Inspectors fit for promotion as Deputy Superintendent of Police (category I) for the year 2017-2018 issued in G.O.Ms.No.1006 Home (Pol-2) Department dated 16.08.2018 at Sl.No.60A and promote the petitioner as Deputy Superintendent of Police from the date of promotion of his immediate juniors together with all consequential service and monetary benefits within a time frame

For Appellants : Mr. Vijay Narayan
Advocate General
assisted by Mrs. A. Srijayanthi
Special Government Pleader
in all the Writ appeals

For Respondents : Mr. K. Venkataramani, Senior Advocate
for M/s. G. Bala and Daisy
in all the Writ Appeals

COMMON JUDGMENT

(The Common Judgment of the Court was delivered by R. SUBBIAH, J)

All these appeals are filed by the appellants questioning the correctness and/or validity of the order passed by the learned Single Judge on 21.12.2018 passed in WP Nos. 30181, 30184, 30189, 30192 and 30899 of 2018. These Writ Appeals are filed mainly on the ground that before passing the order dated 21.12.2018, the learned Single Judge did not afford an opportunity to the appellants to file a counter affidavit repudiating the various averments and allegations the respondent made in the affidavits filed in support of the respective writ petitions. Therefore, the appellants contended that the impugned orders are liable to be set aside and the matter has to be remanded back to the Writ Court for fresh consideration so as to enable the appellants to contest the writ petition by filing counter affidavit(s).

2. The respondent herein has filed W.P.Nos.30181, 30184, 30189, 30192 and 30839 of 2018 before the learned Single Judge praying for various relief. Out of the five writ petitions, WP No. 30181 of 2018 has been filed by the respondent herein for a Writ of Mandamus directing the appellants herein to include the name of the respondent in the panel of Inspectors fit for promotion as Deputy Superintendent of Police (Category-I). for promotion to the post of Deputy Superintendent of Police from the date on which his juniors were given such promotion with all consequential benefits. The remaining four writ petitions namely WP Nos. 30184, 30189, 30192 and 30839 of 2018 were filed to quash the various orders passed by the appellants against the respondent with a consequential direction to promote him as Deputy Superintendent of Police, Category-I without reference to those orders passed against him.

3. When the writ petitions were taken up for hearing, the learned Single Judge, after hearing the counsel for both sides, passed the order dated 21.12.2018 allowing the writ petitions filed by the respondent herein with a direction to the appellants to promote him to the post of Deputy Superintendent of Police, Category-I from the date of promotion of his immediate juniors as claimed in WP No. 30181 of 2018 and to grant all consequential service and monetary benefits, as quickly as possible and in any event, within a period of one month from the date of receipt of a copy of the order. The relevant portion of the order dated 21.12.2018 passed by the learned Single Judge is extracted hereunder:-

"13. The learned Special Government Pleader appearing for the respondents strenuously contended that there was currency of punishment, while there was a consideration with reference to the names to be included in the panel for promotion. The petitioner's name was not included, as the petitioner was suffering from currency of punishment and therefore, the petitioner cannot be permitted to state that his name is not included in the promotion for panel.

13.1. This contention would have been right, if the punishment has been upheld by this Court. But, so far as this case is concerned, the finding is that some charges are baseless, some charges are not proved. Therefore, the claim of the petitioner for inclusion of his name in the panel merits acceptance.

14. Much efforts have been put forth by the learned Special Government Pleader to justify the punishments imposed, but unfortunately it could not be accepted as the contentions are against the documentary evidence available on record.

15. In view of the reasonings rendered in the paragraphs, supra and considering the facts and the circumstances of the case, the respondents are directed to promote the petitioner as Deputy Superintendent of Police, Category I, from the date of promotion of his immediate juniors as claimed in W.P.No.30181 of 2018 and to grant all consequential service and monetary benefits, as quickly as possible and in any event, within a period of one month from the date of receipt of a copy of this order.

16. In the realm of disciplinary jurisprudence, the well founded charges and enquiries would make rough stones into diamonds and the ill founded charges and enquiries would render even the diamonds as pebbles.

17. With the above directions, these writ petitions are disposed of. No costs. Consequently,

the connected WMPs are closed."

4. The learned Advocate General appearing for the appellants vehemently contended that even in the absence of a counter affidavit justifying the various punishments imposed on the respondent by the disciplinary authority, the learned Single Judge had jumped to a conclusion that the objections raised by the Special Government Pleader for considering the claim of the writ petitioner, are without any documentary evidence. The learned Single Judge ought to have granted sufficient opportunity to the appellants to produce the records or to file counter affidavit highlighting the delinquency committed by the respondent, the conduct of the disciplinary proceedings against him, the various punishments imposed or the appeal preferred by him before the appellate authority. However, without giving such an opportunity to the appellants, the learned Single Judge allowed the writ petitions and directed the appellants to confer promotion to the respondent. The learned Single Judge did not take note of the fact that mercy petition filed by the respondent as against the punishment imposed against him, is pending before the appellants at various stages. While so, exercise of jurisdiction under Article 226 of the Constitution of India and allowing the writ petitions merely by considering the averments of the respondent in the affidavit filed in support of the writ petitions as gospel truth, is unwarranted.

5. The learned Advocate General has also taken us to the averments made by the respondent in the affidavits filed in support of the writ petition and contended that there was no occasion for the appellants to repudiate those contentions by filing a counter affidavit. The learned Single Judge dealt with the various averments made by the respondent in the respective writ petitions, in Para No.13 of the order dated 21.12.2018. On behalf of the appellants/department, the learned Special Government Pleader for the appellants/respondents in the writ petition contended that there was currency of punishment pending against the respondent herein and therefore, non-inclusion of his name in the panel for promotion is wholly justified. Notwithstanding such submission, the learned Single Judge allowed the writ petitions without granting sufficient time to file a counter affidavit. The learned Advocate General therefore prayed this Court to set aside the order dated 21.12.2018 passed by the learned single Judge and to remand the matter to the Writ Court for fresh consideration after giving sufficient opportunity to the appellants to defend the writ proceedings.

6. On the other hand, the learned Senior Advocate appearing for the respondent only contended that the learned Single Judge, on going through the volume of records submitted by the respondent herein, has come to a definite conclusion that the punishment imposed against the respondent, which are subjected to challenge in W.P.Nos.30184, 30189, 30192 and 30899 of 2018, are legally not sustainable. According to the learned Senior counsel, the learned single Judge had dealt with the averments made by the respondent/writ petitioner in-extenso and held that the charges against the respondent are baseless. The learned Single Judge also relied on the decision of the Supreme Court in the case of Dr.Rupendir Singh Vs. Union of India, reported in 1982 (2) SCC 83 to conclude that even if an officer is facing enquiry into charges of corruption or misconduct, still, the appointing authority may promote him temporarily pending enquiry into the charges against him. Therefore, the learned Senior Counsel contended that the learned Single Judge is wholly justified in allowing the writ petitions and prayed for dismissal of the writ appeals.

7. We have heard the learned Advocate General appearing for the appellants and the learned Senior advocate for the sole respondent. We have perused the material records placed, including the common order dated 21.12.2018 passed by the learned single Judge, which is impugned in these writ appeals. Admittedly, the respondent herein was dealt with departmentally and the departmental proceedings culminated in imposing punishment and they are subject matter of challenge in WP Nos.30184, 30189, 30192 and 30899 of 2008. It is also seen that the respondent has also filed statutory appeals before the Appellate Authority and also Mercy Petition for showing leniency in the matter of punishment. In such view of the matter, we are of the firm view that the learned Single Judge ought to have directed the appellants herein to file counter affidavit to ascertain the various stages of the disciplinary proceedings initiated against the respondent. Even in para No.5 of the order dated 21.12.2018, the learned single Judge had dealt with the various punishments imposed on the respondent. However, even before the appellants could file a counter affidavit, the learned Single Judge allowed the writ petitions. Before passing an order in a case of this nature, the Department must be given sufficient and adequate opportunity to defend the writ proceedings and failure to do so, only prompts us to set aside the order passed by the learned Single Judge.

8. In the result, the common Order dated 21.12.2018 passed in W.P.Nos.30181, 30184, 30189, 30192 and 30899 of 2018 is set aside. All the Writ Appeals are allowed. The matter is remanded back to the Writ Court for consideration of the Writ Petitions filed by the respondent afresh, after affording sufficient

opportunity to the appellants to file their counter affidavit. The appellants are directed to file counter affidavit within a period of two weeks from the date of receipt of a copy of this judgment. We request the learned Single Judge to expedite the hearing of the writ petitions and dispose of them, preferably within a period of eight weeks thereafter. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rsh/cs

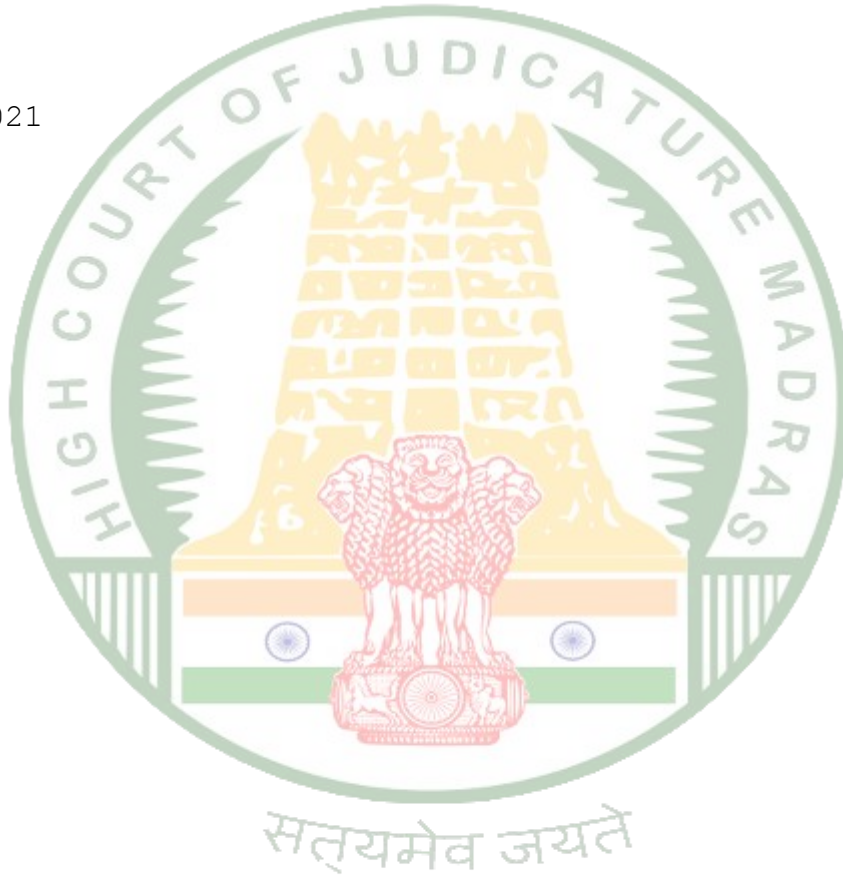
To

1. The Government of Tamil Nadu
the Secretary to Government
Home Department
Fort St. George
Chennai - 600 009
2. Director General of Police
Tamil Nadu
Chennai - 600 004
3. Additional Director General of Police
Law & Order
Tamil Nadu, Chennai - 600 004
4. Deputy Inspector General of Police
Coimbatore Range
Coimbatore
5. The Deputy Inspector General of Police
Thanjavur Range
Thanjavur
6. The Superintendent of Police
District Police Office
Thanjavur

7. The Superintendent of Police,
District Police Office,
Coimbatore.

Common Judgment in
WA Nos. 1911, 1912, 1913,
1914 and 3325 of 2019

sra(co)
aa03/03/2021



WEB COPY