



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.12973 of 2019
and
W.M.P. (MD) No.9667 of 2019

P.Krishnan

... Petitioner

vs.

1.The Superintendent of Police,
Theni District,
Theni.

2) The Director,
Vigilance and Anti Corruption Wing,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings in D.O.No.272/2019 and D.O.No.520/2019 dated 15.03.2019 and 28.05.2019 respectively issued by the 1st respondent and quash the same insofar as non inclusion of the petitioner and consequently direct the 1st respondent to move the petitioner to selection grade in the category of Head Constables and also upgrade the petitioner as Special Sub Inspector in par with the Head Constables included in the impugned proceedings.

For Petitioner : Mr.T.Antony Arul Raj

For Respondents : Mr.M.Jeyakumar,
Additional Government Pleader

O R D E R

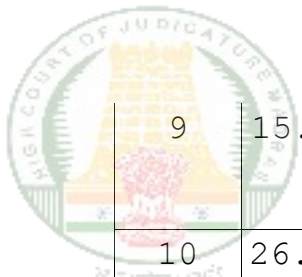
The petitioner herein, who is holding the post of Head Constable before the first respondent, has filed the present writ petition seeking to quash the promotional selection list of Head Constable Selection Grade-II as well as Special Sub Inspector, on the ground that his name has been omitted to be included in the list without assigning any reasons.



2. The respondents have filed their counter affidavit and the second respondent herein has also filed a status report. As per the status report, it is seen that there was an allegation against the petitioner by an Advocate that the petitioner had deliberately delayed in issuing an acknowledgement receipt (C.S.R.) for a complaint given by one Mr.S.Abdul Pari. Based on the complaint given by the Advocate, dated 20.06.2016, a report was given to the Directorate of Vigilance and Anti-Corruption, Chennai on 25.06.2016. From there upon, there was no much progress except the final report, which was filed on 15.05.2019 and the same was addressed to the Home Department on 26.06.2019, which is said to be still pending. In view of all these, the respondents seem to justify the non-inclusion of the petitioner's name in the selection list for the post of Head Constable Selection Grade-II.

3. I am unable to appreciate the conduct of the respondents in handling the case of the petitioner based on a complaint. The following dates and events would reveal the lethargic attitude adopted by the officers of the second respondent and the latches on their part, in failing to conclude the enquiry against the petitioner.

Sl.No	Date	Event
1	20.06.2016	The complainant had sent a lawyer's notice.
2	25.06.2016	The complaint was submitted to the Directorate of Vigilance and Anti Corruption(D.V.A.C.), Chennai
3	13.07.2016	The second respondent had directed the Deputy Superintendent of Police of D.V.A.C., Theni to register the petition in Ref No.PE./133/2016/POL/TN and conduct an enquiry.
4	25.07.2016	One Mr.R.Chitti Babu, the then Deputy Superintendent of Police registered the same in P.W.133/2016/POL/TN against the petitioner and another Special Sub Inspector.
5	01.08.2016	Mr.R.Chitti Babu was transferred and Mr.R.Pandiyarajan, Deputy Superintendant of Police, Madurai had taken up the case for enquiry.
6	08.05.2017	Mr.M.Sathyaseelan took charge as Deputy Superintendant of Police and continued the enquiry.
7	26.10.2018	A draft final report came to be submitted by Mr.M.Sathyaseelan.
8	17.07.2019	Mr.L.Raju assumed charge as Deputy Superintendant of Police and took over the enquiry.



9	15.05.2019	A final report was sent to the Head of the Department through the Vigilance Commissioner, Chennai.
10	26.06.2019	The Vigilance Commissioner, Tamil Nadu had addressed to the Home Department for taking necessary action.

Thereafter, the petition is now said to be pending before the Home Department of Tamil Nadu, after a lapse of more than seven months.

4. The complaint which came to be brought to the notice of the respondents started off with an enquiry in the year 2016 and till date, the same is yet to be finalized. The allegation against the petitioner has also not culminated into framing of charges and this Court is unable to comprehend as to how the preliminary enquiry itself has taken more than three and a half years for the second respondent to complete it and how could a further departmental action be commenced by framing of charges and what could be the time limit for completing the same.

5. The fact remains that during the pendency of all these preliminary enquiry episode, the promotional list for the post of Head Constable Selection Grade-II as well as Special Sub Inspector came to be prepared and disappointingly, the petitioner's name was not included in the list, apparently on the ground that the allegation against the petitioner was pending.

6. The counter affidavit do not disclose as to the authority vested with the respondents to defer from including the petitioner's name in the promotional panel on the basis of allegations, which has not culminated into framing of charge memo. While that being so, it can only be said that the action of the respondents in omitting to include the petitioner's name in the promotional panel is not only illegal but also arbitrary. The delay on the part of the second respondent in sitting over the enquiry commenced, based on the allegation, cannot be appreciated at all.

7. Consequently, this Court is of the view that the petitioner would be entitled to be promoted to both the posts of Head Constable Selection Grade-II as well as Special Sub Inspector, from the date of which the petitioner's immediate junior came to be promoted to both the posts. However, such a selection would be subject to all other qualifications and requirements for such promotional posts.

8. It is made clear that the respondents shall not cite the pendency of the present enquiry initiated by them in Ref. No.PE.133/2016/POL/TN dated 13.07.2016, as a reason for promoting the petitioner to the aforesaid two posts. The first respondent herein, shall endeavour to pass such promotional orders expeditiously as possible, in any event within a period of twelve (12) weeks from the date of receipt of a copy of this order.

<https://hcservices.evoms.gov.in/faces/jsp>

9. With the above directions, the Writ Petition stands allowed.



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W.P.(MD) No.12973 of 2019

No costs. Consequently, connected W.M.P.(MD) No.9667 of 2019 is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1)The Superintendent of Police,
Theni District,
Theni.

2) The Director,
Vigilance and Anti Corruption Wing,
Chennai.

+1 CC to M/s.SPL GP (SR-5614[F] dated 11/02/2020)

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-5727[F] dated
11/02/2020)

Order made in
W.P. (MD) No.12973 of 2019
10.02.2020

KK/04.03.2020/4P-5C