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Contempt Petition No.1088 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 26.02.2021

Orders Pronounced on : 12.03.2021

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Contempt Petition No.1088 of 2018

C.Pichandi,
S/o Chinodan Manthri

.. Petitioner

Vs.

1. Thiru.Niranjan Mardi, IAS.,
The Secretary to Government,
Home (Police-II) Department,
Fort Saint George,
Chennai-600 009.

2. Thiru.T.K.Rajendran, I.P.S.,
Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

3. Thiru.N.Tamil Selvan, IPS.,
The Additional Director General of Police,
Armed Police, Kilpauk,
Chennai-600 010.

.. Respondents

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971 against the order dated 05.02.2014 passed in W.P.No.2303 of 2014 on the file of this Court.



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For petitioner : Mr.K.Venkataramani, Senior Counsel for
Mr.M.Muthappan

For respondents: Mr.M.Elumalai, Addl.G.P.

ORDER

This Contempt Petition is filed alleging non-compliance of the order dated 05.02.2014 passed by this Court in W.P.No.2303 of 2014.

2. This Court, by the said order dated 05.02.2014, observed as follows:

"5. In the result, the impugned order of the second respondent dated 22.10.2013 is set aside and the writ petition is allowed. The respondents are directed to consider the claim of the petitioner for promotion as Assistant Commandant, Category-III by taking into consideration the educational qualification of a pass in SSLC and promote him as Assistant Commandant for 'C' List of the year 2012-2013 and grant him all consequential service and monetary benefits. The said exercise has to be carried out within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

3. The third respondent herein has filed counter affidavit stating as follows:

"2. I submit that this Hon'ble High Court in its order dated 05.02.2014 in Writ Petition No.2303 of 2014 has allowed the Writ Petition with the following directions :-

" The respondents are directed to



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consider the claim of the petitioner for promotion as Assistant Commandant (Category III) by taking into consideration the education qualification of a pass in SSLC and promote him as Assistant Commandant for 'C' list for the year 2012-2013 and grant his all consequential service and monetary benefits."

3. I submit that aggrieved over the above orders of this Hon'ble High Court, Writ Appeal No.52 of 2015 had been filed before this Hon'ble High Court of Madras. The Hon'ble Division Bench of the Madras High Court in its order dated 21.09.2017 dismissed the Writ Appeal and upheld the orders passed by the Hon'ble Single Judge.

4. I submit that Special Leave Petition was filed before the Hon'ble Supreme Court of India against Writ Appeal No.52 of 2015. The Hon'ble Supreme Court has dismissed the SLP in Diary No.24531/2018 dated 03.08.2018. Hence, a Review Petition (C).No.3104 of 2018 was also filed before the Hon'ble Supreme Court of India and the same has also been dismissed by the Hon'ble Supreme Court of India on 03.10.2018.

5. Hence, in compliance to the orders of this Hon'ble High Court dated 05.02.2014 in Government in



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G.O.(Ms).No.188, Home (Police.1) Department, dated 03.04.2019 has included the name of the petitioner in the temporary panel of Inspector-Adjutant/Inspectors in General Category (Regular Line) fit for appointment by recruitment by transfer as Assistant Commandant (Category-3) for the year 2017-2018 at Sl.No.1, above the name of his immediate junior Thiru.R.Venkatachalam. This Government Order has been served on the petitioner on 03.04.2019.

6. I submit that in another issue in M.P.No.1 of 2013 in Writ Petition No.30956 of 2013 filed by one Thiru.M.Arumugam and 3 other, this Hon'ble High Court in interim order dated 14.11.2013 has given the directions as below:

" ... Respondents are directed to follow the rule 24(f) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 while giving promotion to the post of Inspector of Police and Assistant Commandant. Without following Rule, there cannot be any promotion until further orders."

Besides, in the Contempt Petition No.3014 of 2014 in M.P.No.1 of 2013 in Writ Petition No.30956 of 2013, this Hon'ble High Court of Madras in its order dated 19.11.2014 had directed the respondents not to pass any order with regard to promotion to any of the candidates. This Hon'ble Court in Writ Petition No.30956 of 201 in order dated



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21.01.2016 has ordered that the panel for further promotion to the post of Inspector or Assistant Commandant from the post of Sub-Inspector or Inspector respectively in Tamil Nadu Special Police Subordinate Service by taking note of the date of initial appointment of the personnel (both General and Armoury) in General Line of the said service as per rules 24(b) and 24(f) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 and promote the eligible personnel for the said panel to the post of Assistant Commandant or Inspector according to their seniority at the time of entry into service. Against the said order dated 21.01.2016, Writ Appeal No.261 of 2016 was filed and the respondents in Writ Petition No.30956 of 2013 had also filed Writ Appeal No.1525 of 2016 in which this Hon'ble Court had passed common order on 14.12.2016 allowing the Writ Appeals and dismissing the Writ Petition. As against the orders of the contempt petition 3014 of 2014 in M.P.No.1 of 2013 in Writ Petition No.30956 of 2013, the Government have filed Letters Patent Appeal. In the said Letters Patent Appeal SR.No.73826/2016 this Hon'ble Court had closed the Contempt Petition since the Writ Appeal No.261 and 1525 of 2016 filed against Writ Petition No.30956 of 2013 came to be allowed on 14.12.2016.

7. I submit that the post of Assistant Commandant is governed under the State Service in Special Rules for the Tamil Nadu Police Service. As such the Government is the



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appointing authority for the post of Assistant Commandant.

As per Rule 2(A) of the Tamil Nadu Police Service, the crucial date for drawal of panel of Assistant Commandant (Category 3) is 1st June of every year.

8. I submit that pursuant to the above Hon'ble Division Bench's order dated 14.12.2016 and after the disposal of the Letters Patent Appeal (SR).No.73826 of 2016 on 02.06.2017, the Government in G.O.(2D).No.106, Home (Police.1) Department, dated 04.04.2018 have approved "Nil" panel of Inspectors-Adjutant/Inspector in General Category (Regular Line) fit for appointment by recruitment by transfer as Assistant Commandant (Category 3) for the years 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017, since the panel period in respect of the same were lapsed. In G.O.Ms.No.361, Home (Police.1) Department, dated 31.05.2018, the Government had approved the temporary panel of Inspector-Adjutant/Inspectors in General Category (Regular Line) fit for appointment by recruitment by transfer as Assistant Commandant (Category 3) for the year 2017-2018 by including 17 Inspector-Adjutant/Inspectors and all of them were promoted/appointed as Assistant Commandant in Police Note No.9, Home (Police.1) Department, dated 31.05.2018.

9. I submit that due to the interim directions dated 14.11.2013 and in view of injunction order dated



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19.11.2014 issued by this Hon'ble High Court in Writ Petition No.30956 of 2013 as mentioned above the panel of Assistant Commandant (Category 3) up to the year 2016-2017 could not be drawn. The crucial dated for the next panel of Assistant Commandant (Category 3) for the year 2017-2018 is 01.06.2017. The panel had been approved by the Government in G.O.(Ms).No.361, Home (Police.1) Department, dated 31.05.2018, in which the immediate junior of the petitioner has been included. Hence, in G.O.(Ms).No.188, Home (Police.1) Department, dated 03.04.2019 the Government have included the name of the petitioner in the temporary panel of Inspector-Adjutant/Inspectors in General Category (Regular Line) fit for appointment by recruitment by transfer as Assistant Commandant (Category 3) for the year 2017-2018 at Sl.No.1, above the name of his immediate junior Thiru.R.Venkatachalam, in accordance with the statutory Rules.

10. I submit that previously the Government in letter (2D).No.148, Home (Pol.1) Department, dated 26.05.2012, have approved the estimate of vacancies/panels for the post of Inspector of Police (Tamil Nadu Special Police) fit for appointment by recruitment by transfer as Assistant Commandant for the years 2009-2010 and 2010-2011 as "Nil" and arrived the estimate of vacancies for the above post for the year 2011-2012 as 51 (fifty one). Based on the



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recommendation made by third respondent, the names of 90 (Ninety) Inspectors of Police (Tamil Nadu Special Police) according to seniority for appointment/promotion as Assistant Commandants (Category 3) as on the crucial date 01.06.2011 for the year 2011-2012 has been considered and the names of 23 Inspectors of Police were recommended for inclusion in the said panel for the year 2011-2012. The Government in G.O.Ms.No.889, Home (Pol.1) Department, dated 19.11.2012 have ordered temporary appointment to 23 Inspectors of Police (Tamil Nadu Special Police) as Assistant Commandant (Category 3) who are fully qualified to be appointed temporarily as Assistant Commandant for the year 2011-2012. All of them were temporarily appointed/promoted as Assistant Commandant (Category 3) in Police Note No.44, Home (Pol.1) Department, dated 21.11.2012. The above Police Note has been communicated to the third respondent by the second respondent in Endorsement Rc.No.135866/GB.III(2)/2009, dated 22.11.2012. While issuing counter orders, the third respondent has erroneously mentioned as panel of Assistant Commandant (Category 3) for the year 2012-2013 in his order in RO.No.431/2012 in Rc.No.A1/25293/2011, dated 22.11.2012.

11. I submit that due to the interim directions / injunction of the Hon'ble Court, in various cases on the same subject matter of drawal of panel of Assistant



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Commandant (Category 3), as mentioned above, the Government in G.O.(2D).No.106, Home (Pol.1) Department, dated 04.04.2018 have approved 'Nil' panel of Assistant Commandants for the years 2012-2013 to 2016-2017. Hence, in deference to the order dated 05.02.2014 of this Hon'ble Court, the name of the petitioner has been included in the panel for the year 2017-2018 in which his immediate junior was included and promoted/appointed as Assistant Commandant in G.O.Ms.No.188, Home (Pol.1) Department, dated 03.04.2019. No junior to the petitioner has been promoted before the petitioner. As such, the petitioner does not lose his seniority in any manner."

4. When the Contempt Petition is taken up for consideration, the learned counsel for the petitioner made his submission that, this Court, in W.P.No.2303 of 2014, by order dated 05.02.2014, had specifically directed the respondents to consider the claim of the petitioner for promotion as Assistant Commandant, Category III, by taking into consideration the educational qualification of a pass in SSLC and promote him as Assistant Commandant for 'C' List of the year 2012-2013 and grant him all consequential service and monetary benefits, within a period of eight weeks from the date of receipt of a copy of the order. It is further stated by the learned counsel for the petitioner that the petitioner was promoted only in



the year 2018.

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5. Heard both sides and perused the materials available on record.

6. On a perusal of the above extracted contents of the counter affidavit of the third respondent, it is seen that when the promotion panel was not drawn from 2012-2013 to 2016-2017, the question of promoting the petitioner does not arise. Therefore, when the next promotion panel was drawn in 2018, he was rightly promoted. Under such circumstances, absolutely, we do not find any contempt on the part of the respondents. In fact, the petitioner has also filed detailed reply affidavit in that regard.

7. Hence, this Court does not find any contempt made out in this case. Accordingly, the Contempt Petition is closed.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

cs

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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GS/21/06/2021

To

1. The Secretary to Government,
Home (Police-II) Department,
Fort Saint George, Chennai-600 009.



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2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

3. The Additional Director General of Police,
Armed Police, Kilpauk,
Chennai-600 010.