

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 24.02.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.21154 of 2011

S.Meena

... Petitioner

Vs

1.The Director General of Police
Dr Radhakrishnan Salai,
Mylapore, Chennai - 4.

2.The Superintendent of Police,
Thanjavur, Thanjavur District. Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent to consider the claim of the petitioner for promotion as Inspector of Police by including her name in the C list of Sub-Inspector of Police fit for promotion as Inspector of Police for the panel year 2010-11 without reference to the punishment of censure imposed by the 2nd respondent in PR 52/2010 dt 21.7.2010 and promote her as Inspector of Police and grant her all consequential service and monetary benefits.

For Petitioner : Mr.M.Ravi

For 1st Respondents : Mr.K.Magesh

Special Government Pleader

ORDER

The prayer sought for in this writ petition is for a writ of mandamus directing the first respondent to consider the claim of the petitioner for promotion as Inspector of Police by including her name in the C list of Sub-Inspector of Police fit for promotion as Inspector of Police for the panel year 2010-11 without reference to the punishment of censure imposed by the second respondent in PR 52/2010 dated 21.7.2010 and promote her as Inspector of Police and grant her all consequential service and monetary benefits.

2.The petitioner entered into service at the respondent Department as directly recruited Sub Inspector of Police through a selection conducted by the Tamil Nadu Uniform Services Recruitment Board in the year 1997-1998 and she was appointed on

16.04.1999, she successfully completed the training and her seniority has been fixed by the Police Training College at Serial No.285.

3. According to the petitioner, since she had been with the sufficient seniority and having the merit for consideration of her claim for promotion as Inspector of Police by including her name in the 'C' list in the year 2010-2011, it is the case of the petitioner, that the promotional Board which conducted for the preparation of the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the year 2010-2011, taken into account 01.06.2010 as a crucial date for consideration of the panel dated 27.01.2011. However, the name of the petitioner was not included in the 'C' list of Sub Inspector of Police fit for promotion to the Inspector of Police for the year 2010-2011 for the reason that, there has been a disciplinary proceedings initiated under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules (in short "the Rules"), where, the petitioner ultimately was inflicted with the punishment of censure.

4. In this context, it is the further grievance of the petitioner that, by virtue of the Government Letter dated 07.10.2005, which consisting of set of instructions regarding preparation of panel for promotion, the theory of check period was brought in, whereby, those who suffered with the punishment of censure will have a check period of one year, within which, he or she may not be considered for promotion and for other penalties and punishments, the check period is for five years.

5. Subsequently, before a Full Bench of this Court, several issues had been referred for consideration, where, the validity and sustainability of the Government Letter dated 07.10.2005 also was considered, where, the Full Bench, by the decision / Judgment reported in 2011 (3) CTC 129 in the matter of The Deputy Inspector General of Police, Thanjavur Range, Thanjavur and others Vs. V.Rani, has ultimately held that, the Government Letter dated 07.10.2005 stated to be the consolidated instructions regarding the preparation of panel for promotion, issued by the Government, can never be treated as Statutory Rules at all. Therefore, the annexures therein are not enforceable as Statutory Rules especially with regard to a new phrase inserted viz., 'check period' by imposing a total embargo on the right of consideration of a Government Servant who has undergone punishment for the period of one year in case of penalty of censure and five years in other cases of minor penalties, as it has no legal basis at all.

6. In view of the import of the said order passed by the Full Bench of this Court and the same since has been upheld by the Hon'ble Apex Court, the very import of the Government Letter dated 07.10.2005 has lost its validity and consequence and once a Government Letter is quashed by this Court or declared to be unenforceable, such effect would be date back from the date of issuance of the Government Letter itself. Therefore, the embargo put against the petitioner on the crucial date i.e., on 01.06.2010 for the preparation of 'C' list of Sub Inspector of Police fit for promotion to the post of Inspector of Police for the year 2010-2011 cannot be made against the petitioner. Therefore, she would be entitled to get included her name in the 'C' list, accordingly, she shall also be entitled to be considered for promotion to the post of Inspector of Police as on 07.02.2011, the date on which the other incumbents had found place in the 'C' list for promotion.

7. Making these contentions, Mr.M.Ravi, learned counsel appearing for the petitioner would further submit that, in view of the non-inclusion of the name of the petitioner in the 'C' list for 2010-2011, because of the embargo caused due to the import of the Government Letter dated 07.10.2005, the petitioner lost her promotional chance of becoming the Inspector of Police in the year 2011. Therefore, such a promotion shall be considered for the petitioner atleast notionally from that date and correspondingly, subsequent or consequential service and other benefits be conferred on her, he contended.

8. Per contra, Mr.K.Magesh, learned Special Government Pleader appearing for the respondents, would submit that, no doubt, the Government Letter dated 07.10.2005 was declared to be unenforceable by the orders of the Hon'ble Full Bench, referred to above, dated 27.04.2011, however, such import of the Full Bench Judgment will have a prospective effect only from the date of the Judgment. Therefore, before the date of Judgment since the promotion has been effected on 07.02.2011, the petitioner's candidature since was not included in the 'C' list in view of the then prevailing legal position, where, admittedly the petitioner was facing a 3(a) disciplinary proceedings and subsequently was inflicted with the punishment of censure, therefore, in both way that is the pendency of the 3(a) proceedings as well as the check period of one year in view of the punishment of censure, the petitioner was not eligible or entitled to get included in the 'C' list with the crucial date of 01.06.2010. Therefore, consequently, she would also not be eligible for consideration for promotion as to 07.02.2011, as on that date the import of the Government Letter dated 07.10.2005 was in force since the Full Bench decision came in only later, i.e., on 27.04.2011.

9.I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10.The issue raised in this writ petition is in very narrow compass, where, the contention of the learned counsel appearing for the petitioner is, since the Government Letter dated 07.10.2005 has already been declared to be unenforceable by the orders of the Full Bench of this Court dated 27.04.2011 and the same has been upheld by the Hon'ble Apex Court, it has become final, therefore that effect of the Full Bench decision definitely will have an effect from the date of the Government Letter dated 07.10.2005. The further contention of the learned counsel for the petitioner is that, once the import of the Government Letter dated 07.10.2005 is gone, certainly, on the crucial date i.e., on 01.06.2010, the petitioner was very well eligible to be considered for inclusion in the 'C' list of Sub Inspector of Police, consequently, she should have been considered for promotion on 07.02.2011, when promotion was effected, pursuant to the 'C' list.

11.The said submission made by the learned counsel appearing for the petitioner is appealing to this Court. The reason being that, when several issues were referred to the Full Bench, referred to above, one of the issue was, whether the Government Letter dated 07.10.2005 will have a Statutory force to be enforced. Answering to the said query, the Full Bench has held as follows:

"23. In the light of the above said categorical legal position, the submission of Mr.Ravi, learned counsel appearing for the respondent in W.A.280 of 2011 as well as for petitioner in W.P.Nos.45960 of 2006 and 955 of 2007 and apart from Mr.R.Subramanian, learned counsel appearing for the petitioner in W.P.No.47252 of 2006, that the letter of the Government dated 7.10.2005 cannot be equated with the statutory rules framed under proviso to Article 309 of the Constitution of India has to be certainly upheld. The Government letter dated 7.10.2005 stated to be the consolidated instructions regarding preparation of panel for promotion issued by the Secretary to Government, not even with the authority of the Governor of State, can never be treated as statutory rules at all. Therefore, the annexures therein are not enforceable as statutory rules especially with regard to a new phrase inserted viz., check period by imposing a total embargo on the right of consideration of a Government servant who has undergone punishment for the period of one year in case of penalty of censure and five years in other cases of minor penalties, as it has no legal basis at all."

12. When the Letter dated 07.10.2005 of the Government, in unequivocal terms having been declared by the Full Bench as unenforceable, it does not have any Statutory force as it was not issued with the authority of the Governor of the State also and the respondents' stand that, till such a declaration is made by the Full Bench, the effect of the said Letter dated 07.10.2005 would be enforceable, is absolutely against the spirit of the judgment of the Full Bench.

13. Moreover, it is the settled proposition that, once the Constitutionality or vires or the sustainability of the Statutory Provision or Government Orders or Government Letters are questioned before the Court of Law and ultimately, Courts held such Statutory Provisions, Government Orders and Government Letters are unenforceable or declared to be unconstitutional, certainly the effect of such declaration would date back from the date actually a Statutory Rule, Regulations, Government Orders and Government Letters issued came into force.

14. If the said principle is applied to the facts of the present case, certainly, the import of Government Letter dated 07.10.2005 shall not have any effect from the date it was issued. Therefore, as on 01.06.2010, it shall be presumed that, there was no instructions as contained in the said Government Letter dated 07.10.2005 for having a check period of one year for those who have been suffered with a punishment of censure, to be considered for promotional avenue.

15. Here in the case in hand, the crucial date is 01.06.2010, the actual promotion date was on 07.02.2011. Therefore, during these period no other disciplinary proceedings was pending against the petitioner and no other punishment was suffered by her. Therefore, merely because of the import of the Government Letter dated 07.10.2005, the action on the part of the respondent in not including the name of the petitioner in the 'C' list by taking the crucial date as 01.06.2010 was unjustifiable act and therefore, by virtue of the aforesaid legal position as well as the factual matrix, this Court feels that, the petitioner is entitled to get inclusion in the 'C' list with the crucial date of 01.06.2010 and consequently, she will also be entitled to get promotion along with the other eligible persons who got promotion on 07.02.2011.

16. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders.

(i) That there shall be a direction to the respondents to consider the candidature of the petitioner for inclusion in the 'C' list with crucial date i.e., on 01.06.2010, of Sub Inspector of Police

fit for promotion to the post of Inspector of Police for the panel year 2010-2011 and accordingly, confer such promotion to the petitioner as on 07.02.2011 notionally.

(ii) As a sequel, the petitioner shall be entitled to get all other service and attendant benefits without the difference of pay as Inspector of Police during the notional promotion period and such benefits shall be calculated and be conferred on the petitioner by giving the promotion also. The aforesaid needful shall be undertaken by the respondents within a period of three months from the date of receipt of a copy of this order.

17. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

Sgl
To

1. The Director General of Police
Dr Radhakrishnan Salai,
Mylapore, Chennai - 4.

2. The Superintendent of Police,
Thanjavur, Thanjavur District.

+1 CC to The Government Pleader sr 11419.

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JPII (CO)
SP(12/07/2021)