



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.7138 of 2011

P.Pandurangan

..Petitioner

vs.

1.The Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai-9.

2.The Director General of Police,
Mylapore, Chennai-4.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in connection with the impugned orders passed by him in RC.No.213620/GB2(2)/2010 dated 29.11.2010 and quash the same and direct the respondents to consider the claim of the petitioner for promotion as Deputy Superintendent of Police (Cat-1) notionally by including his name in the panel of Deputy Superintendent of Police, Category-I for the year 2006-07 and promote him as Deputy Superintendent of Police (Cat-1) and grant him all consequential service and monetary benefits.

For Petitioner :Mr.K.Venkataramani,
Senior Counsel
for M/s.M.Muthappan.

For Respondents :Mr.Silambanan,
Additional Advocate General, assisted by
Mr.T.Arunkumar,
Additional Government Pleader for R1 & R2

O R D E R

The writ petitioner, challenging the impugned order of the second respondent in and by which the petitioner's request to consider his name for retrospective promotion as Deputy



will come into effect from the date of approval by the Government and as far as the petitioner's claim is concerned, the panel for promotion to the post of Deputy Superintendent of Police (Category-I) was approved by the Government on 05.11.2007, but the petitioner has already retired from service on attaining superannuation on 31.07.2006. It is further submitted by the learned Additional Advocate General that the amended rule removing the age restriction with retrospective effect from 01.06.2006 came to be passed on 12.01.2007 and at that time, the petitioner had already retired from service on 31.07.2006 and he was not eligible for inclusion in the promotion panel and therefore, prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. The issue involved in this writ petition is whether the petitioner, who has retired after attaining the age of superannuation, is eligible for notional promotion to the post of Deputy Superintendent of Police (Category-I), in view of the amended rule removing the age restriction with retrospective effect?

7. It is the stand of the respondents that as per the rules prevalent earlier, the petitioner was not considered for promotion and after he retired from service on 31.07.2006, the rule was amended by the Government vide G.O.(Ms) No.66, Home (Pol-2) Department dated 12.01.2007 removing the upper age limit for promotion of Inspector of Police as Deputy Superintendent of Police, with retrospective effect from 01.06.2006 and the process of promotion will come into effect only from the date of approval of promotion panel by the Government and in the case on hand, the panel was approved by the Government on 05.11.2017, after the petitioner's retirement and therefore, the benefit of the amended rules cannot be given effect to in favour of the petitioner.

8. An identical issue came up before the Delhi High Court in W.P.(C)No.5359 of 2009 in the case of Ram Krishna Sharma v. Union of India and others, wherein the High Court of Delhi had dismissed the writ petition filed by the petitioner therein challenging the order of Tribunal rejecting the notional promotion sought for by the petitioner after superannuation. The aforesaid writ petition was dismissed by the Delhi High Court by referring to the decision of the Hon'ble Supreme Court in Baijnath Sharma v. Hon'ble Rajasthan High Court of Jodhpur &



Another, reported in 1988 SCC (L&S). The relevant portion of the judgment is extracted hereunder:

"The Tribunal answered this question in favour of the petitioner. Union of India came before this Court when it was held that the decision of the Tribunal was erroneous & was contrary to the judgment of the Supreme Court in UOI & Ors Vs. K.K. Vadhera 1989 Supp. (2) SCC 625 as well as in the case of Baijnath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur & Anr. 1988 SCC (L&S) 1754 discussed in that order. It was held:

22. We feel that the Tribunal erred on this count as well. The thrust of the OM, which was issued soon after the decision of the Hon'ble Supreme Court in Baijnath Sharma (supra) is to clarify that the superannuated employees should not be considered for promotion where the DPC is being held after their superannuation. The later part of the OM, which is contradictory to the dictum of the Hon'ble Supreme Court in Baijnath Sharma (supra) obviously cannot be given effect to. Pertinently even the said OM does not in clear terms say that the retired/superannuated employees, if considered and recommended by the DPC would be granted notional promotion from a back date. However, the Tribunal has read this aspect into the OM which, in any event, it could not have done.

23. In view of the aforesaid, we find that the decision of the Tribunal is erroneous and the directions given therein are contrary to the judgments of the Hon'ble Supreme Court in K.K.Vadhera (supra) as well as Baijnath Sharma (supra).

24. It is also contended by the respondent that similar directions have been given by the Hon'ble Supreme Court in Karam Singh (supra). We cannot accept this contention of the respondent for the simple reason that the short order passed by the Supreme Court in Karam Singh does not deal with this issue. It appears that no such issue was raised before the Hon'ble Supreme Court in that case and no arguments were advanced in this regard. The Hon'ble Supreme Court also did not consider the legal issue while issuing the said direction. It cannot be cited as an



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authority on the propositions under consideration. The other case relied upon by the respondent i.e. Hamesh Mahajan (supra) is not applicable to the facts of the present case. In that case on a subsequent revision of seniority the petitioner ranked senior to one Mr. Ramesh Chand Sehgal, who had apparently been promoted. In these circumstances, the High Court rejected the defence of the respondents that the petitioner could not be granted benefits of selection grade and notional promotion with retrospective effect since he had already retired on 31.5.1999. As noticed hereinabove, the respondent has not made out a case of his being superseded by any of his juniors. He had claimed that Ms. Monideepa Bannerjee had superseded him. However, that claim is not correct since Monideepa Bannerjee ranked higher to the respondent in the senior grade of IIS Group 'A'.

25. Coming to the charge of discrimination against him by the petitioner, on the basis of that, the petitioner had promoted a large number of Sr. Grade officers of IIS Group 'A' to JAG notionally w.e.f 10.7.2002 and on actual basis w.e.f. from the date of the taking over a charge, many of whom in the meantime had retired. We find even this claim to be misplaced. He claims that four of his colleagues, who retired like him in the Sr. Grade of IIS Group 'A' have been given notional promotion to Junior Administrative Grade from retrospective date i.e. 7.2.2002. However, what is being missed by the respondent is that all the persons promoted retrospectively notionally w.e.f. 10.7.2002 to the Junior Administrative Grade of the service were senior to the respondent as per the revised seniority list as on 31.3.2000. Had a junior of the respondent been promoted to the Junior Administrative Grade, certainly the respondent would have had a valid and enforcement claim to seek notional promotion from retrospective date i.e. from the date on which the junior was promoted. But this is not his case.

26. In view of the aforesaid, we set aside the impugned order passed by the Tribunal in OA No. 192/2005 dated 8.7.2005 and allow the



present writ petition leaving the parties to bear their respective costs."

9. In yet another decision, the Hon'ble Delhi High Court in the case of Ranvir Singh Vs. Government of NCT of Delhi & Others (WP(C) No. 2969 of 2012 dated 24.05.2013), held as follows;

"4. The only question which calls for our consideration is whether the petitioner is entitled to be promoted on notional basis to the post of Principal. The admitted position is that the petitioner stood retired on May 31, 2010 i.e. before the date of promotion order, June 29, 2010. The issue is no more res integra inasmuch as a Division Bench of this Court of which one of us, Pradeep Nandrajog, J. was a member had decided a batch of writ petitions, lead matter being WP(C) No.8102/2012 Union of India & Anr. v. K.L.Taneja on the subject as to when can a person be granted promotion from a retrospective date. The Bench noted various decisions of the Supreme Court on the point as under:-

"(i) 1987 (4) SCC 566 K.Madhavan & Anr. vs.UOI & Ors.

(ii) 1989 Supp (2) SCC 625 Union of India & Ors. vs. K.K.Vadera & Ors.

(iii) 1995 (4) SCC 246 Vinod Kumar Sangal vs.UOI& Ors.

(iv) 1998 (7) SCC 44 Baij Nath Sharma vs. Hon'ble Rajasthan High Court At Jodhpur & Anr.

(v) AIR 2004 SC 255 P.N Premachandran vs. The State of Kerala & Ors.

(vi) AIR 2004 SC 3460 Sanjay K.Sinha & Ors. vs. State of Bihar & Ors.

(vii) 2006 (13) SCALE 246 State of Uttaranchal & Ors. Vs.Dinesh Kr.Sharma

(viii) 2007 (1) SCC 683 State of Uttaranchal & Anr. vs. Dinesh kumar Sharma.

(ix) 2008 (14) SCC 29 Nirmal Chandra Sinha vs. UOI & Ors.



(x) 2010 (4) SCC 290 UOI & Anr. vs. Hemraj Singh Chauhan & Ors."

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7. The learned counsel for the petitioner would rely upon a judgment of this Court in WP(C) 5549/2007, Dr. Sahadeva Singh v. Union of India & Ors. The said case can be differentiated on facts inasmuch as in that case the petitioner was still working whereas in this case he stood retired. Further, in the case in hand the promotion order was issued after the petitioner had retired. Further, the Tribunal in the impugned order relied upon a judgment of this Court in the case in WP(C) 20812/2005 Union of India v. Rajender Roy wherein this Court rejected a similar plea on the ground that none of the juniors to the respondent was promoted before his retirement. In this case also the Tribunal, in the impugned order, rejected the claim of the petitioner on this very ground. In other words, since no junior to the petitioner was promoted before his retirement, he could not have claimed any right for being promoted to the post of Principal. Further, if the claim of the petitioner is allowed then the promotion order with respect to around 128 Vice Principals promoted to the post of Principals vide order dated June 29, 2010, need to be revised which is impermissible.

8. We find no infirmity in the order of the Tribunal. The writ petition is dismissed."

10. This Court also had an occasion to deal with a similar issue in W.P.No.14092 of 2015 dated 01.07.2020 [V.Vijayakumarasamy v. The Government of T.N. & another] reported in 2020 (2) WLR 321 wherein this Court, by relying upon the decisions of the Delhi High Court (cited supra), had observed as follows:

"23.The aforesaid decisions of the Hon'ble Supreme Court and Delhi High Court were not placed before the Hon'ble Division Bench of this Court while deciding the case in W.A. No. 594 of 2018 and the Hon'ble Division Bench has not considered the proposition of law laid by the decisions cited supra. Therefore considering the facts and circumstances of the case on hand and by relying upon the various decisions of the Hon'ble Apex Court cited supra, the



following principles of law has been laid down in the aforesaid decisions:

(i) Service Jurisprudence does not recognize retrospective promotion i.e a promotion from a back date.

(ii) If there exists a rule authorising the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

(iii). Since malafides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the malafide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a malafide act i.e deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made."

11. In view of the stand taken by the respondents in the counter affidavit and in the light of the decisions of the Delhi High Court cited supra and followed by this Court in W.P.No.14029 of 2015 dated 01.07.2020 [2020 (2) WLR 321], this Court finds no merit in this writ petition. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jvm

To

1.The Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai-9.



2.The Director General of Police,
Mylapore, Chennai-4.

+1 CC to Mr.M.Muthappan, Advocate sr 59234
+1 CC to The Government Pleader sr 59416.

W.P.No.7138 of 2011

GSM(CO)
SP(29/11/2021)