

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.33556 of 2013
& M.P.No.1 of 2013

M.Thangaraju

... Petitioner

Vs.

1. The Principal Secretary to Government,
Home [Police - 2] Department,
Fort St. George, Chennai - 600 009.
 2. The Director General of Police,
Chennai - 600 004.
 3. The Commissioner of Police,
City Police Office, Trichy.
- ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to include the petitioner's name in the panel of Inspectors fit for promotion as Deputy Superintendent of Police [Category-I] for the year 2012-2013 issued by the first respondent in G.O.[Ms.] No.954 Home [Police - 2] Department, dated 06.11.2013 without reference to the punishments cited by the third respondent herein in Na.Ka.No.H2/3672/2011 dated 01.04.2011 and promote the petitioner as Deputy Superintendent of Police [Category - I] from the date of promotion of his immediate juniors, together with all consequential service and monetary benefits.

For Petitioner : M/s.Bala and Daisy

For Respondents : Mr.S.Thangavel,
Special Government Pleader

ORDER

Heard both sides and perused the materials placed before this Court.

2.This writ petition has been filed seeking a direction to the respondents to include the petitioner's name in the panel of Inspectors fit for promotion as Deputy Superintendent of Police [Category-I] for the year 2012-2013 issued by the first

respondent in G.O.[Ms.] No.954 Home [Police - 2] Department, dated 06.11.2013 without reference to the punishments cited by the third respondent herein in Na.Ka.No.H2/3672/2011 dated 01.04.2011 and accordingly, promote the petitioner as Deputy Superintendent of Police [Category - I] from the date of promotion of his immediate juniors together with all consequential service and monetary benefits.

3.According to the petitioner, he joined the Police Department as Sub Inspector of Police in the year 1987 and was subsequently, promoted as Inspector of Police. Though he was eligible for promotion to the post of Deputy Superintendent of Police [Category - I] in the year 2012, his name was not included in the panel and his promotion was withheld on the ground of currency of punishment of stoppage of increment as on the crucial date, i.e., 01.06.2012. It is the further case of the petitioner that he was imposed two minor punishments viz., stoppage of increment for one year without cumulative effect each, in the disciplinary proceedings initiated against the petitioner and the currency of the said punishments started on 15.10.2009 and ceased to be in existence from 14.10.2010, however, due to ill-motive, he was inflicted with punishments separately, from 24.04.2001 to 24.04.2019. As a result of the same, more than 60 persons, who are juniors to the petitioner, were promoted as Deputy Superintendent of Police and the petitioner has been made to work under them, with great difficulty and mental agony. Aggrieved over the same, the petitioner has come forward with this writ petition for the aforesaid relief.

4.Upon notice, the respondents filed a detailed counter affidavit inter alia stating as follows:

(i)During his service, the petitioner was dealt with departmentally for grave charges under Rule 3(b) and 3(a) of the Tamil Nadu Police Subordinate Service [Discipline and Appeal] Rules and imposed with 20 major/minor punishments, which include censure, rank reduction, pay reduction and stoppage increments.

(ii)The Government in G.O.(Ms)No.954, Home (Police-2) Department, Dated 06.11.2013 included the names of 176 Inspector of Police (Taluk) fit for promotion to the rank of Deputy Superintendent of Police (Category-1) for the year 2012-13; the petitioner's name was considered, but not included in the panel for the year 2012-13 in view of currency of punishments imposed in P.R.Nos.181/2000, 109/2002, 60/2003 on the crucial date i.e., 01.06.2012 and charge pending under Rule 3(b) of the Tamil Nadu Police Subordinate Service [Discipline and Appeal] Rules in P.R.No.33/2013 at the time of consideration of actual promotion.

(iii)The counter affidavit also proceeds to state that the promotion panel for the year 2012-13 was set aside by this Court by order dated 05.07.2013 in WP(MD)No.12712/2011 with a direction to the third respondent to pass fresh order;

accordingly, the Commissioner of Police, Trichy City awarded the petitioner with a punishment of 'censure' on 24.10.2013 and on review, the punishment of 'postponement of increment for one year with cumulative effect' imposed in PR.No.23/2009 u/r 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, dated 15.10.2009, was modified as censure by the Director General of Police, Tamil Nadu vide proceedings in Rc.No.208285/AP IV(1)/2010 dated 22.03.2011; since those two punishments were not an impediment for inclusion of his name in the panel of Inspectors fit for appointment by transfer as Deputy Superintendent of Police (category I) for the year 2012-13, the name of the petitioner was considered, but not recommended for inclusion, in view of other currency of punishments imposed in PR.No.181/2000, 109/2002, 60/2003 on the crucial date i.e., 01/06/2012 and pendency of charge in PR.No.33/2013.

(iv) A member of service, who has been imposed with major / minor punishment becomes eligible and entitled for promotion from the next day of completion of currency of any punishment if he is otherwise eligible and at the time of consideration of a member of service for promotion to the next higher post, the following criteria has been followed:

(a) No charges pending or under contemplation u/r 3(b), V&AC enquiry, PSO 151 enquiry pending criminal case Departmental action, TDP enquiry Adverse Report etc., if any against the member of service and no currency of punishment pending against him;

(b) No major punishment awarded during the check period of last five years;

(c) The punishment of censure not imposed within the period of one year from the crucial date.

But, in the present case, the petitioner was undergoing currency of punishments at the time of consideration of actual promotion and hence, his name was not included in the temporary panel of Deputy Superintendent of Police (category-I) for the year 2012-13 approved in G.O.(Ms).No.954, Home (Police-2) Department, Dated 06.11.2013.

5. It is seen from the averments so made in the counter affidavit filed by the respondents that though the name of the petitioner was considered to be included in the panel for the year 2012-13 for promotion to the post of Deputy Superintendent of Police (category -I), the same was not recommended as he was undergoing currency of punishments in PR.No.181/2000, 109/2002, 60/2003 on the crucial date i.e., 01/06/2012 and pendency of charge in PR.No.33/2013 at the time of consideration. It is settled law that 'during the currency of punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion'. Hence, this Court is not inclined to consider the claim of the petitioner, as the same sans merits.

6. Therefore, this writ petition deserves to be dismissed and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vrc

To

1. The Principal Secretary to Government,
Home [Police - 2] Department,
Fort St. George, Chennai - 600 009.
2. The Director General of Police,
Chennai - 600 004.
3. The Commissioner of Police, Trichy.

+1cc to M/s.Bala and Daisy, Advocate SR.No.5212

+1cc to Government Pleader SR.No.5549

W.P.No.33556 of 2013

PP(CO)
GMY(07/07/2021)

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