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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7546 of 2015

B.Raja

...Petitioner

-Vs-

1.The Director General of Police,
Tamil Nadu, Chennai 600 004.

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

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent in his Proceeding RC No.102418/GB-2(2)/2014 dated 20.12.2014 and quash the same and consequently direct the Respondents herein to promote the Petitioner notionally as Deputy Superintendent of Police with effect from 31.05.2012 and pay the pensionary benefits in the post of Deputy Superintendent of Police with effect from 31.05.2012 with all monetary and other attendant benefits.

For Petitioner : Mr.K.Raja

For Respondents : Mr.C.Selvaraj,

Additional Government Pleader.

O R D E R

The petitioner herein had retired from the service of the Police Department on 30.06.2012. It is his case that, during his service, his name was included in the Promotion Panel for the year 2011-2012 for the post of Deputy Superintendent of Police. In spite of the inclusion of his name, the Panel was not finalised till his date of superannuation and thereafter, the Promotion Panel was given effect only on 06.07.2012, thereby depriving of the promotion to the petitioner.

2. It is in this background, the learned counsel for the



petitioner would submit that the delay on the part of the respondents in giving effect to the Promotion Panel, cannot be attributed to the petitioner and therefore, he would be entitled for retrospective promotion from the date of expiry of the Panel i.e., from 31.05.2012. In support of such a claim, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of the Engineer-in-Chief, W.R.O., and the Chief Engineer (General) & Another Versus C.L.Pasupathy reported in CDJ 2013 MHC 1499 as well as in the case of the Commissioner, Corporation of Chennai Versus Muthuirulappan and Another passed in W.A.No.594 of 2018.

3. The learned Additional Government Pleader on the other hand placed reliance on the counter affidavit filed on behalf of the respondents and submitted that the crucial date for the Panel Year of 2011-2012 was fixed as 01.06.2011 and the petitioner's name along with others was included and the proposal was sent to the Government for temporary appointment to the post of Deputy Superintendent of Police (Category 1). The Government issued orders on 19.06.2012 and the consequential appointment orders were issued on 06.07.2012, by which time, the petitioner had already retired from service on 30.06.2012, owing to which, he could not be given the promotion.

4. I have given careful consideration to the submissions made by the respective learned counsel appearing on either sides.

5. According to General Rule 4 (a) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, it provides for preparation of the Panel for a particular year, which Panel would be valid for one year and would lapse at the end of that year. In case, where the Panel is not finalised within that year, the list of approved employees would be carried forward for the inclusion in the next Panel. But the crucial question that arises in the instant case is as to what would be the position of the Government servant, whose name is found in the approved list but promotion orders have not been issued when he retires thereafter, before the next Promotion Panel is drawn.

6. This question precisely arose before the Hon'ble Supreme Court in the case of Major General H.M.Singh, VSM Vs. Union of India and Another reported in 2014 (3) SCC 670, whereby, the Hon'ble Supreme Court of India was of the view that such non-consideration of the Promotion Panel which deprived the Government servant of the promotion owing to his retirement, would amount to violation of his Fundamental Rights vested under



Articles 14 & 16 of the Constitution of India and when the concerned Government Department may not be justified in raising a technical plea for the delay in finalizing the Promotional Panel. The relevant portion of the order is extracted herein as follows:-

"28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition, that the respondents were desirous of filling the vacancy of Lieutenant General, when it became available on 1.1.2007. The factual position depicted in the counter affidavit reveals, that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view, that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential order dated 29.2.2008, and thereafter, by a further Presidential order dated 30.5.2008. The above orders clearly depict, that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to



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the rank of Lieutenant General, (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet), stands affirmed. The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant General, would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.

.....

33. Insofar as the present controversy is concerned, there is no doubt whatsoever, that a clear vacancy against the rank of Lieutenant General became available with effect from 1.1.2007. At that juncture, the appellant had 14 months of service remaining. It is not as if the vacancy came into existence after the appellant had reached the age of retirement on superannuation. The present case is therefore, not covered by the technical plea canvassed at the hands of the learned senior counsel for the respondents. The denial of promotion to the appellant mainly for the reason, that the appellant was on extension in service, to our mind, is unsustainable besides being arbitrary, specially in the light of the fact, that the vacancy for which the appellant was clamouring consideration, became available, well before the date of his retirement on superannuation. We have, therefore, no hesitation in rejecting the basis on which the claim of the appellant for onward promotion to the rank of Lieutenant General was declined, by the Appointments Committee of the Cabinet."

7. The Hon'ble Division Bench of this Court in Muthuirulappan's case (cited supra) had an occasion to follow the aforesaid decision of the Hon'ble Supreme Court in Major General H.M.Singh's case (cited supra) and had confirmed the notional promotion granted to a similarly placed employee.



8. This apart, another Hon'ble Division Bench of this Court in C.L.Pasupathy's case (cited supra) had dealt with a similar situation also. Above all, in another case in N.Easwaramurthy Vs. the Government of Tamil Nadu, rep. by its Secretary and others of the Hon'ble Division Bench in W.A.No.1041 of 2019, a similar situation arose whereby the Government servant was granted notional promotion in view of the delay caused by the Government in failing to finalise the Promotion Panel in time. The relevant portion of the order reads as follows:-

"5.The appellant was not responsible for the delay in giving him promotion. The respondents would be justified in their contention, in case, the post was not available for promotion. The admitted case of the respondents shows that a proposal was made for giving promotion to the appellant way back on 11.05.2013. the vacancy occurred as early as on 30.04.2013. The matter was kept pending with the Government. The fact that the Government took considerable time for approving the proposal should not cause prejudice to the appellant. Similarly, the fact that the appellant retired from service by the time the orders were passed pursuant to the proposal by the Government, also should not stand in the way of giving him notional promotion. The so called administrative reason cannot be attributed to the appellant. We are therefore of the view that the learned single Judge was not justified in denying the benefits to the appellant.

6.We direct the respondents to give notional promotion to the appellant taking into account, the approval of proposal by the Government dated 06.06.2013 in G.O. (D).No.250. His promotion should relate back to 11.05.2013, i.e., the date on which the proposal was made for promotion. The appellant should be given the promotional benefits only notionally. He should be treated as an officer who retired from the post of Joint Director for all practical purposes.

7.We direct the respondents to pass orders giving promotion to the appellant in



the post of Joint Director notionally as expeditiously as possible and in any case, within a period of eight weeks from the date of receipt of copy of this judgment."

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9. The aforesaid order of the Hon'ble Division Bench is self-explanatory. As such, the reasons assigned by the learned Additional Government Pleader based on the averments in the counter affidavit attributing the delay on the part of the Government in passing approval orders and the consequential promotional orders, are regarded only as a technical plea and applying the principles laid down by the Hon'ble Apex Court in Major General H.M.Singh's case (cited supra), the delay would be fatal to the respondents.

10. Consequently, it necessarily requires to be held that the petitioner ought to have been promoted to the post of Deputy Superintendent of Police with effect from 31.05.2012, which is the last date of the validity of the Promotional Panel.

11. In this background, the impugned order passed by the first respondent herein, assigning the reasons for the delay in finalising the Promotion Panel cannot be sustained.

12. In the light of the above observations, the impugned order in RC No.102418/GB-2(2)/2014 dated 20.12.2014 on the file of the first respondent is set aside. Consequently, the first respondent herein is directed to issue orders granting notional promotion to the petitioner herein to the post of Deputy Superintendent of Police (Category 1) with effect from 31.05.2012 and thereby release all the monetary benefits for the said post till the date of his retirement. The first respondent shall endeavour to pass such orders at the earliest, in any event within a period of four (04) weeks from the date of receipt of a copy of this order.

13. Accordingly, the Writ Petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sts/ata



To:

1.The Director General of Police,
Tamil Nadu, Chennai 600 004.

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

+1cc to Mr.K.Raja, Advocate SR.No.64931
+1cc to the Government Pleader SR.No.65261

W.P.No.7546 of 2015

BR(CO)
GN(20/12/2021)