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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24678 of 2019
and W.M.P.Nos.24339 & 24341 of 2019

(Through Video Conferencing)

A.Vijayakumar

..Petitioner

vs

1. The Home Secretary,
Tamil Nadu Government,
Home (Police-2) Department,
Secretariat,
Chennai 600 009.

2. The Director General of Police,
O/o.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai 600 004.

..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 in pursuant to the impugned order passed by the 1st respondent in G.O.(Ms.)No.375 Home (Police 2) Department dated 24.07.2019 and quash the same insofar as not including the petitioner's name is concerned and consequential direction to the respondents herein to promote the petitioner to the post of Deputy Superintendent of Police or Assistant Commissioner of Police with retrospective effect from the date on which the immediate juniors of the petitioner were promoted and accord all consequential and monetary benefits within a reasonable time period.

For Petitioner	:	Mr.A.R.L.Sundaresan SC for Mr.K.Prem Anand
For Respondents	:	Mr.V.P.R.Elamparithi Government Advocate.

O R D E R

The petitioner has challenged the impugned G.O.Ms.No.375 dated 24.07.2019. Vide impugned G.O., name of the petitioner has been deleted from being promoted to the post of Superintendent of Police or Assistant Commissioner of Police.



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2. The case of the petitioner is that the petitioner joined the service in the Tamil Nadu Police Subordinate Services as a Sub-Inspector of Police at Sankarankoil Police Station, Tirunelveli District. Subsequently, he was promoted as an Inspector of Police (Category I) on 11.10.2017.

3. The petitioner was suspended on 28.07.2012 and subjected to a disciplinary proceedings on account of the death of the accused. The petitioner was thereafter issued with a charge memo, dated 28.04.2014. The Deputy Inspector General of Police, Tirunelveli had passed a final order dated 02.07.2016. The petitioner was imposed with a punishment of postponement of increment for two years without cumulative effect. The petitioner therefore preferred an appeal before the Appellate Authority, namely, the Additional Director General of Police (L & O) which culminated in an order dated 28.01.2017.

4. By the aforesaid order dated 28.01.2017, the First Appellate Authority modified the punishment to postponement of next increment for two years. Under such circumstances, the petitioner has preferred further appeal before the second respondent, the Director General of Police which has culminated in an order dated 19.10.2017. The punishment was reduced to postponement of future increment for a period of one year. The aforesaid order has also been accepted by the Government in G.O.Ms.No.1071 dated 14.09.2018.

5. The learned Senior counsel for the petitioner therefore submits that there was no impediment for considering the name of the petitioner for being promoted on the crucial date as the punishment for postponement of increment for one year would be for a period between 12.07.2017 to 01.07.2018. He therefore submits that the name of the petitioner ought to be included for promotion to the post of the Deputy Superintendent of Police or Assistant Commissioner of Police.

6. The learned Senior counsel submits that though the petitioner was prosecuted in a criminal proceedings in PRC.No.31 of 2015, the petitioner has challenged the same before the Madurai Bench of Madras High Court in CrI.O.P.No.5997 of 2016. He submits that by an order dated 13.01.2020, the Court has categorically concluded that while the Magisterial enquiry was not required, it has held that the criminal Court can proceed.

7. The learned Senior Counsel submits that there is no embargo under the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 from promoting the petitioner inasmuch as mere filing of the case in a Court by the appropriate authority against a member of the services is not a bar for including the name in the approved list for promotion.



He further submits that since no other pending disciplinary proceeding against the petitioner, the petitioner's name deserves to be considered for being promoted.

8. The learned Senior counsel further submits that no charge has been framed and filed before the Sessions Court. The learned Government Advocate for the respondents confirms the same.

9. The learned Government Advocate for the respondents submits that the enquiry proceedings has culminated in a lesser punishment. He submits that since criminal proceedings was pending against the petitioner in PRC.No.31 of 2015 before the Judicial Magistrate No.1, Tirunelveli, the petitioner's name cannot be considered for promotion.

10. I have heard the learned Senior counsel for the petitioner and the learned Government Advocate for the respondents and perused the impugned order and punishment orders passed against the petitioner.

11. There is no dispute that the disciplinary proceedings which was passed on 12.07.2016 for loss of increments for a period of two years without cumulative effect has been reduced to loss of increments for one year was alone. It is also evident that charge sheet has not been filed in the criminal proceedings before the criminal court .

12. The first respondent vide G.O.Ms.No.375, dated 24.07.2019 has prepared panel of Inspector of Police to be promoted temporarily as Deputy Superintendent of Police (Category - 1) for the panel year 2018-2019. The petitioner's name has not been included in the list as a criminal proceeding has been initiated against the petitioner in P.R.C.No.31 of 2015 which was pending before the Judicial Magistrate Court No.1, Tirunelveli.

13. Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 deals with preparation of approved panel for promotion. Part-A to the Schedule-XI of the Act spells out at the procedure for preparation of approved list for promotion. As per Clause II (3) and (4) of Part-A to the Schedule - XI of the Act, name of a member of service shall not be considered for inclusion in the approved list, if any enquiry is pending against him in the Tribunal for Disciplinary Proceedings. It is also makes it clear that issuance of a Show Cause Notice or charges framed under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of service shall not be a bar for inclusion of his name in the approved list.



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14. Clause II (5) of Part-A to the Schedule-XI of the Act also makes it clear that merely filing of a cases in Courts by the appropriate Investigation Authority against a member of service, shall not be a bar for inclusion of name in the approved list. Only if specific charges had been framed or charge sheet has been filed in the criminal case on the crucial date, name of such member shall not be considered for inclusion in the approved list.

15. In this case, a charge sheet has been filed in PRC.No.31 of 2015. However, as on the date of the preparation of panel for promoting the Inspectors as Deputy Superintendent of Police (Category-1) on temporary basis no charge sheet had been filed. Therefore, the name of the petitioner cannot be excluded. Further, the petitioner has also filed CrI.O.P.No.5997 of 2016 before this Court to quash PRC.No.31 of 2015 which pending before the Judicial Magistrate No.I, Tirunelveli and has obtained a stay of the same vide order dated 12.04.2016.

16. The punishment imposed on the petitioner by the Disciplinary Authority on 15.07.2016 has been modified by the second respondent on 19.10.2017 vide Rc.No.114635/AP.II(1) 2/2017. The punishment of postponement of increment for a period of one year cannot operate against the petitioner.

17. As per Clause II (13) of Part-A to the Schedule - XI of the Act, if a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion.

18. This Court is therefore of the view that this writ petition deserves to be allowed and is accordingly stands allowed with consequential reliefs to the petitioner.

19. The first respondent is therefore directed to take steps to promote the petitioner either as a Deputy Superintendent of Police or a Assistant Commissioner of Police with retrospective effect from the date on which the immediate juniors of the petitioner were promoted. The first respondent shall endeavour to pass appropriate orders to promote the petitioner within a period of six weeks from the date of receipt of a copy of this order. *** "needless to state if the petitioner is convicted in PRC.No.31/2015, departmental proceedings may be initiated against the petitioner in accordance with relevant rules in force".**



20. The writ petition is allowed with the above observation.
No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-VI)

Dated 25.08.2021

**(*) Deleted and Substituted as per
Order dated 27.09.2021 made in
WP.No.24678 of 2019**

Sd/-

**Assistant Registrar(CS-II)
dated 29.09.2021**

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Home Secretary,
Tamil Nadu Government,
Home (Police-2) Department,
Secretariat,
Chennai 600 009.
2. The Director General of Police,
O/o.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai 600 004.

**Corrected order to
be substituted to the
order already
despatched on
26/08/2021**

+1cc to the Government Pleader, S.R.No.39431
+1cc to M/s.K.Prem Anand, Advocate SR.No.49839

W.P.No.24678 of 2019
and

WMP.Nos.24339 & 24341 of 2019

MG(CO)
RGA(25/08/2021)
AJS(CO)
KM(29/09/2021)