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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mrs. Justice V. BHAVANI SUBBAROYAN

W.A.No.1429 of 2022
& C.M.P.No.9254 of 2022

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.

.. Appellants/Respondents

Vs

A.Vijayakumar

.. Respondent/Petitioner

Appeal preferred under Clause 15 of Letters Patent against the order dated 09.08.2021 made in W.P.No.24678 of 2019 and allow above Writ Appeal.

Prayer in W.P.No.24678 of 2019 : 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 in so far as not including the petitioners name is concerned and pass a 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 that may be fixed by this Honorable Court.

For Appellants : Ms.P.Raja Rajeswari,
Government Advocate

For Respondent : Mr.P.Wilson, Senior Counsel for
Mr.K.Prem Anand



JUDGMENT

(Made by PARESH UPADHYAY, J.)

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Challenge in this appeal is made to the order dated 09.08.2021 recorded on W.P.No.24687 of 2019. This appeal is by the State.

2. Learned Government Advocate for the appellants has submitted that the direction by learned single Judge to promote the writ petitioner with effect from the date his immediate juniors were promoted is against the policy of the State on more than one count. It is submitted that the writ petitioner was undergoing punishment and therefore he could not have been promoted and further that the writ petitioner is also facing criminal proceedings. It is further submitted that under either of the circumstances such a direction could not have been issued and therefore this appeal be entertained.

3.1 On the other hand, Mr.P.Wilson, learned senior advocate for the writ petitioner has submitted that the case of the State even in departmental enquiry against the writ petitioner was that there was some dereliction of duty in managing the police force which resulted in some mishap between two groups and therefore there is no question of the writ petitioner facing criminal proceedings at the hands of the State but that is not the subject matter of this appeal and therefore that aspect is not argued further.

3.2 So far departmental enquiry is concerned, it is submitted that for the alleged misconduct of the year 2012, punishment of withholding of increment for two years with cumulative effect was ordered on 12.07.2016, which in the subsequent appeal/ revision, has been modified by the authorities of the State - initially as withholding of two increments without cumulative effect and subsequently as withholding of one increment without cumulative effect. Attention of this Court is invited to the orders a copy of which is placed on record.

3.3 It is submitted that the cut-off date for the consideration of promotion on the post of Deputy Superintendent of Police was 01.06.2018 and going by the policy of the State itself, as on that date, the writ petitioner was neither undergoing punishment nor was under any cloud. It is submitted that this was considered by learned single Judge and direction was given to promote the writ petitioner. It is submitted that this appeal be dismissed.



4. Having heard learned counsel for the respective parties and having considered the material on record, this Court finds as under:

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4.1 The charge against the writ petitioner was dereliction of duty. The satisfaction recorded by the Director General of Police, while modifying the punishment, is to the effect that "He has been issued a charge memo for his failure to take sufficient strength of police personnel and went to the spot without uniform to attend dispute between two groups of people regarding sand smuggling". It is under these circumstances, the proceedings were initiated against the petitioner.

4.2 The authorities have found, on evaluation of the material that ends of justice would meet if the writ petitioner is imposed punishment of withholding of one increment without cumulative effect. The said punishment will relate back to 12.07.2016 the date on which the first order was passed by the disciplinary authority. We find that as on 01.06.2018, the writ petitioner could not be said to be in cloud and if otherwise, he is found to be meritorious and within zone, he could not have been denied promotion.

4.3 It is not in dispute that the persons junior to the writ petitioner, while were promoted the writ petitioner was not promoted. The direction by learned single Judge to promote the writ petitioner with effect from the date of his juniors are given promotion, in the facts of this case, according to us, can not be said to be erroneous in any manner. This appeal therefore needs to be dismissed.

4.4 So far the criminal proceedings are concerned, we find that in the facts noted above, whether the State can take any stand against the writ petitioner itself is an issue, however, no observations are made in this regard since that issue is not before us.

5. In view of above, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

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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.

+1cc to Government Pleader SR.No.35312

+1cc to Mr.K.Prem Anand, Advocate SR.No.34343(01/07/2022)

W.A.No.1429 of 2022

SKM(CO)
GMY(30/06/2022)