

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.06.2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition Nos.5588 and 5589 of 2014

P.Mohanraj ... Petitioner in both petitions

Vs.

The Principal Secretary to Government,
Home (Police - 2) Department,
Secretariat, Chennai - 600 009.

... Respondent in W.P.No.5588/2014

1.The Superintendent of Police,
District Police Office,
The Nilgris District @ Udhagai.

2.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore - 641 018. .. Respondents in W.P.No.5589/2014

PRAYER:

W.P.No.5588/2014:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent herein to promote the petitioner as Deputy Superintendent of Police (Cat-1) with effect from 18.11.2013, the date of promotion of immediate junior taking into account the inclusion of the petitioner's name in G.O.Ms.No.954, Home (Pol.2) Department dated 06.11.2013 at Serial No.114, with all consequential service and monetary benefits.

W.P.No.5589/2014:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the order of the first respondent herein passed in Na.Ka.No.H2/P.R.69/2013 dated 29.10.2013 imposing a punishment of postponement of increment for a period of one year without cumulative effect and the consequential order of the second respondent herein passed in Na.Ka.No.D2/10649/2013 dated 18.01.2014 and quash the same.

For Petitioner : Mr.L.Chandrakumar
[in both petitions] for Mr.Ravi Shanmugam

For Respondents : Mr.A.M.Ayyadurai
[in both petitions] Government Advocate

COMMON ORDER

W.P.No.5588 of 2014 has been filed seeking a direction to the respondent to promote the petitioner as Deputy Superintendent of Police (Cat-1) with effect from 18.11.2013, the date of promotion of immediate junior taking into account the inclusion of the petitioner's name in G.O.Ms.No.954, Home (Pol.2) Department dated 06.11.2013 at Serial No.114, with all consequential service and monetary benefits.

2. W.P.No.5589 of 2014 has been filed seeking quash of the order of the first respondent passed in Na.Ka.No.H2/P.R.69/2013 dated 29.10.2013 imposing punishment of postponement of increment for a period of one year without cumulative effect and the consequential order of the second respondent passed in Na.Ka.No.D2/10649/2013 dated 18.01.2014.

3. The petitioner joined as direct Sub-Inspector of Police on 19.09.1987. He was promoted as Inspector of Police in the year 2000. The petitioner states that he is fully qualified for promotion to the post of Deputy Superintendent of Police. As on the crucial date for the panel year 2012-2013, the petitioner was fully qualified and his name was included for the panel year 2012-2013 for promotion to the post of Deputy Superintendent of Police in Serial No.114. The crucial date was 01.06.2012 and on that date, the petitioner was not suffering any punishment or currency of punishment.

4. A charge memo under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, was framed against the petitioner vide proceedings dated 30.08.2013.

5. Learned counsel appearing for the petitioner reiterated that pendency of a charge under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, is not a bar for inclusion of petitioner's name in the panel and for promotion. In the present case, the crucial date for the panel year 2012-2013 was 01.06.2012 and the name of the petitioner was included in the panel. The fact remains that the name of immediate junior of the petitioner Mr.D.Thanavel was included in Serial No.115. The promotion order to the said junior was issued for the post of Deputy Superintendent of Police on 18.11.2013. Before grant of promotion to the junior, the charge under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, framed against the petitioner ended with an order of punishment vide proceedings dated 29.10.2013.

6. Learned counsel appearing for the petitioner mainly contended that though the punishment order was issued vide proceedings dated 29.10.2013, the currency of punishment will come into operation only with effect from 01.07.2014.

Therefore, the petitioner is entitled to be promoted on par with his junior to the post of Deputy Superintendent of Police vide proceedings dated 18.11.2013.

7. Learned Government Advocate appearing on behalf of the respondents made a submission that according to the petitioner, as per G.O.(Ms) No.368, P & AR Department dated 18.10.1993, the promotion deferred should be reopened after disposal of the charge. Learned Government Advocate submitted that Rule 4(a) of the Tamil Nadu State and Subordinate Service (Discipline and Appeal) Rules has been scrupulously followed and the petitioner's name will be considered for promotion as Deputy Superintendent of Police (Category-I), only after completion of the punishment period, which is awarded in P.R.No.69/2013 and the same is in currency now. As per sub-rule (1-HH) of paragraph II of Schedule VII to Rule 4(a) to General Rules for the Tamil Nadu State and Subordinate Services "any punishment, including 'Censure' imposed on a member of service after the crucial date, but before the actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment". Hence, the petitioner was not given promotion.

8. Learned Government Advocate further submitted that under G.O.(Ms).No.954, Home (Pol.2) Department, dated 06.11.2013, the Government have approved a temporary panel of Inspector of Police fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-I) for the year 2012-2013. In the panel, the petitioner's name also had been included in S.No.114. In the meanwhile, the petitioner was issued with a show cause notice under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and orders were passed by the Competent Authority on 29.10.2013 imposing punishment of "Postponement of his next increment for a period of one year without cumulative effect". Accordingly, his next increment which falls due on 01.07.2014 was ordered to be postponed for one year without cumulative effect in DO.1049/2013 dated 18.11.2013. Hence, the request of the petitioner cannot be considered at this stage.

9. The question that arises for consideration is whether the petitioner is entitled to be promoted to the post of Deputy Superintendent of Police on par with his junior vide proceedings dated 18.11.2013.

10. As per Rule 4(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, the pendency of a charge under Rule 3(a) is not a bar for promotion. However, if the charge under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, is ended with an order of punishment, then the said punishment is a bar for promotion. As per sub-rule (1-HH) of paragraph II of Schedule VII to Rule 4(a) to General Rules for the Tamil Nadu

State and Subordinate Services, any punishment after the crucial date, but before the actual promotion or appointment, shall be held against the member of service and he shall not be given promotion or appointment. Hence, the petitioner was not given promotion.

11. In the present case, the currency of punishment falls due on 01.07.2014 on account of the fact that increment was due to the petitioner. However, the order of punishment was imposed on 29.10.2013 and the said punishment is to be held against the petitioner. Imposing punishment is one aspect of the matter and currency is another issue. Once punishment is imposed, promotion could be withheld and therefore, the respondents have not committed any infirmity in not considering the name of the petitioner for promotion on par with his junior.

12. In the present case, even before grant of promotion to the junior of the petitioner, the petitioner was imposed with an order of punishment vide proceedings dated 29.10.2013. Therefore, the relief as such sought for in the present petition deserves no merit consideration.

Accordingly, these writ petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gm
To

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

2.The Superintendent of Police,
District Police Office,
The Nilgris District @ Udhagai.

3.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore - 641 018.

+1 cc to Government Pleader Sr.NO. 34904

Writ Petition Nos.5588 and 5589 of 2014

skm(CO)

A.SK(29/06/2022)