



W.P.(MD).No.12237 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.12237 of 2012

P.Robinson Gnanasigamony

... Petitioner

Vs.

1.The Director General of Police,
Chennai – 600 004.

2.The Superintendent of Police,
Kanyakumari District at
Nagercoil.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent in his proceedings C.No. A1/21635/2012, dated 13.07.2012, quash the same and consequently direct the second respondent to promote the petitioner to the post of Special Sub Inspector from 01.08.2010.

For Petitioner : Mr.P.Saravana Kumar

For Respondents : Mr.N.Muthu Vijayan,
Special Government Pleader.



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ORDER

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This Writ Petition is filed challenging the impugned order dated 13.07.2012 and consequently direct the second respondent to promote the petitioner to the post of Special Sub Inspector from 01.08.2010.

2. The petitioner joined the Police Department on 25.10.1984 and promoted as Head Constable on 25.07.2000. As per G.O.Ms.No.15 and the Chief Office Guidelines, the petitioner is eligible for promotion as Sub Inspector of Police after 25 years of service on the whole and 10 years of service as Head Constable. The petitioner has fulfilled these two requirements on 25.07.2010. The petitioner was awarded punishment on 13.09.2007 in P.R.No.53/2007 under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules. The petitioner was denied promotion/ upgradation due to the said punishment in P.R.No.53/2007, whereas the petitioner's batchmates were upgraded. The contention of the petitioner is that there was no currency of punishment when the petitioner was eligible for consideration. However, the respondents have invoked check period and has declined to grant upgradation to the post of Special Sub Inspector. Hence, the present Writ Petition is filed.



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3. The respondents relied on G.O.Ms.No.368 (P&AR) Department dated 18.10.1993 wherein, it is stated that pendency of charges will be held against the Government servants if the charges are pending for finalization. The respondents also relied on Letter Ms.No.248 P & AR Department Reforms(S) Department, dated 20.10.1997, wherein it states that the employee would not be eligible for consideration for promotion during the check period.

4. The said issue was considered by the Hon'ble Full Bench vide order dated 27.04.2011 in the case of the ***Deputy Inspector General of Police, Thanjavur Range, Thanjavur Vs. V. Rani reported in 2011(3) CTC 129***, wherein both the G.O.Ms.No.368 and the Letter No. 248 was quashed. The Hon'ble Full Bench has held that the said Government letter in Ms.No.248 (P & AR) Department dated 20.10.1997 and G.O.Ms.No.368 dated 18.10.1993 is not having the force of statutory rules because it has been passed without invoking Article 306 of the Constitution of India. Moreover, the Hon'ble Full Bench further held the check period is a new invention by the employer and alien to service jurisprudence, where there is no statutory sanction for it, check period should not be considered. The relevant portion of the judgment is extracted hereunder:



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28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

- 1) During the period of currency of minor 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 and to that extent, the finding of the Division Bench in [Subramanian v. Government of Tamil Nadu](#) rep. by its Secretary, Chennai and others [2008 (5) MLJ 350] stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.
- 2) If any benefit has been conferred on the party to the judgment rendered by the Division Bench in [Subramanian v. Government of Tamil Nadu](#) rep. by its Secretary, Chennai and others [2008 (5) MLJ 350], the same shall not be affected by the judgment of this Bench since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.
3. The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to [Article 309](#) of the Constitution of India and it can utmost be administrative instructions issued under [Article 162](#) of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.
4. The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso [Article 309](#) of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.
5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period viz., one year in the case of censure and five years in the case of other minor punishments is illegal and impermissible under the statutory rules.



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5. However, the learned counsel appearing for the respondents submitted that the rules were subsequently amended and hence the judgment of Rani's case cannot be invoked. Moreover, the punishment runs beyond the date of judgment rendered in Rani's case, the date of delivery of judgment in Rani's case is 27.04.2011 and the punishment order dated 13.09.2007, the punishment would run upto to 2012 and hence the present case is not covered by Rani's case.

6. This plea cannot be accepted, since the starting of the punishment should be taken into account i.e. 13.09.2007 and as on the date of punishment dated 13.09.2007, the said G.O. and Letter were quashed. Therefore, the plea of the respondents is rejected. Therefore, this Court is of the considered opinion that the respondents cannot rely on the quashed G.O. and Letter and deny promotion to the petitioner.

7. The punishment is passed under Rule 3(a) and if any punishment is passed under Rule 3(a), the same will not be considered as a punishment for declining promotion as per G.O.Ms.No.559 Home (Police VI) Department, dated 07.12.2021. The Government has taken a policy decision by issuing



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G.O.Ms.No.559, thereby cancelling all the minor punishments to the police personnel which are affecting the promotion of the delinquents. Hence based on the aforesaid Government Order, any disciplinary proceedings initiated under Rule 3(a) will not be bar to grant promotion.

8. Therefore, the respondents are directed to consider the case of the petitioner in the light of the G.O.Ms.No.559 and pass orders. The respondents are directed to keep the petitioner in appropriate seniority before his junior and grant promotion.

9. It is submitted by the learned counsel appearing for the petitioner that the petitioner is retired from service.

10. Therefore, this Court is quashing the impugned order and directs the respondents to grant notional promotion to the petitioner and also grant all consequential monetary benefits and service benefits. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.



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11. With the above direction, this Writ Petition is allowed. There shall be no order as to costs.

14.12.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The Director General of Police,
Chennai – 600 004.
- 2.The Superintendent of Police,
Kanyakumari District at
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S.SRIMATHY, J.

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