



W.P.(MD).No.14671 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 12.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.14671 of 2012

P.Rajadhas

... Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai – 4.

2.The Superintendent of Police,
Kanyakumari District.

... 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.A1/8164/2012 dated 27.03.2012 and quash the same and consequently direct the respondents to promote the petitioner as a Special Sub Inspector of Police as on date 12.08.2010 as per his seniority.

For Petitioner : Mr.S.Karthik

For Respondents : Mr.J.Ashok,
Additional Government Pleader.



W.P.(MD).No.14671 of 2012

ORDER

WEB COPY

This Writ Petition is filed for Writ of Certiorarified Mandamus to quash the impugned order dated 27.03.2012 and consequently direct the respondents to promote the Petitioner as a Special Sub Inspector of Police as on date 12.08.2010 as per his seniority.

2. The brief facts as stated in the affidavit are that the petitioner was appointed as Grade-II Police Constable on 02.04.1981 and promoted as Grade-I Police Constable on 25.07.1995, but there was a delay of four years in granting promotion. Thereafter, again the petitioner was promoted as Head Constable on 01.09.2000. On completion of ten years as Grade-II Police Constable, the petitioner was upgraded as Grade-I Police Constable in the year 1995 only and the reasons were not stated by the respondents for causing delay in granting promotion. The contention of the petitioner is that normally after completion of fifteen years of service, the next upgradation would be made to the post of Head Constable. The respondents issued order of upgradation to the petitioner and many others upgrading them to the post of Head Constable post only with effect from 01.09.2000. The next avenue of promotion available to the petitioner is Special Sub-Inspector of Police (SSI) which would be given on



W.P.(MD).No.14671 of 2012

completion of 25 years of service. The petitioner was eligible to be promoted as Special Sub-Inspector of Police. However, no seniority list was prepared by the respondents for Kanyakumari District Police to be promoted as SSI. The Government issued G.O.Ms.No.15 Home (Pol.V.) Department dated 07.01.2010 wherein, the Government delegated the power to Superintendent of Police / Deputy Inspector General of Police / Commissioner of Police to issue orders for upgradation of Police Personnel as Grade-I Police Constable / Head Constable / Special Sub-Inspector of Police. The respondents have prepared a list of eligible candidates for being upgraded as Special Sub-Inspector of Police as on 31.08.2010 and as on the date, the petitioner was eligible to be upgraded. However, the petitioner was served a show cause notice dated 31.10.2011, wherein it is stated that the petitioner while he was serving at Kaliyakavilai Santhai Police Station, had committed deficiency in duty by not wearing shoes in the Police check post on 30.07.2011 and it was proposed proceedings under Rule 3(b) of TWPSS (D&A) Rules, 1955. Since the said show cause notice was pending, the petitioner's name was not recommended for upgradation as on 01.01.2011 and on 01.08.2012, due to pendency of 3(b) charges. However, the petitioner submits that the respondents issued an order of punishment of reduction of pay in one stage on 14.05.2011 for one year with cumulative effect for alleged dereliction of duty. The petitioner preferred an appeal and the first



W.P.(MD).No.14671 of 2012

respondent vide order dated 01.02.2012 has passed an order, wherein, the punishment was modified as reduction of pay for six months without cumulative effect and the effect of punishment was completed on 01.07.2012. The petitioner submitted a representation for upgradation on 15.02.2012 and the second respondent has passed an impugned order dated 27.03.2012 rejecting the petitioner's claim stating that the charge was pending and hence the promotion cannot be considered. The contention of the petitioner is that after completion of 31 years of long service, the petitioner had retired from service on 31.03.2012 and the second respondent had passed an erroneous order stating that on the due date of promotion i.e. on 01.08.2012, the petitioner is facing the charges. But as per G.O.Ms.No.1015, the candidate shall be considered if on due date prior to five years, the candidate did not have any punishment. But that was also not considered by the second respondent. Since the petitioner has not undergone any punishment prior to five years of due date, the impugned order is perverse. Moreover, the charge against the petitioner is very meagre and baseless. Hence, the petitioner prays to allow the Writ Petition by granting promotion.



W.P.(MD).No.14671 of 2012

3. The second respondent has filed a counter stating that the petitioner was enlisted as Grade-II Police Constable on 02.04.1981, upgraded as Grade-I Police Constable on 25.07.1995 and as Head Constable on 25.07.2000. The petitioner was normally due for upgradation as Special Sub Inspector of Police with effect from 01.08.2010 and the petitioner's case was already considered during 01.08.2010 along with his batchmates and found that he was not eligible, as a charge under Rule 3(b) in P.R.45/2010 dated 15.04.2010 was pending at the time of consideration. Subsequently, the petitioner was awarded with a punishment of reduction in pay by two stages for one year which shall operate to postpone his future increments in PR.45/2010 under Rule 3(b) dated 14.05.2011. Accordingly, the petitioner's pay was reduced by one stage from Rs.12,150/- to Rs.11,790/- with effect from 21.05.2011. The petitioner filed Review Petition and after considering the same, the above punishment was modified into that of reduction in time scale of pay by one stage for six months without cumulative effect by the Director General of Police, Chennai in proceedings dated 01.02.2012. Accordingly, the petitioner's pay was reduced from Rs.12,520/- to Rs.11,150/- for six months without cumulative effect and his pay was refixed with effect from 21.11.2011 vide proceedings dated 06.03.2012. Moreover, the petitioner was also awarded with the punishment of 'Black Mark' in PR.135 /2011 under Rule 3(a) dated 15.12.2011 for the



W.P.(MD).No.14671 of 2012

delinquency committed on 30.07.2011 and this punishment was expired only on 14.12.2012. The petitioner retired from service on superannuation on 31.03.2012. As per Police Standing Order 94 (4) of Volume I, the punishment of Black Mark shall take effect from the date of offence that is from 30.07.2011. Due to currency of punishment, the petitioner's request for upgradation as Special Sub-Inspector of Police could not be considered while he was in service. The petitioner submitted a representation dated 15.02.2012 to the respondents requesting for upgradation and the same was declined by an endorsement dated 27.03.2012. Now, the petitioner filed this Writ Petition to quash the same and to grant upgradation as Special Sub Inspector of Police with retrospective effect. As per the rules and Government orders prescribed for the issues, the petitioner was eligible for consideration for upgradation as Special Sub Inspector of Police on 01.08.2010 and he was found not eligible due to currency of punishment. The above upgradation procedure is followed in State Level and there is no inordinate delay in granting upgradation as Grade-I Police Constable and Head Constable. On the date of consideration, that is on 01.08.2010, the petitioner was not eligible because of the pendency of the disciplinary proceedings in PR.45/2010. Time bound promotions were given as per G.O.Ms.No.15, Home (Police.V) Department, dated 07.01.2010 following the guidelines issued in G.O.Ms.No.368 (P&AR) Department, dated



W.P.(MD).No.14671 of 2012

18.10.1993. Instructions were given in the above Government Orders that pendency of charges framed under Rule 3(b) should be held against the officer and including deferred until finalization of the disciplinary proceedings. As per the above rules, the petitioner became ineligible for upgradation as Special Sub Inspector of Police during 01.08.2010 and his name was passed over. Further, he was awarded with a punishment of reduction of pay by two stages for one year which shall operate to postpone his future increments in PR.45/2010 under Rule 3(b) dated 14.05.2011 by the Superintendent of Police, Kanniyakumari District. In the meanwhile, again the petitioner was awarded with the punishment of Black Mark in PR.135/2011 and the said delinquency was committed on 30.07.2011 and the punishment expired on 14.12.2012. The petitioner attained superannuation on 31.03.2012 before the expiry of punishment of Black Mark awarded to the petitioner. Hence, the claim of the petitioner is already rejected. Therefore, the petitioner is not eligible for the promotion as claimed by him and hence the respondents prayed to dismiss the writ petition.

4. Heard Mr.S.Karthik, the learned counsel appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents and perused the records.



W.P.(MD).No.14671 of 2012

5. It is an admitted fact that the petitioner had two disciplinary proceedings in PR.45 /2010 and 135/2011. As far as PR.45/2010 is concerned, punishment of reduction of pay by two stages for one year which shall operate to postpone his future increments was awarded. In Review Petition, the punishment was modified into that of reduction in time scale of pay by one stage for six months without cumulative effect vide order dated 01.02.2012. This punishment was given effect to and subsequently, the petitioner's pay was refixed to his original pay from 21.11.2011 and the punishment was given effect from 21.05.2011 to 21.11.2011. This punishment was only in the year 2011, but as on the date of crucial date i.e. 01.08.2010 there was no punishment at all. The respondents have not considered since there was a charge memo pending.

6. As far as PR.135/2011 is concerned, the delinquency was committed on 30.07.2011 and as per Police Standing Order 94 (4) is concerned, the currency of punishment would expire on 14.12.2012 but the petitioner has attained superannuation on 31.03.2012. The contention of the respondents is that since the petitioner has attained superannuation even prior to the completion of punishment and hence the petitioner was not considered for promotion.



W.P.(MD).No.14671 of 2012

WEB COPY

7. The contention of the petitioner is that the crucial date of consideration is 01.08.2010 and as on 01.08.2010, there was no currency of punishment. Even in the counter, the respondents stated that the petitioner was normally viewed for upgradation as Special Sub Inspector of Police with effect from 01.08.2010. But the contention of the respondents is that PR.45/2010 dated 15.04.2010 was pending at the time of consideration. Subsequently, the petitioner was awarded with the punishment on 14.05.2011 and reduced vide order dated 01.02.2012. The currency of punishment was inflicted from 21.05.2011 to 20.11.2011. The issue before this Court is whether the petitioner is eligible for promotion, when the disciplinary proceedings are pending based on certain charges. There are several cases in which the respondents have initiated disciplinary proceedings and kept the disciplinary proceedings pending for over several years, which may be until the retirement of the employee, the disciplinary proceedings were kept pending. But, by showing the pendency of the disciplinary proceedings, the employee would be denied promotion. The authorities are using such situation as a tool to demand obedience also. At times, it takes the colour of vindictiveness and bias. Such power cannot be granted to the higher authorities, which will lead to uncontrol power and misuse of power. Therefore, this Court is of the considered opinion



W.P.(MD).No.14671 of 2012

that citing the initiation of disciplinary proceedings by issuing show cause notice or charge memo, promotion cannot be denied at all.

8. The next plea of the petitioner is that in review petition the punishment was reduced and hence the respondents are bound to consider the petitioner for promotion. In the present case, on review, the petitioner's punishment was reduced and the currency of punishment is from 21.05.2011 to 20.11.2011 and after the currency of punishment, the pay fixation was refixed with effect from 21.11.2011. In such circumstances, from 21.11.2011 onwards, the petitioner would be entitled for promotion.

9. The respondents relied on G.O.Ms.No.368 (P&AR) Department dated 18.10.1993, wherein, it is stated that the 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. The said issue was considered 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 as under:

WEB COPY

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 of the Constitution of India and it can utmost be administrative instructions issued under [Article 162](#) of the Constitution of India. [Article 309](#) n 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 other minor punishments is illegal and impermissible under the statutory rules.



W.P.(MD).No.14671 of 2012

WEB COPY

Therefore, this Court is of the considered opinion that the respondents cannot rely on the quashed Government Order and also Letter and deny promotion to the petitioner. Hence, the petitioner is entitled to promotion.

10. In the present case, the petitioner was facing another delinquency in PR.No.135/2011 and according to the respondents, the punishment would come into effect from date of the commitment of punishment and the date is fixed as 30.07.2011. According to the respondents, as per Police Standing Order 94(4), the said punishment for Black Mark would expire on 14.12.2012 but in the meanwhile, the petitioner attained superannuation on 31.03.2012, because of this punishment also, the petitioner is losing his opportunity to be considered. In the *Rani's case* (stated supra), the concept of check period is held as alien to service jurisprudence and hence the denial of promotion based on check period is illegal. Therefore, from this angle also the petitioner is entitled to promotion.

11. Therefore, this Court is of the considered opinion that as on 01.08.2010, the petitioner case ought to be considered for promotion along with his batchmates. Therefore, the respondents are directed to grant notional promotion to the petitioner by considering the date as 01.08.2010. However,



W.P.(MD).No.14671 of 2012

the petitioner is entitled to pensionary benefits and not monetary benefits, since only notional promotion is granted.

12. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

12.09.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai – 4.

2.The Superintendent of Police,
Kanyakumari District.



WEB COPY



W.P.(MD).No.14671 of 2012

S.SRIMATHY, J.

Nsr

W.P.(MD).No.14671 of 2012

12.09.2022