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W.P.(MD)NO.5242 OF 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5242 of 2020

M.Somasundaram

... Petitioner

Vs.

1. The Secretary to Government,
Home Department,
Secretariat, St.George Fort,
Chennai.

2. The Director General of Police,
Tamil Nadu,
Chennai – 600 004.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Rc.No.181875/GB 2(2) /2017 dated 16.10.2018 and quash the same as illegal and consequently direct the 1st respondent to promote the petitioner to the post of Deputy Superintendent of Police(category -I) for the year 2015-2016, as per the Rule 39 of General Rules for Tamil Nadu State and Subordinate Services, within a time frame fixed by this Court.



For Petitioner : Mr.J.Jeyakumaran

For Respondents: Mr.A.K.Manikkam,
Special Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as Sub Inspector of Police on 01.03.1996. He was implicated in a custodial death case which was registered as Crime No.177 of 1999 on the file of Thalamuthu Nagar police station, Tuticorin District. The petitioner is figuring as the first accused in the said case which has culminated in S.C.No.223 of 2006 on the file of the Additional Sessions cum Fast Track Court No.I, Tuticorin. The petitioner seeks relief of temporary promotion to the post of Deputy Superintendent of Police. His request was rejected by by the Director General of Police vide impugned endorsement dated 16.10.2018. Questioning the same, the present writ petition has been filed.



3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned endorsement and grant the relief as prayed for.

4. The respondents have filed counter affidavit. The learned Special Government Pleader took me through its contents and called upon this Court to sustain the impugned order and dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. As rightly pointed out, the petitioner is facing criminal prosecution. The question that arises for consideration is whether he is entitled to be temporarily promoted to the post of Deputy Superintendent of Police. Rule 39 of Tamil Nadu State and Subordinate Services Rules provided for temporary promotion. Rule 39(d) reads as under:-



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“ 39. Temporary promotion

...

(d) Where it is necessary to promote an officer against whom an enquiry into allegations of corruption or misconduct is pending, the appointing authority may promote him temporarily pending enquiry into the charges against him. The competent authority shall have discretion to make regular promotion in suitable cases.”

7. There is a corresponding provision in Tamil Nadu Government Servants (Conditions of Service) Act 2016. Section 47(4) of the Act is as follows:-

“ Where it is necessary to promote an officer against whom an enquiry into allegations of corruption or misconduct is pending, but no charge sheet has been filed in the criminal case or where no charge under sub-rule (b) of rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules have been framed or no proceedings before the Tribunal for Disciplinary



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Proceedings is pending, the appointing authority may promote him temporarily pending enquiry into the allegations against him.”

8. If the aforesaid provision is applied, obviously the petitioner has to be denied the relief. It is not in dispute that the enquiry into allegation of misconduct is pending. Of course the disciplinary action initiated against the petitioner has been stayed till the disposal of the criminal case vide Order dated 10.11.2003 in O.A.No.7943 of 2001 passed by the Tamil Nadu Administrative Tribunal. It is also not in dispute that charge sheet has been filed in the criminal case. In fact the charges also have been framed. That apart, in the impugned order it has been specifically mentioned that the services of the writ petitioner in the rank of Inspector of Police have not been regularised. Thus a technical application of the aforesaid statutory provision would definitely result in non-suiting the writ petitioner.

9. At the same time, this Court cannot lose sight of the facts obtaining in this case. No doubt, the writ petitioner is



facing criminal prosecution in respect of a custodial death.

The occurrence itself had happened way back in 1999.

Investigation was taken up and final report had also been filed and the case was taken cognizance and committal proceedings got over and the case itself came to the file of the Sessions Court way back in the year 2006. More than 17 years have elapsed. The case is still pending. It is seen that the wife of the victim filed a petition for including one Thiru.Ramakrishnan also who worked as Sub Inspector of Police in the said station during the relevant time as an accused. Her petition was dismissed by the trial Court. Questioning the same, she filed Crl.R.C.(MD)No.653 of 2007 before Madurai Bench of Madras High Court. Vide Order dated 18.03.2008, criminal revision petition was allowed and the trial Court was directed to include the said Ramakrishnan as one of the accused in S.C.No.223 of 2006. The said Ramakrishnan moved the Hon'ble Supreme Court questioning the said order and as a result the proceedings could not take off for several years thereafter. The Hon'ble Apex Court dismissed the SLP filed by the said Ramakrishnan. Even thereafter, the trial could not progress for various reasons. Crl.R.C.(MD)No.13 of 2020 came



to be filed and again the proceedings got stayed. The learned counsel appearing for the petitioner categorically asserts before this Court that the writ petitioner is not in anyway responsible for the delay. Even though SLP filed by Thiru.Ramakrishnan was dismissed in the year 2014, in the year 2016 he was given temporary promotion to the post of Deputy Superintendent of Police. A copy of the proceedings dated 13.01.2016 promoting Thiru.Ramakrishnan as Deputy Superintendent of Police has been enclosed in the typed set of papers. It is also stated that one Ravichandran who was originally junior to the petitioner has also been promoted to the post of Deputy Superintendent of Police.

10. I may not countenance the petitioner's request for inclusion of his name in 2015-16 panel. As rightly pointed out by the learned Special Government Pleader, when his service in the rank of the Inspector of Police has not been regularised, it may not be possible to include him in the impugned panel. But that does not prevent this Court to grant the relief of temporary promotion to the post of Deputy Superintendent of Police. This is primarily for two reasons. The case against the



writ petitioner has been hanging fire for more than two decades; the writ petitioner is not responsible for the delay. It is well settled that right to promotion is not a fundamental right but right to be considered for promotion has evolved as a fundamental right. In this case, even this right has been seriously jeopardized in view of the pendency of the criminal case for too long a period. The other reason is that promotion was given to Thiru.Ramakrishnan to the post of Deputy Superintendent of Police in the year 2016. It is also not in dispute that the name of Thiru.Ramakrishnan had already been included as one of the accused in S.C.No.223 of 2006 by virtue of the order passed by this Court. His SLP suffered dismissal in the year 2014 itself. Yet the department has chosen to grant temporary promotion to him to the post of Deputy Superintendent of Police. Therefore, the petitioner is definitely entitled to parity of treatment. For the aforesaid twin reasons, while setting aside the impugned order dated 16.10.2018 passed by the second respondent, I direct the respondents to promote the petitioner to the post of Deputy Superintendent of Police. It is seen that the writ petitioner secured temporary promotion to the post of Inspector of Police



by virtue of the order passed by this Court in W.P.(MD)No. 11183 of 2009. He was directed to execute an undertaking that he shall not claim any seniority by virtue of the temporary promotion as noted in paragraph No.5 of the counter affidavit. Subject to the execution of a similar undertaking, the respondents are directed to grant promotion to the petitioner on temporary basis. Such an order shall be passed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. This writ petition stands allowed. No costs.

27.10.2022

Index : Yes / No
Internet : Yes/ No
PMU

To:

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G.R.SWAMINATHAN,J.

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