



W.P.(MD)No.19679 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.09.2022**

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THE HON'BL MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.19679 of 2017
and
W.M.P.(MD)No.15942 of 2017

P.Sabapathi

... Petitioner

Vs.

1. The Director General of Police,
Law and Order,
Chennai.

2. The Deputy Inspector General of Police,
Tirunelveli Region,
Tirunelveli District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the first respondent pertaining to its order in Rc.No.126522/NGBI(1)/2014, dated 11.02.2016 and to quash the same and consequently, direct the respondents to promote the petitioner as Inspector of Police (TK) for the year 2009-2010 along with his immediate juniors and to grant all monetary and service benefits



W.P.(MD)No.19679 of 2017

consequent to the same.

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For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.V.Om Prakash
Government Advocate (civil side)

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order, dated 11.02.2016 and consequently, direct the respondents to promote the petitioner as Inspector of Police (TK) for the year 2009-2010 along with his immediate juniors and to grant all monetary and service benefits consequent to the same.

2. The petitioner was appointed as Sub Inspector of Police on 16.04.1999. The contention of the petitioner is that a false charge was foisted against the petitioner and a show cause notice was issued on 24.12.2008. Though the petitioner submitted a detailed reply, the Superintendent of Police by order, dated 05.08.2009 has passed an order postponing the petitioner's increment for two year without cumulative



W.P.(MD)No.19679 of 2017

effect. Aggrieved by the said order, the petitioner preferred an appeal before the second respondent and the same was rejected on 12.09.2009.

As against the said order, the petitioner preferred a Review Petition on 01.02.2010 to the first respondent. After analyzing the entire records, the first respondent, vide order, dated 02.02.2011, passed a final order modifying the punishment as that of censure.

3. The contention of the petitioner is that the punishment was imposed on 05.08.2009. Whereas the C list was prepared only during the year 2011. At the time of drawing the C list, there is no punishment pending against the petitioner. However, the petitioner was not considered for promotion. The petitioner submitted a representation to the respondent to include the petitioner's name and to promote as Inspector of Police. As per the seniority of appointment, the petitioner was at serial No.372. But the persons who are next to serial No.372, that is from 373 were considered for promotion in the C List prepared during January 2011. Subsequently, the petitioner was promoted as Inspector of Police on 15.06.2012 and now the petitioner is discharging his duties as



W.P.(MD)No.19679 of 2017

Inspector of Police, Kalakad Police Station. But the contention of the petitioner is that if the petitioner's name was included in the C list prepared in the year 2011, he could have been received various service and monetary benefits. Thereafter, on 24.06.2014, the petitioner submitted a representation to the first respondent and the same was rejected by the impugned order, dated 11.02.2016, wherein, it has been stated that the petitioner's name was not considered for the panel in the year 2010-2011 due to the currency of punishment for two years without cumulative effect. In the impugned order, it is stated that the petitioner was included in the C list for promotion as Inspector for the year 2011-2012 and promoted as Inspector of Police and it is also stated that as per G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 24.02.2014, Rule 4(a) was amended, which states that a punishment of censure imposed within a period of one year to the crucial date shall be held against the members of service and his name shall not be considered for inclusion in the approved list. The petitioner stated that the question of considering the censure during check period was considered and held in the judgment rendered by Hon'ble Full



W.P.(MD)No.19679 of 2017

Bench in Deputy Inspector General of Police Vs V. Rani reported in 2011 (3) CTC 129. Without considering the same, the impugned order was passed. Aggrieved over the same, the petitioner has filed this writ petition.

4. The respondents have filed counter affidavit stating that while drawing panel to the post of Inspector of Police for the year 2009-2010, the petitioner was not included because he was awarded with the punishment of stoppage of one year without cumulative effect. G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department, dated 22.02.2014, stated as follows:

“1(HH) Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment”.



W.P.(MD)No.19679 of 2017

In the said Government Order, it has been stated that any punishment imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment. According to the respondents, the Inspector of Police promotion panel for the year 2009-2010, the petitioner is ineligible for said panel. The petitioner was inflicted with the punishment and the crucial date is 01.06.2010. Hence, the respondent submitted that as per the provisions the petitioner is not entitled to. The respondent also relied on the amendments made to rule No 4(a) of the general rules for Tamil Nadu State and Subordinate Services in Schedule VII in part II-A Paragraph II (G.O.Ms.No.22, dated 24.02.2014) read as follows:

“1(ii) if a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to the post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion”.

5. The punishment was imposed on 05.08.2009. As per the



W.P.(MD)No.19679 of 2017

provision of 1(HH), any punishment imposed on a member of service within a period of five years prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. As per the provision of 1(II) if the punishment imposed for delinquencies that were committed five years prior to the crucial date his name shall be considered for promotion. Since the delinquencies were committed within five years period, the name of the petitioner was not included. Hence, the respondents prayed to dismiss the writ petition.

6. Heard Mr.S.C.Herold Singh, learned Counsel appearing for the petitioner and Mr.V.Omprakash, learned Government Advocate (Civil side) appearing for the respondents.

7. Admittedly the punishment of censure was imposed on 05.08.2009. Applying the principles laid down in Rani's case, the check period cannot be imposed on the petitioner. However, the respondents relied on the G.O.Ms.No.22, Personnel and Administrative Reforms (S)



W.P.(MD)No.19679 of 2017

Department, dated 24.02.2014 and submitted that based on the Government Order the petitioner is not entitled to. This plea cannot be accepted since the Government Order had come into effect on 24.02.2014, which is the date the Government Order was issued and retrospective effect cannot be granted to the Government Order. This Court is of the considered opinion that the petitioner's claim would come within the purview of Rani's case, hence the petitioner is entitled to the relief. Therefore, the respondents are directed to grant notional promotion to the petitioner. It is made clear that the petitioner is not entitled to the monetary benefits, but he is entitled only to the pensionary benefits. With the above said direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

28.09.2022

Index : Yes / No
Internet : Yes / No
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To
1. The Director General of Police,

8/10



W.P.(MD)No.19679 of 2017

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Chennai.

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2. The Deputy Inspector General of Police,
Tirunelveli Region,
Tirunelveli District.

S.SRIMATHY, J



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W.P.(MD)No.19679 of 2017

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