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W.P.No.12289

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

W.P.No.12289 of 2011
and M.P.No.2 of 2011

C.Thangaraj
HC-590
Bagalur Police Station,
Krishnagiri District.

...Petitioner

Vs.

1.The Deputy Inspector General of Police,
Salem Range,
Salem.

2.The Superintendent of Police,
Krishnagiri.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in D.O.No.337/2005 C.No.A2/2906/2005 dated 24.03.2005 and quash the same and directing the respondents to restore the petitioner to the post of Head Constable, irrespective of pendency of the Charge sheet laid against the petitioner and others in Crime No.2/AC/2000, dated 18.03.2000 and Special C.C.No.59 of 2004 dated 27.10.2004 on the file of Special Judge-Cum-Chief Judicial Magistrate, Salem.



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For Petitioner : Mr.T.Arulraj
For Respondent : Mr.R.Neethi Perumal
Government Advocate

ORDER

The instant Writ Petition has been filed seeking to quash the order of the second respondent dated 24.03.2005 and direct the respondents to restore the petitioner to the post of Head Constable irrespective of the Charge sheet laid against the petitioner.

2.Heard Mr.T.Arulraj, learned counsel appearing for the petitioner and Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents.

3.Mr.T.Arulraj, learned counsel appearing for the petitioner would submit that the petitioner had joined as Grade – II Police Constable on 17.11.1988 and promoted as Grade-I Police Constable on 01.10.1999 and then he should have been promoted as Head Constable in the year 1998. But he was promoted as an Head Constable by an order dated 09.11.2004 with effect from 28.10.2004. However, the petitioner was arrested on 19.03.2000 on the basis of the complaint filed by one N.Mathivanan along with various other persons. The order impugned was sought to be cancelled since a charge sheet had been laid against the petitioner in Special C.C.No.59 of 2004 on 27.10.2004. He would submit that the criminal case that had been filed in the



aforsaid calendar case was tried by the Special Judge, Salem and by a judgment dated 23.05.2017 he had been acquitted of the offences charged. Further, he would submit that the order of cancellation had been made in the year 2005 whereas the petitioner was promoted as a Head Constable on 28.10.2004 on the pretext that he had been charge-sheeted. Even though he had challenged the said order of cancellation on the ground that he was not served with any notice prior to the issuance of such order in view that he had been acquitted in the criminal case itself, the reason assigned in order of cancellation cannot now stand and therefore, the order of promotion ought to be restored and further benefits ought to be given to the petitioner.

4.He would further submit that the Disciplinary Proceedings initiated by the respondents were quashed by following a Division Bench judgment of this Court of similarly placed persons and therefore, there is no impediment in granting the relief as prayed for by the petitioner. In fact, he would submit that the learned Single Judge while quashing the charge memo had also made it clear that the service benefits due to the petitioner should be granted.

5.Countering his arguments, Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents would submit that the petitioner along with various other persons had involved themselves in corrupt practices for which, a



criminal case had been initiated against them. Against the order of acquittal, the Government had preferred a Criminal Appeal which is still pending on the file of this Court. He would further submit that the upgradation of the petitioner was made on 28.10.2004, whereas the petitioner was charged by a criminal Court on 27.10.2004. This was not brought to the notice of the Authority while granting a general order of upgrading of various Grade – II Police Constables who were upgraded as Head Constables. When it is brought to the notice of the Authority about the charge sheet that is pending on the date when the upgradation was ordered, an order of cancellation had been passed. He would submit that in the peculiar facts of the case, there is no necessity to put the petitioner on notice about the order of cancellation since the order of cancellation itself was not non-est for the reason that the persons against whom criminal cases are pending were not entitled to be upgraded.

6.He would further submit that the Department had preferred an appeal as against the order of the learned Single Judge in W.A.S.R.No.22644 of 2023. He would submit that the Division Bench judgment relied upon by the learned Single Judge to quash the charge memo in the case of the petitioner had also been challenged by the Government in S.L.P.Nos.15883 to 15891 of 2022 and the same is pending before the Hon'ble Apex Court. Therefore, he would submit that quashing of the charge memo had not attained finality and therefore, the same cannot be relied



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upon by the petitioner to substantiate his case.

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7.I have considered the rival submission made by the respective counsel appearing on either side and perused the materials available on record.

8.The petitioner was granted upgradation from the post of Grade – I Police Constable to Head Constable on 28.10.2004 and the same had been cancelled by the order impugned taking note of the fact that on 27.10.2004, the petitioner had been charge-sheeted. A departmental action has also been initiated against which, the petitioner had preferred W.P.No.32256 of 2007 & this Court had dismissed the same by order dated 14.09.2011.

9.As regards the Departmental Proceedings persons, those who were charge sheeted in the criminal case along with the petitioner were also sought to be proceeded departmentally which they had challenged before this Court in a batch of Writ Petitions in W.P.No.11376 of 2012. Pending the said Writ Petitions, the criminal Court had acquitted all the persons charged by its order dated 23.05.2017. Taking note of the said fact, the charge memo against the similarly placed persons had been quashed by the learned Single Judge of this Court by its order dated 25.03.2021.

Aggrieved against the order of quashing, the Government had preferred W.A.No.1071



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of 2022 etc and the Hon'ble Division Bench of this Court by its order dated 21.04.2022 had dismissed the appeal filed by the Government. It is also brought to my notice that the Government had preferred a Special Leave Petition against the said order, however, no stay has been granted by the Hon'ble Apex Court. Taking note of the Division Bench order of this Court, the charge memo in the case of the petitioner had also been quashed by the learned Single Judge in the Writ Petition filed by him & another in W.P.Nos.5253 & 5254 of 2018 by order dated 28.07.2022 which also seems to have been taken by way of Intra Court Appeal filed by the Government and it is still yet to be numbered.

10.Learned Single Judge while allowing the Writ Petition had issued the following directions:

“That the impugned orders in both the writ petitions are hereby quashed. Consequently, the respondent shall pass necessary orders with regard to the service benefits due to these petitioners. However, it is made clear that, insofar as the service benefits to be conferred on the petitioners, all those benefits shall only be given as notional benefits. Such benefits shall be considered as continuity of service or length of service for the purpose of consequential relief and based of which, in respect of the petitioners, who have superannuated, they shall be permitted to retire from service on the date of superannuation and consequently, their retiral and pensionary benefits shall be



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calculated and disbursed.”

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The prayer in the Writ Petition is to set aside the order of cancellation of upgradation on the ground that the petitioner had been charge sheeted in a criminal case. The said reason does not stand any more as the petitioner had been acquitted in the criminal case. Therefore, the order of cancellation would have to go and his order of upgradation would have to be restored. I need not give a specific direction with regard to the same since already a learned Single Judge in the Writ Petition filed by the petitioner challenging the charge memo had issued directions by directing the respondents to pass necessary orders with regard to the service benefits due to the petitioner.

11. In such view of the matter, no further orders are required to be made in this Writ Petition. However, a direction is given to the respondents to comply with the directions issued by the learned Single Judge in W.P.Nos.5253 & 5254 of 2018 within a period of six weeks from the date of receipt of a copy of this order. It is needless to say that the petitioner shall also be upgraded as a Head Constable pursuant to the order dated 28.10.2004.



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12. With the aforesaid directions, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
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To

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1.The Deputy Inspector General of Police,
Salem Range,
Salem.

2.The Superintendent of Police,
Krishnagiri.



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K.KUMARESH BABU, J.

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