



WEB COPY



W.P.No.22859 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No. 22859 of 2016

and

W.M.P.No.19533 of 2016

J.Adiyaman

... Petitioner

Versus

1.The Director General of Police,
Tamil Nadu,
Mylapore, Chennai 600 04.

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

3.The Superintendent of Police,
Dharmapuri District,
Dharmapuri.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, prays to issue a Writ of Certiorarified Mandamus, praying to call for the records comprised in D.O.898/2010 C No.A2/294961/2010 dated 10.11.2010 and the consequential order Na.Ka.No.A2/3220/2011 dated 18.02.2011 on the file of the 3rd respondent, quash the same and consequently direct the respondents to promote the petitioner as special Sub-Inspector of Police with effect from 13.08.2010 along with his batch mates as per order of the 2nd respondent in R.C.No.A3/756/8582/2010 dated 12.08.2010 and D.O.No.693/2010 dated 13.08.2010 of the 3rd respondent along with consequential promotional benefits.



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For Petitioner : Mr.R.Bharanidharan
For Respondents : Mrs.M.Shahjahan
Special Government Pleader

ORDER

This writ petition has been filed to call for the records comprised in D.O.898/2010 C No.A2/294961/2010 dated 10.11.2010 and the consequential order Na.Ka.No.A2/3220/2011 dated 18.02.2011 on the file of the 3rd respondent, quash the same and consequently direct the respondents to promote the petitioner as special Sub-Inspector of Police with effect from 13.08.2010 along with his batch mates as per order of the 2nd respondent in R.C.No.A3/756/8582/2010 dated 12.08.2010 and D.O.No.693/2010 dated 13.08.2010 of the 3rd respondent along with consequential promotional benefits.

2. The case of the petitioner is that he was enlisted as Police Constable Grade-II on 25.10.1984 and his seniority was fixed above PC 1184 and below PC 1221 as per orders made in G.O.Ms.No.844 Home (Police.N) Department dated 03.06.1997 and in D.O.No.91/98(A2/34765/97) dated 27.10.1998 of the Superintendent of Police, Dharmapuri. While the petitioner was serving at Uthangari Police Station, he was issued with a charge memo under Rule 3(b) of the TNPSS (D/A) Rules for having absented from duty



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without leave or permission from the competent authority. The petitioner submitted his medical certificates to justify his leave on the ground of serious illness. Subsequently, the petitioner joined duty. However, though his batch mates were given upgradation much earlier, the petitioner was not considered because of the pendency of the punishment awarded in disciplinary proceedings namely, postponement of increment for two years without cumulative effect, by the 3rd respondent on 01.12.1995. Subsequently, the petitioner filed a writ petition in W.P.No.16377 of 2010 seeking direction from this Court to direct the officials to consider his application in the nature of mercy petition and this Court allowed the writ petition directing the 1st respondent to consider the mercy petition/representation and pass orders on merits within a period of eight weeks. In pursuance to the said order, the 1st respondent, by order dated 18.10.2010 in Rc.No.407/137084/AP.2(2)/2010, had modified the punishment from “postponement of increment for two years to “Black Mark”. It is the specific case of the petitioner that despite the punishment being modified to “black mark”, he was not considered for advancement on par with his batch mates. According to the writ petitioner, the action of the respondents was wholly unjustified and arbitrary.

3. The 3rd respondent has filed a counter setting out the facts leading to

<https://www.mhc.tn.gov.in/judis> the award of punishment being modified as “black mark” and also



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specifically taking a stand that the petitioner's name was not considered for inclusion in the approved list because any punishment before actual promotion or appointment would be held against the said person. Therefore, the respondents sought for dismissal of the petition.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

5. The learned counsel for the petitioner invited the attention of this Court to the judgment of the Hon'ble Full Bench of this Court in the case of ***Deputy Inspector General of Police, Thanjavur Range, Thanjavur Vs V.Rani*** reported in ***2011 3CTC 129***. The ratio laid down by the Hon'ble Full Bench of this Court was also specifically followed in W.P.No.13436 of 2011 dated 17.06.2011. That was also a case where the punishment imposed was “black mark”. However, this Court following the ratio laid down by the Hon'ble Full Bench, held that the embargo put on the right of the Government Servants for being considered for promotion for further period after the period of minor punishment is either in the name of check period, “one year in the case of censure and five years in the case of other punishments” was illegal and impermissible under statutory rules.



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6. The present facts are also identical to the facts of the case in W.P.No.13436 of 2011 where this Court, following the ratio laid down by the Hon'ble Full Bench of this Court, held that the petitioner was entitled to seek promotion in the light of the pronouncement of the Hon'ble Full Bench decision.

7. Accordingly, this Court sets aside the impugned order passed and remits the matter to the 3rd respondent to consider the petitioner's promotion in the light of the ratio laid down by the Hon'ble Full Bench reported in 2011 3 CTC 129 and pass fresh orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

8. With the above direction, this writ petition is disposed of. No cost. Consequently, connected miscellaneous petition is closed.

12.06.2023

Index : Yes / No
Internet: Yes
Speaking/non speaking order
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P.B.BALAJI, J.,

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To

- 1.The Director General of Police,
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- 2.The Deputy Inspector General of Police,
Salem Range,
Salem.
- 3.The Superintendent of Police,
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