



WEB COPY

W.P.No.7004 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.08.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.7004 of 2017
and WMP Nos.7623 and 7624 of 2017

G.Kanakaraj

... Petitioner

Vs.

- 1 The State of Tamil Nadu
Rep. by its Secretary to Government Home
(Courts VI) Department Fort St. George
Secretariat Chennai 600 009
- 2 The Director of Prosecution
O/o. The Director of Prosecution Tamil Nadu
Slum Clearance Board II Floor No.t
Kamarajar Salai Chennai 600 005
- 3 The Chairman
Tamilnadu Public Service Commissioner II
Floor Block 5 Sastri Bhavan Chennai 600
006
- 4 S.Ravichandran
Additional Public Prosecutor/Deputy Legal
Advisor Vigilance and Anti-Corruption
Chief Judicial Magistrate Court/Special
Judge Cuddalore.
- 5 R.Manimegalai
Additional Public Prosecutor Chief Judicial
Magistrate Court/Special Judge Namakkal.
- 6 R.Murugan
Assistant Public Prosecution Tiruvannamalai.



7 K.Sakthivel
Additional Public Prosecutor Chief Judicial
Magistrate Court Perambalur.

8 R.Sekar Durai
Assistant Director of Prosecution Nagercoil.

9 E.Lakshmipathy
Additional Public Prosecutor Chief Judicial
Magistrate Court Thiruvallur.

10 T.Panneerselvam
Additional Public Prosecutor/Deputy Legal
Advisor Vigilance and Anti-Corruption
Special Judge/Special Court Chennai

.... Respondents

Prayer: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the in G.O.Ms.No. 158 dated 27.02.2017 in Home (Courts VI) Department of the 1st Respondent herein and the order of appointment dated 28.02.2017 in RC. No. 665/DOP/A1/ 2016 of the 2nd Respondent herein and quash the same and consequently direct the respondent 1 to 2 herein to appoint the petitioner as Deputy Director of Prosecution with effect from 27.02.2017

For Petitioner : Ms.Meah Rukmani
for Mr.A.Ramkumar
For Respondents : Mr.S.Ravikumar
Special Government Pleader – R1 & R2
Mr.R.Karthikeyan – R3
Mr.s.Thiruvengadam – R4, R5, R7, R9&R10
No appearance – R6 & R8

ORDER

This Writ Petition has been filed in the nature of Writ of Certiorarified
Mandamus seeking records relating to G.O.Ms.No.158 dated 27.02.2017 in Home



(Courts VI) Department of the 1st Respondent and the order of appointment dated 28.02.2017 in RC. No. 665/DOP/A1/ 2016 of the 2nd Respondent herein and quash both the orders and consequently direct the first and respondents to appoint the petitioner as Deputy Director of Prosecution with effect from 27.02.2017.

2. The petitioner G.Kanakaraj had been appointed as Assistant Public Prosecutor Grade II by the Tamil Nadu Public Service Commission by order dated 31.05.1996 vide G.O.Ms.No.776 Home (Courts VI) Department. He was then posted as Assistant Public Prosecutor Grade I in various Judicial Magistrate Courts. He was then promoted as Additional Public Prosecutor in Chief Judicial Magistrate Court, Tiruchirappalli by order dated 28.03.2011 vide G.O.2D No.134 of Home (courts VI) Department. He was then transferred as Assistant Director of Prosecution by order dated 19.02.2013.

3. At that time, the Department of Prosecution had called for panel of Assistant Directors of Prosecution/Additional Public Prosecutor for further promotion as Deputy Director of Prosecution by letter dated 31.07.2013. The petitioner's name was also included in the panel and the Government had forwarded the said panel for final approval to the High Court.

4. It is contended that the petitioner was not appointed as Deputy Director of Prosecutions but the 4th to 10th respondents had been so appointed. Contending that the petitioner should also have been considered for such appointment and questioning the said appointment of the aforesaid respondents and the rejection of the name of the petitioner herein, this Writ Petition has been filed.



5. A counter affidavit had been filed on behalf of the first and second respondents, wherein it had been stated that a panel had been drawn for further promotion to the post of Deputy Director of Prosecutions and the petitioner's name was also forwarded to the High Court. It had been stated that the appointment is subject to the final approval by the Hon'ble the Chief Justice as contemplated under Section 25A of the Code of Criminal Procedure.

6. It had also been stated that the Registrar General of the High Court by communication dated 20.07.2016 had forwarded a list of those prosecutors who had been so approved by the Hon'ble the Chief Justice and it was stated that the name of the petitioner was not found. It was also contended that it is not for the respondents to question that particular approval or rejection by the Hon'ble the Chief Justice. It had therefore been contended that the respondents had no role in the final approval and that therefore the petitioner's request cannot be granted and the Writ Petition should be dismissed.

7. The facts are clear. The petitioner's name had been forwarded by the Government for further consideration to the post of Deputy Director of Prosecution. In this connection Section 25A of the Code of Criminal Procedure would be relevant and is extracted below:

25A. Directorate of Prosecution.—(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such



appointment shall be made with the concurrence of the Chief Justice of the High Court.

8. It is seen that the State Government should establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as the Government thinks would require for effective prosecution of the criminal cases in the State of Tamil Nadu.

9. The petitioner's name was also included in the panel by the respondents. Therefore the respondents cannot be now blamed for the non-appointment of the petitioner herein. They can only forward the names to the Court. Thereafter, as seen from Section 25A (2), extracted above, the appointment can be made only with the concurrence of the Hon'ble the Chief Justice of the High Court.

10. The matter had been placed before the Hon'ble the Chief Justice and the respondents have received a communication from the Registrar General enclosing a list of names who had been so concurred by the Hon'ble the Chief Justice to be appointed as Deputy Directors of Prosecution. The name of the petitioner was not one of them.

11. It is not however for this Court to question the wisdom of that particular concurrence or non-concurrence given by the Hon'ble the Chief Justice. It is also not within the scope of the Government to raise issues on this aspect. The final approval and the concurring authority is the Hon'ble Chief Justice.

12. If the petitioner's name was not found, then, the first and second respondents cannot be called upon to include the name of the petitioner as sought for

C.V.KARTHIKEYAN,J.



in the Writ Petition and also interfere with the concurrence given by the Hon'ble the Chief Justice.

WEB COPY

13. In light of the above, this Writ Petition is misconceived and the same stands dismissed, as the first and second respondents cannot grant the relief sought for by the petitioner. No costs. Connected Miscellaneous Petitions are also dismissed.

sl

30.08.2023

Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No

To

- 1 The State of Tamil Nadu
Rep. by its Secretary to Government Home
(Courts VI) Department Fort St. George
Secretariat Chennai 600 009
- 2 The Director of Prosecution
O/o. The Director of Prosecution Tamil Nadu
Slum Clearance Board II Floor No.t
Kamarajar Salai Chennai 600 005
- 3 The Chairman
Tamilnadu Public Service Commissioner II
Floor Block 5 Sastri Bhavan Chennai 600
006

W.P.No.7004 of 2017
and WMP Nos.7623 and 7624 of 2017