



W.P.No.18231 of 2011

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|               |   |            |
|---------------|---|------------|
| Reserved on   | : | 27.03.2024 |
| Pronounced on | : | 29.04.2024 |

**CORAM**

**THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN**

**W.P.No.18231 of 2011**

R.Perumalswamy

...Petitioner

Vs.

1.The Principal Secretary to Government,  
Home (Police 1A) Department,  
Fort St.George, Chennai – 9.

2.The Director General of Police,  
Mylapore, Chennai – 4.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1<sup>st</sup> respondent in connection with the impugned order passed by him in letter No.D.No.1227/Home(Pol.1A) Department dated 10.12.2010 and quash the same and further direct the respondents to consider the claim of the petitioner for promotion as Superintendent of Police notionally, in the panel of the year 2008-09 published in GO.Ms.No.497 Home (Pol.1A) Department dated 24.06.2009 and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani, Senior Counsel



W.P.No.18231 of 2011

for Mr.M.Muthappan

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For Respondents : Mr.Haja Nazirudeen, AAG  
asst by Mr.D.Gopal, Government Advocate

**ORDER**

This Writ Petition is filed calling for the records of the 1<sup>st</sup> respondent in connection with the impugned order passed by him in letter No.D.No.1227/Home(Pol.1A) Department dated 10.12.2010 and quash the same and further direct the respondents to consider the claim of the petitioner for promotion as Superintendent of Police notionally, in the panel of the year 2008-09 published in GO.Ms.No.497 Home (Pol.1A) Department dated 24.06.2009 and grant him all consequential service and monetary benefits.

2.The case of the petitioner is that, petitioner entered into the Service in Police Department in the year 1973 as Sub-Inspector of Police. He was promoted as Inspector of Police in the year 1983 and subsequently promoted as Deputy Superintendent of Police, Category -I in the year 1998 and as Additional Superintendent of Police on 07.07.2006. He retired on attaining the age of superannuation on 31.03.2009. Petitioner is the recipient of Chief Minister's medal for meritorious service in the year 1992, Governor's medal for vigilance in the year 2006 and President's Police Medal for meritorious service in the year 2007. Petitioner has attained seniority and merit for consideration of his



W.P.No.18231 of 2011

claim for the promotion as Superintendent of Police ( non- cadre) for the panel year 2008-09. The crucial date for the preparation of the panel was 01.06.2008.

The estimated vacancy in the post of Superintendent of Police ( non-cadre) for the year 2008-09 has been worked out as 15. The Director General of Police has sent a communication to the 1<sup>st</sup> respondent on 13.06.2008, 25.10.2008 and 18.12.2008 for approval of the estimated vacancy. In a proposal consisting of the names of 30 eligible Additional Superintendent of Police, Category -I, petitioner's name was recommended in Sl.No.12 out of 30 names.

2.1. A batch of Writ Petitions including W.P.No.35176 of 2008 was filed before this Court, seeking direction to promote the petitioners therein as Additional Superintendent of Police on par with their seniority fixed earlier in pursuance of G.O.Ms.No.1252 Home ( Pol.II) Dept.dated 29.04.2004. A Writ Petition was filed challenging the order of the Government granting relaxation in favour of some of the police personnel who were involved in special task force operation and who have been granted accelerated promotion as a one time measure. This Court granted interim injunction in M.P.No.03 of 2008 in W.P.No.35716 of 2007 restraining the Government from giving promotion to the juniors in the cadre of Additional Superintendent of Police to the post of Superintendent of Police, pending disposal of the Writ Petition.



W.P.No.18231 of 2011

WEB COPY 2.2. On 02.02.2009 and on 02.03.2009, a list was sent to the Government i.e., panel for promotion to the post of Superintendent of Police, in which petitioner's name was included in Sl.No.12. The interim injunction petition in MP.No.3 of 2008 in W.P.No.35716 of 2007 was dismissed by this Court on 20.04.2009. However, petitioner had retired on attaining the age of superannuation on 31.03.2009.

3. It is the submission of the learned counsel for the petitioner that, crucial date for the preparation of the panel for the post of Superintendent of Police was 01.06.2008. Panel was prepared and sent to the Government on 13.06.2008, 25.10.2008 and 18.12.2008. However, Government has not taken immediate steps for promoting the eligible candidates. The interim injunction order in W.P.No.35716 of 2007 was granted only on 12.11.2008. Had the Government considered the case of persons who are due to retire soon, petitioner would have been promoted as Superintendent of Police ( Non Cadre). Due to the delayed action and insensitiveness shown by the Government, petitioner had lost his promotion. Thus, he prayed for promoting him as Superintendent of Police notionally with attendant benefit.



W.P.No.18231 of 2011

4.In response, the learned Government Advocate submitted that, due to the stay granted in M.P.No.03 of 2008 in W.P.No.35716 of 2007, the panel could not be approved. Only after the stay petition was dismissed on 20.04.2009, panel was approved on 24.06.2009. Meanwhile, petitioner got retired and therefore, he could not be promoted as Superintendent of Police ( Non Cadre).

4.1.It is his further submission that the estimated vacancy in the post of Superintendent of police (Non cadre) for appointment by promotion for the year 2008-09 was 8. The Government of India have determined the vacancies for recruitment by promotion through the Tamil cadre IPS during 2008 as 10. As such, 10 Non Cadre Superintendent of Police would be appointed to Indian Police Service against the vacancies determined for the 2008 leaving 10 vacancies in Tamil Nadu Police Service in the rank of Superintendent of Police. Therefore, 10 additional Superintendent of Police have to be promoted as Superintendent of Police, in the existing vacancies and thus estimated vacancy in the post of Superintendent of Police (Non-cadre) for the year 2008-09 was arrived, if approved by the Government, as 17. By a letter in Letter No.3(D) No.13, Home (Police.1A) Department, dated 02.03.2009, the Government approved the estimate vacancies for the post of temporary Superintendents of



W.P.No.18231 of 2011

Police (Non-cadre) by appointment through promotion for the year 2008-09 as

15, subject to the condition that the 10 vacancies in the cadre post should be filled up on or before 31.05.2009. The panel was approved and a Government Order was passed in G.O.Ms.No.497, Home (Pol.1A) Department, dated 24.06.2009. On 31.03.2009, there were no vacancies available for promoting the petitioner as Superintendent of Police (Non-cadre), even assuming that panel was approved prior to 31.03.2009. Only 5 persons topping the seniority were temporarily promoted through G.O.Ms.No.357, Home Department, dated 28.04.2009, in view of the exigency i.e., due to the ensuing election. Even petitioner immediate seniors who were to retire between March 2009 to October 2009 were not considered for promotion. The reason is there were no vacancies. Thus, learned counsel for the respondent submitted that petitioner is not entitled for promotion.

5.In reply, learned counsel for the petitioner submitted that, in the letter addressed by the then Director General of Police in Rc.No.050671/GB I(2)/2010, dated 22.07.2010, it was clearly stated that the estimated vacancies for the year 2008-09 was 15. During the meeting held on 02.02.2009, the police Establishment Board considered the names of the eligible Additional Superintendents of Police (Cat.1) and their suitability for inclusion in the panel.



W.P.No.18231 of 2011

Accordingly, petitioner's name was also included in the panel of 36 in Sl.No.12.

The Government approved the estimated vacancy in letter dated (3D) No.13, dated 02.03.2009 as 15. In G.O.Ms.No.497, Home (pol, 1A) Department, dated 24.06.2009 approved the temporary panel of ADSP fit for promotion as Superintendent of Police (Non-Cadre) for the year 2008-09 as 14. Thus, he submitted that, had the Government acted with speed, petitioner would have been promoted as Superintendent of Police (Non-cadre) before the date of his retirement. The inaction on the part of the Government is the cause of his denial of promotion.

6.Considered the rival submissions and perused the records.

7.From the records produced and submissions made by the learned counsel for the parties, it is seen that petitioner was not promoted as Superintendent of Police (Non-cadre), for the reason that, before the panel was approved and Government Order was issued in GO.Ms.No.497 Home (Pol.1A) Department dated 24.06.2009, he retired from service on attaining the age of superannuation on 31.03.2009.

7.1.It is also not in dispute that in a Writ Petition in W.P.No.35716 of



W.P.No.18231 of 2011

2007, where the petitioner is not a party, order of stay restraining the Government from giving promotion to the juniors of the petitioners therein, was passed in M.P.No.3 of 2008. In view of the pendency of this Writ Petition and grant of stay, the Government was not in a position to process the promotion of Additional Superintendent of Police to post o Superintendent of Police (Non-cadre). The letter of the then Director General of Police in Rc.No.64302/GB1(2)/2008, dated 13.06.2008 shows that, the estimated vacancy for the post of Superintendent of Police (Non-cadre) for appointment by promotion for the year 2008-09 was arrived at 8. Only on the basis of this 8 vacancies, the top 5 in the list were promoted due to the ensuing election by invoking Rule 39(a)(i) General Rules under the Tamil Nadu State and Subordinate Service Rules. The Government of India determined the vacancies for Indian Police Service by promotion through Tamil Nadu cadre IPS in the year 2008 as 10. If those 10 IPS vacancies are filled up, there will be 10 vacancies in the cadre of Superintendent of Police (Non-cadre). Thus, the total vacancies for 2008-09 was arrived at 17, subject to approval of the Government. Unfortunately for the petitioner, due to litigation, the list got approved only on 26.04.2009. As on 13.06.2008, only 8 vacancies were available. Out of these vacancies, 5 were filled up through proceedings in G.O.Ms.No.357, Home Department, dated 28.04.2009. That promotion was also temporary. In the



W.P.No.18231 of 2011

panel, petitioner's name was found in Sl.No.12. From the records produced, it is clear that there was no vacancy available for promoting the petitioner as Superintendent of Police (Non-cadre) till the date of his retirement on 31.03.2009. Only if there is a vacancy, petitioner can make a legal claim for the promotion or if any one of his junior is promoted ahead of him, petitioner can seek the relief. There was no vacancy available, therefore, petitioner cannot claim that he should be promoted a Superintendent of Police (Non-cadre).

8.This Court finds no merits in the claim of the petitioner. Therefore, the impugned order passed by the 1<sup>st</sup> respondent in letter No.D.No.1227/Home(Pol.1A) Department dated 10.12.2010 cannot be quashed. Accordingly, this Writ Petition is dismissed. No costs.

**29.04.2024**

Index:Yes/No  
Speaking/Non speaking order  
gd

**G.CHANDRASEKHARAN.J.,**

gd

To

1.The Principal Secretary to Government,



W.P.No.18231 of 2011

Home (Police 1A) Department,  
Fort St.George, Chennai – 9.

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2.The Director General of Police,  
Mylapore, Chennai – 4.

**Pre-Delivery Order in**  
W.P.No.18231 of 2011

29.04.2024