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W.P.No.34540 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.09.2024
Pronounced on	28.10.2024

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.34540 of 2015

R.Paramasivam

... Petitioner

Vs.

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

2. The Director General of Police Tamil Nadu,
Dr. Radhakrishnan Salai,
Mylapore, Chennai – 4.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned order passed in ROC No. 152469/GBII(2)/2012 dated 21.06.2013 and quash the same and direct the respondents to include the name of the petitioner in the panel of Inspector of Police fit for promotion as Deputy Superintendent of Police, Category-I for the year 2009-10 and promote him as Deputy Superintendent of Police, w.e.f. 05.10.2010 and grant him all consequential service and monetary benefits.



W.P.No.34540 of 2015

WEB COPY

For Petitioner : Mr.K.Venkataramani,
Senior Counsel
for Mr. M.Muthappan

For Respondents : Mr. S.John J.Raja Singh,
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the order in ROC No. 152469/GBII(2)/2012 dated 21.06.2013 passed by the second respondent, and direct the respondents to include the name of the petitioner in the panel of Inspector of Police fit for promotion as Deputy Superintendent of Police, Category-I for the year 2009-10 and promote him as Deputy Superintendent of Police, with effect from 05.10.2010 and grant him all consequential service and monetary benefits.

2. The learned Senior Counsel appearing for the petitioner would contend that a person's claim for promotion can be deferred on three grounds, namely: formulated charges, currency of punishment, and when charge-sheeted in a criminal case. It is further contended by the learned



W.P.No.34540 of 2015

Senior Counsel for the petitioner that, once a person is exonerated from the charges, then his claim should be considered within 15 days from the date of exoneration, and he should be promoted retrospectively with all consequential service and monetary benefits on par with his immediate junior. The learned Senior Counsel for the petitioner would also contend that though the charge against the petitioner was pending on crucial date, when the subsequent panel was published on 05.10.2010, the punishment imposed against him was set aside by the Appellate Authority in the proceedings dated 26.07.2012. Hence, the learned Senior Counsel would contend that the petitioner is entitled to be considered for promotion for the panel year 2009-2010.

2.1. The learned Senior Counsel for the petitioner would further contend that, though the petitioner obtained an order directing the respondents to consider his representation, the respondents have rejected his representation on the erroneous ground that, on the crucial date, the charge against the petitioner was pending. It is the contention of the learned Senior Counsel for the petitioner that such rejection is contrary to the settled legal principle. Hence, prayed to allow this Writ Petition.



W.P.No.34540 of 2015

WEB COPY

3. Per contra, the learned Additional Government Pleader appearing for the respondents would vehemently contend that during the panel year 2009-2010, on the crucial date, the petitioner was charge-sheeted, and subsequently, the punishment of censure was ordered against him. Only during the panel year 2011-2012 his punishment was set aside, but there were certain other charges. He would further contend that all the impediments against the petitioner were cleared only during 2016-2017, after that, he was considered for promotion temporarily for the post of Deputy Superintendent of Police, and he had officiated as Deputy Superintendent of Police on 07.02.2018. Hence, it is the contention of the learned Additional Government Pleader that the petitioner cannot have any retrospective promotion.

3.1. It was also the submission of the learned Additional Government Pleader that, apart from the punishment of censure, which was set aside on 26.07.2012, the petitioner was subsequently imposed with punishments in P.R. No. 129/2012 dated 21.02.2014 and in P.R. No. 135/2013. Because of



W.P.No.34540 of 2015

those currency of subsequent punishments, his name was not considered even for the subsequent panel. However, after completion of all impediments and the check period, he was duly considered for promotion. Therefore, the learned Additional Government Pleader would contend that, the petitioner's prayer for retrospective promotion is without any merits.

4. I have given anxious consideration to the submissions made on either side.

5. The short point to be considered in the present Writ Petition is, whether the petitioner was eligible to be included in the panel 2009-2010 for the promotional post of Deputy Superintendent of Police.

6. While looking at the impugned order dated 21.06.2013, the request of the petitioner was denied on the sole ground that the petitioner's order of punishment of censure, was set aside belatedly, on 02.08.2011, and at that point of time, he was facing another charge under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, in PR.129 of 2012 at Kaniyakumari District. Therefore, the fact remains, during



W.P.No.34540 of 2015

2009-2010 panel, the petitioner was not considered for promotion on the basis of the punishment of Censure in PR.No.69 of 2010. It is an admitted fact that such punishment of Censure was later set aside vide order dated 26.07.2012. In such view of the matter, the impediment projected against the petitioner, for consideration in the panel period (11.11.2009 to 10.11.2010), becomes dampened and attenuated.

7. No doubt, subsequently, within a short span of time more specifically, even prior to the order of punishment passed in PR.No.69 of 2010 was set aside, the petitioner again was issued with yet another charge memorandum, which again resulted in yet another punishment of Censure on 02.08.2011. As such, the issue to be considered is: when the petitioner was not considered for the panel year 2009-2010 on the ground of currency of punishment in PR. No. 69 of 2010, and later on when the same was set aside, whether the subsequent delinquency arising after the panel period, namely after the crucial date i.e., 01.06.2009, has any bearing in the promotion of previous year's panel.

8. In this regard, the learned Senior Counsel for the petitioner relied



W.P.No.34540 of 2015

upon the judgment of the Hon'ble Supreme Court of India in the case of ***Delhi Jal Board Vs. Mahinder Singh*** reported in (2000) 7 SCC 210. The ratio of the above judgment is, if any promotion was deferred based upon a disciplinary enquiry or punishment, and subsequently if the first punishment was set aside, then, mere pendency of another departmental enquiry for the subsequent delinquency qua after the crucial date, would in no way affect the benefit of the assessment of the first departmental promotional Committee, which deferred consideration in the previous panel year. The relevant portion of the judgment of ***Delhi Jal Board's*** case (cited supra), which reads as follows:-

“5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in



W.P.No.34540 of 2015

his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench.”

9. The ***Delhi Jal Board's*** case (cited supra) has been subsequently followed by the Hon'ble Division Bench of this Court in ***W.A. No. 123 of 2015, dated 10.02.2015 [Director General of Police Vs. Saravanan.R]***, and the learned Single Judge of this Court, in the case of ***K.Sivanandam vs. State of Tamil Nadu and Ors.***, reported in ***MANU/TN/7084/2023***. In the case in hand, the only impediment against the petitioner to be included in the panel of Inspector of Police fit for promotion to the Deputy Superintendent of Police, for the year 2009-2010, was the currency of punishment imposed in PR. No. 69 of 2010.

10. Admittedly, this said punishment was subsequently set aside on 26.07.2012. In this scenario, to based upon the ratio of the ***Delhi Jal Board's*** case (cited supra), there are absolutely no impediments against the petitioner for being considered in the panel year 2009-2010 for promotion to the post



W.P.No.34540 of 2015

of Deputy Superintendent of Police.

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11. Though there is a delay in filing the instant Writ Petition, considering the peculiar circumstances of this case, as well as the fact that the petitioner has superannuated from service, this Court is of the view that the delay could not deter this Court from ordering in favour of the petitioner. Hence, I find grounds to interfere with the impugned order dated 21.06.2013.

12. In the result, this Writ Petition is allowed, directing the second respondent to notionally promote the petitioner to the post of Deputy Superintendent of Police with effect from 05.10.2010 also directed to give him with consequential benefits. It is made clear that, the petitioner would be eligible to have monetary benefits on and from the actual date of officiating the post of Deputy Superintendent of Police. No costs.

28.10.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes



WEB COPY



W.P.No.34540 of 2015

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WEB COPY



W.P.No.34540 of 2015

C.KUMARAPPAN, J.

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W.P.No.34540 of 2015

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