



WEB COPY



W.P.No.10714 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.10714 of 2021

P.Aruchamy

... Petitioner

Vs.

1.The State of Tamil Nadu Rep by its
Secretary to Government,
Home (Police IV) Department,
Secretariat, Chennai 600 009.

2.The Director General of Police,
Mylapore, Chennai 600 004.

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

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to consider the claims of the petitioner and promote the petitioner as Deputy Superintendent of Police on par with junior by including his name in the panel for the year 2018-19 and grant all consequential benefits.

For Petitioner : Mr.A.R.Suresh for Mr.K.Arumugam



WEB COPY



W.P.No.10714 of 2021

For Respondents : Mr.T.Chezhiyan, AGP

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus, to direct the respondents to consider the claim of the petitioner and promote him as Deputy Superintendent of Police on par with his junior by including his name in the panel for the year 2018-19 and grant all consequential benefits.

2. Heard Mr.A.R.Suresh, learned counsel for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents.

3. When the petitioner was working as Inspector of Police, was imposed with the punishment of stoppage of increment of three months without cumulative effect by the order of the Superintendent of Police, Tiruppur dated 15.06.2015. He was also imposed with the another punishment of stoppage of increment for one year without cumulative effect by the order of the DIG of Police on 22.06.2015. The above punishments were implemented and thereafter, the petitioner's annual



W.P.No.10714 of 2021

increments were restored.

WEB COPY

4. The respondents have drawn a panel fit for promotion to the post of Deputy Superintendent of Police for the year 2018-19. The petitioner's name was not included in the said panel even though his juniors were included. When enquired in the office, he came to know that the punishment of stoppage of increment is covered within five years check period and hence his name has not been included. The petitioner had given a representation to the second respondent to include him in the panel but it was not considered.

5. The learned counsel for the petitioner submitted that the check period, which would stall the promotion even if there is no currency of punishment has been prescribed in the Government Orders issued in Government Letter No.248, P & AR Department, dated 20.10.1997 and G.O.Ms.No.22, P & AR Department, dated 24.02.2014 and they were set aside by this Court in its order passed in W.A.(MD).No.315 of 2010 dated 27.04.2011. Even though the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 was enacted subsequently and the



W.P.No.10714 of 2021

check period was reintroduced, that cannot be given effect retrospectively.

6. The learned Additional Government Pleader for the respondents submitted that the first punishment was implemented from 01.04.2016 to 30.06.2016 and the said five years period is from 01.06.2013 to 31.05.2018. Hence the petitioner's name was not included for the years 2018-19. However, his name has been included in the subsequent panel.

7. No doubt the petitioner has suffered stoppage of increment and the said punishment of stoppage of increment was over by 15.09.2015. However, the petitioner's name was not included since it fell within five years check period. However, the Government Order which was issued for enforcing the check period of five years if the Government Servant was punished has been challenged and it was dealt by the Full Bench of this Court in the case of ***Deputy Inspector General of Police & Another Vs. V.Rani, reported in (2011) 4 MLJ 1 (FB)***, wherein it is held as under:

"28 (5). Consequently, the embargo put on the right



W.P.No.10714 of 2021

WEB COPY

of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check-period' viz., one year in the case of censure and five years in the case of other minor punishments is illegal and impermissible under the statutory rules."

8. However it is claimed by the respondents that the check period has been introduced once again in the subsequent Act. But however in the judgment held in W.A.No.3889 of 2019, it has been decided that the Tamil Nadu Government Servants Conditions and Service Act, 2016 would apply only prospectively and hence it will not take away the rights of those employees whose punishment has already been over. No doubt, the petitioner has suffered punishment only in the year 2015. the currency of punishment would have been over on 15.09.2016 itself.

9. Even though the revised Act has reintroduced the check period, that cannot be given with any retrospective effect as the punishment of stoppage of increment that was imposed against the petitioner was prior to the Act came into force. Hence, the petitioner will not come under the



W.P.No.10714 of 2021

embargo of five years check period. However, the petitioner has sent a representation in this regard and that has not been considered so far. In view of the above discussion, the respondents have got the obligation to consider the representation of the petitioner and pass orders.

10. In the result, this Writ Petition is disposed and the respondents are directed to consider the representation of the petitioner submitted in this regard and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. No costs.

25.03.2024

Index : Yes /No
Internet : Yes/No
Speaking / Non-speaking
Neutral Citation : Yes / No
gsk



W.P.No.10714 of 2021

WEB COPY

- To
- 1.The Secretary to Government,
Home (Police IV) Department,
Secretariat, Chennai 600 009.
 - 2.The Director General of Police,
Mylapore, Chennai 600 004.
 - 3.The Superintendent of Police,
Thiruppur, Thiruppur District.



WEB COPY



W.P.No.10714 of 2021

R.N.MANJULA, J.

gsk

W.P.No.10714 of 2021

25.03.2024