

W.P.No.30994 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.30994 of 2015

Tmt.Shantha Ebenesan,
Joint Director of Prosecution (Retired),
Flat No.S-1, Chin Mudra Apartment,
United India Colony,
First Cross Street,
Kodambakkam, Chennai – 24.

... Petitioner

Vs.

The Government of Tamil Nadu,
Represented by its Principal Secretary to Government,
Home (Courts-VI) Department,
Secretariat, Chennai – 600 009.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Respondent / Government relating to Letter No.64694/Cts.VI/2013-3, Home (Courts-VI) Department dated 29.09.2014, to quash the same and to issue consequential directions to the Respondent / Government to consider the claim of the Petitioner for notional promotion as Director of Prosecution with effect from 26.11.2009 and promote her notionally as such with consequential monetary benefits including higher pensionary benefits.



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For Petitioner : Mr.G.Amalraj
for Mr.G.Punniyakotti

For Respondent : Mr.G.Prassanna
Government Advocate

ORDER

The Petitioner had retired as a “Joint Director of Prosecution” on 31.03.2010 after serving for about 30 years as a Law Officer of the Government of Tamil Nadu as “Assistant Public Prosecutor”, Grade-II, Grade-I, “Additional Public Prosecutor”, “Deputy Director of Prosecution”, “Special and Public Prosecutor in Vigilance and Anti-Corruption”, Crime Branch-Criminal Investigation Department (CBCID) in various Courts in the state of Tamil Nadu.

2. It is the case of the Petitioner that the Petitioner was entitled to be promoted as a “Director of Prosecution” in terms of Section 25-A of the Code of Criminal Procedure, 1973, inserted vide the Central Act 25 of 2005, which came into force on 23.06.2005.

3. Learned counsel for the Petitioner placed reliance on the decision of the Division Bench of the Madurai Bench of this Court in **S.Thamizharasan Vs. The State of Tamil Nadu, Represented by Secretary to Government and**



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others in W.P (MD).No.222 of 2009 wherein, the Court vide Order dated 26.11.2009 had declared the appointment and continuation of the 3rd Respondent therein namely N.Chanbagaraman in the post of “Director of Prosecution” as illegal, void, unconstitutional and violative of the Rules governing the appointment of the “Director of Prosecution” as per **G.O.Ms.No.232, Home Police Department dated 17.03.2005.**

4. Specifically, reference was made to Paragraph 36 from the aforesaid decision of the Division Bench of the Madurai Bench of this Court which reads as under:-

“36. In view of the foregoing discussions, we have no hesitation to hold that the appointment of a Police Officer as Director of Prosecution is contrary to Section 25-A of the Code of Criminal Procedure, 1973, and so, the same is liable to be quashed. In the case on hand, the second respondent was the Director of Prosecution when this Writ Petition was filed. Recently, he has been transferred and in his place, the third respondent has been posted. Though the third respondent is a Law Graduate, admittedly, he does not satisfy the qualification as prescribed in Section 25-A of the Code, and further, his appointment was not made with the concurrence of the Hon'ble Chief Justice of this Court. So, his appointment is liable to be set aside.

*37. In the result, the Writ Petition is allowed; **the appointment of the third respondent as Director of Prosecution, is set aside and the Government is at liberty to appoint Director of Prosecution and Deputy Directors***



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of Prosecution strictly in accordance with Section 25-A of the Criminal Procedure Code. No costs. Consequently, connected Miscellaneous Petition is closed. ”

5. It is submitted that despite several representations by the Petitioner for considering the Petitioner for promotion to the post of “Director of Prosecution” pursuant to the above amendment by way of insertion of Section 25-A of the Code of Criminal Procedure, 1973, the Respondent failed to promote the Petitioner as a “Director of Prosecution”. It is stated during the interregnum, the Petitioner had also attained the age of superannuation on 31.03.2010.

6. Since the Petitioner had already attained the age of superannuation on 31.03.2010, the learned counsel for the Petitioner would submit that the Petitioner would be entitled for notional promotion to the post of “Director of Prosecution” with effect from the date of the decision of the Madurai Bench in **S.Thamizharasan Vs. The State of Tamil Nadu, Represented by Secretary to Government and others** in W.P (MD).No.222 of 2009 vide Order dated 26.11.2009.

7. Learned Government Advocate for the Respondent on the other hand would submit that pursuant to aforesaid Order dated 26.11.2009 of the Madurai Bench of this Court in W.P.(MD) No.222 of 2009, the Government had issued **G.O(Ms) No.618, Home (CTS.VI) Department** dated **27.08.2013**, whereby

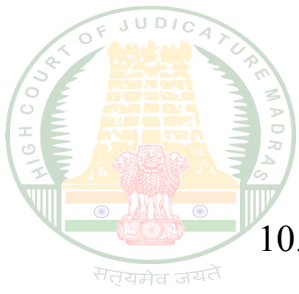


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about 15 persons were appointed as “Director of Prosecution”, “Joint Director (Administration)” and “Deputy Directors of Prosecution”.

8. It is further submitted that the Order dated 26.11.2009 of the Division Bench of the Madurai Bench of the Madras High Court could not be complied with inasmuch as the bill (LA Bill No.33 of 2006) was passed by the Tamil Nadu Legislative Assembly on 02.09.2006 by omitting Section 25-A of the Code of Criminal Procedure, 1973, in its application to the state of Tamil Nadu and that the said Bill was sent to the Government of India for obtaining the assent of the President of India and therefore the Government was not in a position to comply with the Order dated 26.11.2009 of the Division Bench of the Madurai Bench of this Court in W.P.(MD) No.222 of 2009.

9. It is submitted by the learned Government Advocate for the Respondent that only pursuant to a Contempt Petition filed by Mr.K.R.Ramasamy @ Traffic Ramasamy in Contempt Petition (MD) No.594 of 2013, the Government had obtained opinion from the Advocate General of Tamil Nadu in the matter pursuant to which, 15 persons were appointed to various posts as mentioned above.



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10. Learned Government Advocate for the Respondent further submits that the Registrar General of Madras High Court vide Letter dated 16.08.2013 bearing Roc.No.4279-A/2013/RG/F2, has conveyed the concurrence of the Hon'ble Chief Justice of Madras High Court for appointment of the Prosecuting Officers as Director of Prosecution, Joint Director (Administration) and Deputy Directors of Prosecution respectively in accordance with Section 25-A of the Code of Criminal Procedure, 1973.

11. It is further submitted by the learned Government Advocate for the Respondent that the post of Director of Prosecution is not a promotional post and therefore the Petitioner was not entitled to the aforesaid position/post.

12. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Government Advocate for the Respondent.

13. Section 25-A of the Code of Criminal Procedure, 1973 came into force on 26.03.2005, when the Petitioner was still serving as a Joint Director of Prosecution. As per Section 25-A of the Code of Criminal Procedure, 1973 as inserted by the Central Act 25 of 2005, the State Government was required to establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.



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14. However, as per sub-section (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 and that the Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

15. The admitted position is that though the Code of Criminal Procedure, 1973 was amended with effect from 26.03.2005, the Government took consistent stand to implement the same only after Contempt Petition No.5194 of 2013 was filed by K.R.Ramasamy @ Traffic Ramasamy for not complying with the Order dated 26.11.2009 of this Court in **S.Thamizharasan Vs. The State of Tamil Nadu, Represented by Secretary to Government and others** in W.P.(MD) No.222 of 2009.

16. Thus, the Petitioner cannot be denied the benefits which the Petitioner would have gotten, had the Order dated 26.11.2009 of the Division Bench of the Madurai Bench of this Court in W.P.(MD) No.222 of 2009 was complied by the



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Respondent within a reasonable period of time.

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17. That being the case, the belated implementation of Section 25-A of the Code of Criminal Procedure, 1973 cannot be put to the disadvantage of the Petitioner since the Petitioner had already retired on 31.03.2010. The Petitioner would have been entitled to be promoted to the post of “Director of Prosecution” before her attaining the age of superannuation on 31.03.2010 as the Act came into force on 23.06.2005 and as been observed in Paragraph 7 of the Order dated 26.11.2009 of the Division Bench of the Madurai High Court in **S.Thamizharasan's case** (*cited supra*).

18. Considering the same, the Impugned Government Letter No.64694/Cts.VI/2013-3, Home (Courts-VI) Department dated 29.09.2014, is quashed and the case is remitted back to the Respondent to pass a fresh order to see whether the Petitioner would have been eligible to be appointed as Director of Prosecution in terms of Section 25-A of the Code of the Criminal Procedure, 1973, had the Respondent not decided to challenge the same or withdraw the same by sending Bill (LA Bill No.33 of 2006) to the Government of India for obtaining assent of the Government of India.



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19. In case the Petitioner was senior most person as on the date of the Order dated 26.11.2009 of the Madurai Bench of this Court in W.P.(MD) No.222 of 2009, the Petitioner's service may be treated as that of Director of Prosecution.

20. Accordingly, the Petitioner's retiral and terminal benefits shall be reworked and be paid to the Petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

21. Needless to state, the Petitioner shall be heard before any adverse orders proposed to be passed against the Petitioner.

22. This Writ Petition stands disposed of with the above observations.
No costs.

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Neutral Citation : Yes / No

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The Principal Secretary,
Government of Tamil Nadu,
Home (Courts-VI) Department,
Secretariat, Chennai – 600 009.

C.SARAVANAN, J.

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