

(2014) 12 SC CK 0102

In the Supreme Court Of India

Case No : Civil Appeal No. 11447 of 2014 (Arising out of SLP (C) No. 15390 of 2011)

D.G. of Police and Others

APPELLANT

Vs

V. Gurunathan

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 223, 225B, 419

Citation : (2015) 2 SCT 20

Hon'ble Judges : Dipak Misra, J;U.U. Lalit, J.

Bench : Division Bench

Advocate : Subramanian Prasad and B. Balaji, Advs., for the Appellant; M.P. Parthibha and Rakesh K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

The Respondent was appointed as a Grade-II Constable in the year 1976. He was promoted to the post of Grade-I Constable in the year 1994. While he was holding the said post, a criminal case for offences punishable Under Sections 223, 225B, 419 and 109 of the Indian Penal Code, 1860 was instituted against him.

In view of the institution of the criminal proceeding, the Respondent was suspended from service. He remained under suspension till the judgment of acquittal dated 22.2.1996 was passed by the learned trial Judge. As the narration would reveal after the judgment of acquittal was recorded, the Respondent was reinstated in service on 07.03.1996.

2. At this juncture, it is necessary to be stated that while the Respondent was under suspension and facing the charge, a departmental promotional examination took place on 17/18th November, 1995 for the post of Sub-Inspector. This selection is fundamentally is an accelerated promotion. As per

Rules prescribed, there has to be a competitive examination amongst the departmental candidates and thereafter, the persons who have secured requisite marks meeting the eligibility criteria, they are called for interview; and in the interview, marks are awarded and thereafter the marks obtained in the written examination and the marks secured in the interview are computed and selection is finalised. The ranking is made in accordance with the marks obtained in the written examination as well as the interview.

3. At this juncture, it is necessary to sit on the time machine. The Respondent, after his acquittal, was extended all the benefits, that is, the increments, back-wages, etc. by the department. The Respondent that he should have been considered for promotion with retrospective effect and, therefore, he filed an OA No. 5666 of 2005 before the tribunal. As the tribunal was abolished, the matter stood transferred to the High Court and registered as Writ Petition No. 26198 of 2005. The learned Single Judge by order dated 07.02.2006, directed the Respondent to make a representation for mitigation of his grievances. The said representation was rejected by the competent authority on the foundation that his case could not be considered as he was not a candidate in the earlier recruitment process. Being dissatisfied with the order of rejection of the representation, the Respondent approached the High Court in a Writ Petition No. 22879 of 2008 and the writ court allowed the writ petition and directed as follows:

"Considering the above facts and circumstances, I am inclined to set aside the impugned order of the second Respondent dated 27.02.2008 and the writ petition stands allowed. The second Respondent is directed to consider and pass orders in the light of the orders that have been passed by this Court in W.P. No. 26198 of the second Respondent within a period of six weeks from the date of receipt of a copy of this order."

The aforesaid order was assailed in W.A. No. 737 of 2009 and the Division Bench, while affirming the order passed by the learned Single Judge, directed thus:

"As rightly pointed out by the learned Single Judge, the Respondent was prevented from participating in the selection due to the pendency of the criminal proceedings. The said proceedings ended in acquittal and all service benefits were paid to him. Therefore, we find no ground to interfere with the order under challenge. The Appellants are directed to consider the name of the Respondent for promotion to the post of Sub-Inspector of Police from the date on which juniors were considered for promotion. The writ appeal is accordingly dismissed."

4. It is submitted by Mr. Subramanian, Learned Counsel for the Appellant that the order passed by the High Court is extremely difficult to be carried out at this juncture. In essence, the submission is, it is impossible. Learned Counsel would contend that the law does not envisage any act to be done which is impossible. Elaborating his submission, it is contended by him that the post when not filled up by promotion from the departmental channel by convening a Departmental

Promotion Committee and it is not relatable to assessment of the ACRs and the other career graph. It is urged by him, there was a competitive examination and more than 1650 candidates appeared and after screening process was completed, a list was prepared in accordance with merit. Learned Counsel would contend that the Respondent did not apply and, had he applied, his case could have been considered and his marks could have been possibly kept in abeyance for consideration. It is urged by him that to put the clock back at this stage is impossible for a test cannot be held as there are no competitors and the competitive merit cannot be assessed because the merit was the sole basis and not the ACRs. Learned Counsel would further contend that the Respondent had already been promoted in the year 2011 by regular departmental promotion process which is different than the accelerated promotion by selection.

5. Learned Counsel for the Respondent supported the order passed by the High Court.

6. Having heard Learned Counsel for the parties, we are of the considered opinion that the directions issued by the High Court are really difficult to be complied with by the Appellants. The department be asked to perform impossible act. Whether the Respondent could have applied for the post at that point of time is another matter. Had he applied and the State had denied the matter would have been in another realm. Suffice it to state that at this distance of time, a direction would be in the realm of impossibility and, therefore, the order passed by the High Court is unsustainable and, accordingly, it is set aside. Resultantly, the appeal is allowed and the order passed by the High Court is set aside. There shall be no order as to costs.