

(1976) 11 MAD CK 0040
In the Madras High Court

K.S. Venkataraman

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 12-11-1976

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1977) 2 LLJ 211 : (1977) 90 LW 344

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Judgement

A.D. Koshal, J.—The petitioner was functioning as a Superintendent of Police under the Tamil Nadu Government, when, on the 7th

November, 1960 he was suspended from service with effect from the 20th October, 1960 because proceedings for departmental action were

initiated against him on charges framed in May, 1958. The proceedings lingered on for about four years and ultimately, in the year 1964, the State

Government recommended that he be removed from service. The Government of India, however, referred the matter to the Solicitor-General, who

was of the opinion that the petitioner had not had a fair trial. Acting on that opinion, the Government of India passed an order that all the charges

preferred against the petitioner be dropped and directed the State Government to reinstate him. On the 15th March, 1965 the petitioner was

served with an order from the State Government, dropping all the charges against him, reinstating him in service and limiting his salary from service

to the subsistence allowance drawn by him. Another order served on him on the same day directed his retirement from service with effect from the

15th of June, 1965 when he would attain the age of 55 years. On that very day, the petitioner was relieved of his duties and placed on leave. He

challenged the order of his retirement in Writ Petitions Nos. 2402 and 2463 of 1965 which were accepted on the 8th of April, 1968 by this Court,

which quashed that order. In the meantime, however, on the 5th of September, 1967 the State Government sanctioned the payment of salary and

allowances at full rates to the petitioner for the entire period of his suspension.

2. The judgment dated the 8th of 1968 in W.P. Nos. 2402 and 2463 of 1965 quashing the order retiring the petitioner was upheld in Writ Appeals

Nos. 198 and 199 of 1968 decided on the 11th of February, 1971. During the pendency of the appeals, however, i.e., on the 16th of July, 1968,

the petitioner attained the age of superannuation on completing his 58th year.

3. In response to numerous representations made by the petitioner thereafter, the Government of India sent to the State Government a letter dated

the 29th of August, 1972, stating that the petitioner should also be considered for promotion to (the selection grade and to the super time-scale

from the dates on which his immediate juniors were given such promotion and that such consideration should be on the same basis on which

promotion was allowed to those juniors. The State Government, however, refused to consider the petitioner's case for promotion and the

Government of India decided not to interfere with the decision arrived at by the State Government in that behalf.

4. It is in the circumstances related above that the petitioner has invoked that the State Government and the Government of India, who are the two

respondents before me, be directed through a writ of mandamus to pay to the petitioner all his arrears of pay and allowances and also to allow him

all the benefits consequent upon his reinstatement as a result of the decision of the two writ petitions mentioned above.

5. During the pendency of these proceedings, all the arrears of pay and allowances due to the petitioner have been paid. The only question which

survives for determination, therefore, is whether the petitioner is entitled to another benefit, viz., his right to be considered for promotion to the

selection grade and the super time-scale from the dates on which his juniors were given such promotion. According to the learned Advocate-

General the petition has no such right after his retirement but I do not see how that right can be denied to him even though he is no longer in

service. When he came under suspension, his case for promotion to the selection

grade and super time-scale was not considered for the sole reason that departmental proceedings pending against him. After those proceedings were dropped, that right was revived and would ensure to his benefit as from the date when he was due for consideration for promotion. It is true that he has no vested right to be promoted ; but that he had a right to be considered for promotion when the occasion arose is not denied even by the learned Advocate-General whose only argument is that when once that occasion has gone by, the right is not revived in spite of the departmental proceedings, by reason of the pendency of which that right, was not ex-tended to him having terminated in his favour When once the petitioner is absolved of all charges the reason which prompted the Government not to consider him for promotion is obliterated, so that the petitioners right to have his case reopened and his name considered for promotion with effect from the date when a person junior to him was promoted would revive. Further, he is entitled to such consideration with the application of the same criteria which were brought to bear on the promotion of his juniors. If there was more than one such occasion his case has to be considered in relation to them all| end on the same basis. Refusal of these rights to him is a denial of j equality of opportunity in the matter of employment and is hit by Article 16 of the Constitution of India. Learned Advocate-General has not been able to cite any authority in support of his proposition contrary to this conclusion which finds support from the decision in State of Mysore Vs. C.R. Sheshadri and Others, .

6. In the result the petition succeeds and is accepted and the respondents are directed to consider the case of the petitioner for promotion to the selection grade and the super time-scale with effect from each of the dates on which any of his juniors were promoted thereto and to apply to the consideration of his case for such promotion the same criteria on which the promotion of his juniors was based. As the proceedings have lingered on for years the respondents are directed to finalise the case of the petitioner in pursuance of this order by the 31st of January, 1977, at the latest.

The petitioner will have his costs of these proceedings. Counsel's fee Rs. 250.