

(2021) 01 KL CK 0159

In the High Court Of Kerala

Case No : Original Petition (CAT) No. 219 Of 2020

Sandeep VM

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2021) 01 KL CK 0159

Hon'ble Judges : Alexander Thomas, J;T.R. Ravi, J

Bench : Division Bench

Advocate : R. Sreeraj, Rekha Vasudevan, Girish Kumar V, Thomas Mathew Nellimoottil, T. Rajasekharan Nair

Final Decision : Disposed Of

Judgement

Alexander Thomas, J

1. The prayer in the aforecaptioned Original Petition filed under Article 227 of the Constitution of India is as follows :

"..... to direct the respondents to consider the petitioner for appointment by promotion to the Indian Police Service for the vacancies of the year 2020 notwithstanding his retirement from the State Police Service on 31.5.2020."

2. Heard Sri.R.Sreeraj, learned counsel appearing for the petitioner/applicant in the O.A, Sri.P.Vijayakumar, learned Assistant Solicitor General appearing for respondent Nos.1 & 2, Sri.Thomas Mathew Nellimoottil, learned Standing Counsel appearing for respondent Nos.3 & 4 and Sri.T.Rajasekharan Nair, learned Government Pleader appearing for respondent Nos.5 & 6.

3. The petitioner is aggrieved by the impugned Ext.P1 final order dated 29.05.2020 rendered by the Central Administrative Tribunal, Ernakulam Bench in O.A No.207/2020 to the limited extent it does not direct the competent

respondent authorities in considering the claim of the petitioner for promotion to the Indian Police Service for the year 2020. The impugned Ext.P1 order rendered by the Central Administrative Tribunal, Ernakulam Bench in O.A No.207/2020, reads as follows :

"Heard the learned counsel appearing for the parties through video conferencing.

2. Learned counsel for the applicant Mr. Babu Joseph Kuruvathazha appeared and submitted that the applicant is presently holding the post of Superintendent of Police (Non-IPS) attached to the State Human Rights Commission, Trivandrum and is due for retirement on 31.5.2020. He has prayed for a declaration that his retirement on superannuation from State Service may not preclude his name being considered for promotion to IPS cadre under the SCS quota for the years 2018, 2019 and 2020.

3. Notice. Mr. N. Anilkumar, SCGSC entered appearance on behalf of respondents Nos. 1 & 2. Mr. Thomas Mathew Nellimoottil, nodal counsel for UPSC entered appearance on behalf of respondents Nos. 3 and 4 and submitted that the applicant is not eligible for the current year 2020 as he is retiring in the month of May, 2020. Mr. M. Rajeev, G.P entered appearance on behalf of respondents Nos.5 & 6 and submitted that they have no objection for the applicant to be considered for selection and appointment in promotion quota for the year 2018 and 2019 as long as a similar order to the order earlier passed by this Tribunal in Annexures A3 & A4 is passed.

4. Accordingly, after hearing both sides we are of the view that the OA can be disposed of at the admission stage itself by making it clear that the retirement of the applicant from State Police Service shall not preclude him from him considered for promotion to IPS under the SCS quota for the years 2018 & 2019, if he is otherwise eligible. Ordered accordingly.

5. The Original Application is disposed of as above. No order as to cost."

4. A reading of the impugned Ext.P1 order would make it clear that the petitioner had contended that he was eligible to be considered for appointment by promotion to the Indian Police Service, for the selection years 2018, 2019 & 2020. The Tribunal has ordered that the retirement of the petitioner herein from the State Police Service shall not preclude from him being considered for promotion to the Indian Police Service under the SCS quota for the years 2018 & 2019, if he is otherwise eligible. As regards the claim of the petitioner that he is also eligible for consideration of promotion for the year 2020, the said factual plea of the petitioner has been recorded in paragraph No.3 of Ext.P1 order. But the Tribunal has also recorded the opposition made by the learned counsel appearing for the UPSC that the petitioner/applicant is not eligible for the current year, 2020, as he is retiring in the month of May, 2020. The petitioner would point out that his date of birth is 24.05.1964 and the age of superannuation fixed in the State Police Service is 56 years and that he completed the age of 56 years on 24.05.2020 and thereupon, he has superannuated from State Police Service

on 31.05.2020. Further, it is pointed out that an incumbent, who is similarly situated as the petitioner, who has also retired on 31.05.2020 from the State Police Service, has secured Ext.P6 final order dated 28.07.2020 rendered by the very same Tribunal (CAT, Ernakulam Bench) in O.A No.250/2020, wherein it was directed that the retirement of the said applicant from the State Police Service shall not preclude consideration of his case for promotion in the IPS cadre for vacancies of the years 2018, 2019 & 2020, if he is otherwise eligible, as per the Rules and regulations in existence. Hence, the petitioner would point out that the omission on the part of the Tribunal in also directing in the impugned Ext.P1 order that the petitioner should also be considered for the year 2020, if he is otherwise eligible, is illegal and unreasonable.

5. The learned counsel for the petitioner has pointed out that Regulation 5(3) of the Indian Police Service (Appointment by Promotion) Regulations, 1955, which is a statutory regulation governing the field and mandates that the Selection Committee shall not consider the cases of members of the State Police Service, who have attained the age of 56 years on the first day of January of the year in which it meets. Further it is pointed out that a Proviso to the said Regulation stipulates that a member of the State Police Service, who has attained the age of 56 years on the first day of January of the year, in which the Committee meets, shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or any of the years immediately preceding the year in which such meeting is held, but could not be considered as no meeting of the Committee was held during such preceding year or years. It is pointed out that the only issue raised by the petitioner is regarding the omission on the part of Tribunal for giving directions for consideration of the claim of the petitioner for promotion in the IPS cadre for the selection year 2020. According to the petitioner, his date of birth is 24.05.1964 and he has superannuated from State Police Service on 31.05.2020, as aforesaid. If, as a matter of fact, the date of birth of the petitioner as officially recorded in the service record is 24.05.1964, then he had completed only 55 years 7 months and 7 days as on the cut-off date of 01.01.2020. In other words, if the date of birth is as aforesaid, then the petitioner has not completed the upper age limit of 56 years as on the cut-off date of 01.01.2020, as far as the selection year 2020 is concerned. Further, those aspects regarding the date of birth of the petitioner, etc. are matters of fact to be ascertained by the competent state authorities concerned.

6. In the light of the abovesaid aspects, this Court is of the considered view that the Tribunal should have passed orders in the case of the petitioner, as ordered in the similar case as per Ext.P6 order in O.A No.250/2020. In that view of the matter, it is ordered that we uphold the orders of the Tribunal at Ext.P1 to the extent it orders that the retirement of the petitioner from the State Police Service shall not preclude from being considered for promotion to the IPS under the State quota for the years 2018 & 2019, if he is otherwise eligible. However, we would order that the retirement of the petitioner from the State Police Service shall not preclude him from being considered for promotion to the IPS for the

year 2020 as well, if he is otherwise eligible. The impugned final order at Ext.P1 will stand modified as aforesaid.

With these observations and directions, the above Original Petition (CAT) will stand disposed of.