

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.22047 of 2015

M.Senthil Kumar, Gr-I, PC-451

.. Petitioner

Vs.

The Director General of Police,
O/o. Director General of Police,
Kamarajar Salai,
Chennai-600 004.

.. Respondent

The writ petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, directing the respondent to consider the petitioner's representation dated 6.12.2014 and pass orders and to grant approval and recognition to the Tamil Nadu Police Constabulary Association.

For Petitioner : Mr.M.Madhu Prakash

For Respondent : Mr.A.L.Somayaji, Advocate General
assisted by Mr.P.Sanjai Gandhi, AGP

सत्यमेव जयते

ORDER

Heard Mr.M.Madhu Prakash, the learned counsel appearing on behalf of the petitioner and Mr.A.L.Somayaji, learned Advocate General, appearing on behalf of Mr.Sanjai Gandhi, learned Additional Government Pleader, appearing on behalf of the respondent.

2 This writ petition has been filed, praying that this Court may be pleased to issue a Writ of Mandamus to direct the respondent to consider and pass appropriate orders on the representation of the petitioner, dated 6.12.2014, and to grant approval and recognition to the Tamil Nadu Police Constabulary

Association.

3 The petitioner, who is working as a Police Constable Grade-I, attached to B-4, Kottamati Police Station, Melur Sub Division, Madurai District, had filed the present writ petition, stating that he had joined the Tamil Nadu Police force, on 1.12.2003. The petitioner has stated that the police constabulary in India has a great legacy from the time of the British rulers. They have been known for their bravery. Their contribution in the fields of the law enforcement, including the detection of crimes, is well known. Many police constables, the Sub Inspectors of Police and the Inspectors of Police, from the State of Tamil Nadu, have been awarded with medals, by the President of India, for their excellence in carrying on their duties. It had been further stated that various police enactments have been legislated for making improvement in the efficiency of the police force and for providing them all the necessary benefits.

4 Article 19(1)(c) of the Constitution of India recognises the rights of the citizens of India to form associations, with certain limitations, prescribed in clause (4) of the said Article. While so, the Parliament had enacted central legislation, during the year 1996, as per the powers conferred on it, under Article 33 of the Constitution of India, bringing into force certain restrictions, with regard to the enjoyment of the freedom of association.

5 It has been further stated that the respondent does not have any power or authority to prevent the police constabulary from forming an association. However, the respondent has refused to recognise the association formed by the police constabulary, inspite of several representations having been made to the respondent. One such representation is dated 6.12.2014, requesting the respondent to grant approval and recognition to the Tamil Nadu Police Constabulary Association. In such circumstances, the petitioner has preferred the present writ petition before this Court, invoking its writ jurisdiction, under Article 226 of the Constitution of India.

6 A detailed counter affidavit has been filed on behalf of the respondent, denying the claims made by the petitioner, in his affidavit filed in support of the writ petition.

7 It has been stated that one K.Sivakumar, Grade-I Police Constable, Chennai City Police, had filed a writ petition, in W.P.No.21328 of 2001, seeking a direction from this Court to direct the Director General of Police, to consider his representation, dated 5.10.2001, and the subsequent representation, dated 17.10.2001, for the grant of the recognition to the association. Another writ petition, in W.P.No.11279 of 2000 filed by one A.Manivannan, Grade-I Police Constable and the W.P.No.18817 of 2001 filed by Dr.Subramania Swamy, were also pending before this Court. After considering the claims made in the writ petitions, a direction had been issued by this Court, directing the Government to consider and

dispose of the representations made by the petitioners for the formation of the association, by way of a common order. Pursuant to the order passed by this Court, the Director General of Police, who is the competent authority to issue orders, had passed a detailed order, dated 20.7.2002, as per the power vested with them, under Rule 8 of the Police Forces (Restriction of Rights) Rules, 1966. The Director General of Police had passed the order, dated 20.7.2002, rejecting the request for the formation of the police association.

8 While so, K.Sivakumar had filed a writ petition, in W.P.No.35906 of 2002, praying for a similar direction. One M.Panneerselvam, a former Grade-II Police Constable, had filed a writ petition, in W.P.No.6706 of 2003, praying that this Court may be pleased to direct the respondent therein to grant recognition to the "Tamil Nadu Kavalthurai Kavalargal Sangam". Another writ petition had been filed by Dr.Subramania Swamy, in W.P.No.16573 of 2003, with a similar prayer, for the grant of the approval, for the formation of the association, for the subordinate police officers of the State of Tamil Nadu. The First Bench of this Court, by a common order, dated 11.5.2004, had dismissed the writ petitions, in W.P.Nos.6706 and 16573 of 2003, on the question of locus standi. W.P.No.35906 of 2002 had been dismissed with an observation that the petitioner could file an application, seeking the reliefs before the Director General of Police. The Supreme Court had dismissed the Special Leave Petition filed before it by K.Sivakumar, relating to the order made in W.P.No.35906 of 2002, in S.L.P.(C) No.17713 of 2004. It had been further stated that K.Sivakumar, Grade-I Police Constable, had filed another writ petition before this Court, in W.P.No.23350 of 2005, with a similar prayer. The First Bench of this Court had disposed of the writ petition, permitting the petitioner to work out his remedy before the authority concerned. He had filed another writ petition, in W.P.No.8081 of 2006, with a similar prayer, as prayed for by him, in W.P.No.23350 of 2005. The First Bench of this Court, by its order, dated 27.3.2006, had directed the competent authority to hear the petitioner and to take an appropriate decision in the matter, in accordance with law. As per the order passed by the First Bench of this Court, the petitioner had been heard, in person and an order had been passed, rejecting the request of the petitioner. However, the writ petition filed by the petitioner, in W.P.No.9827 of 2015, had been dismissed by the First Bench, as withdrawn, by its order, dated 7.4.2015 and no liberty had been granted to the petitioner to file a fresh writ petition. However, the petitioner has preferred the present writ petition with an identical prayer, as in W.P.No.9827 of 2015.

9 It has been further stated that the State Government has passed orders, in G.O.Ms.No.1431, dated 8.6.1979, permitting, in principle, the formation of the three associations, for the benefit of the police personnel. As per

Rule 8 of the Police Force (Restriction of Rights) Rules, 1966, the present Director General of Police is the competent authority to grant, refuse or revoke the recognition of an association. In view of the fact that a number of police grievance cells, having been constituted by the State Government, for redressing of the grievances of the police personnel, the Director General of Police had come to the conclusion that there was no necessity for the grant of approval or recognition, for the formation of the Tamil Nadu Police Constabulary Association. It had been further submitted that the police personnel in the State of Tamil Nadu have been provided with various benefits and their grievances, if any, would be redressed by the State Government.

10 It has been further submitted that the rights to form associations, recognised under Article 19 of the Constitution of India, is not an absolute right. Certain reasonable restrictions can be imposed in respect of the right relating to the formation of such associations, based on the grounds mentioned therein. The Director General of Police, who is the authority to grant approval or recognition for the association of the police personnel, is vested with the necessary powers, under Rule 8 of the Police Force (Restriction of Rights) Rules, 1966. In such circumstances, the relief prayed for by the petitioner, in the present writ petition, cannot be granted by this Court, as it is devoid of merits.

11 In view of the submissions made by the learned counsel, appearing on behalf of the petitioner and the learned Advocate General, appearing on behalf of the respondent and on perusal of the records available, this Court is of the considered view that the relief prayed for by the petitioner, in the present writ petition, cannot be granted, by this Court.

12 It is noted that the petitioner and certain other persons have filed a number of writ petitions before this Court, praying for reliefs, which are similar to the reliefs prayed for in the present writ petition. Further, it is noted that the petitioner had preferred a writ petition, with an identical prayer, before the First Bench of this Court, in W.P.No.9827 of 2015. The said writ petition had been dismissed, as withdrawn, by the order, dated 7.4.2015. No leave or liberty had been granted by the First Bench of this Court, to the petitioner, to file a fresh writ petition, with the same prayer, in its order, dated 7.4.2015.

13 It is a well settled position of law that if a writ petition is withdrawn, without obtaining necessary leave or liberty to file a fresh writ petition, no fresh writ petitions can be filed based on the same cause of action, seeking a similar relief. Such a writ petition is not maintainable. Further, it is clear that the Director General of Police concerned has the authority to grant approval or to recognise the association of the police personnel, as per Rule 8 of the Police Force (Restriction of Rights) Rules, 1966.

14 Further, it is a well known position of law that the freedom to form associations, recognised by Article 19(1)(c) of the Constitution of India, is not an absolute right, even though it is fundamental in nature. It is open to the State to impose reasonable restrictions, based on the grounds mentioned in the said article. While so, the relief prayed for by the petitioner, in the present writ petition, cannot be claimed as a matter of right. It is for the authority concerned to exercise the discretion, conferred on such authority, by Rule 8 of the Police Force (Restriction of Rights) Rules, 1966. As such, this Court is of the considered view that the present writ petition, filed by the petitioner, is devoid of merits. Therefore, it is liable to be dismissed. Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vvk

To

The Director General of Police,
O/o. Director General of Police,
Kamarajar Salai,
Chennai-600 004.

+3 cc to Mr.M.Madhu Prakash, Advocate SR.No.39043/2016
one CC to the Government Pleader, SR.No.39325/2016

KGK(CO)
CP 23/07/2016

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W.P.No.22047 of 2015

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