

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2016

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THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.2042 of 2016

R.Govindaraj

.. Petitioner

Vs.

1.Secretary to Government,
Home Department,
Fort St.George, Chennai - 600 009.

2.Director General of Police,
Chennai - 600 004.

3.Superintendent of Police,
District Police Office,
Dharmapuri District.

.. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent herein in his proceedings Na.Ka.No.A1/26768/2015 dated 03.09.2015 and quash the same and consequently direct the respondents herein to notionally promote the petitioner as Special Sub-Inspector of Police on completion of 25 years of their services as per G.O.M.No.15 Home [Police IV] Department dated 07.01.2010 and in the light of the Division Bench judgment rendered in W.A.[MD]Nos.1506/2011 etc., batch dated 17.06.2013 and R.A.[MD].Nos.10 to 12 of 2013 dated 02.07.2013 and to re-fix the petitioner's pension with all consequential monetary and service benefits.

For Petitioner : M/s.G.Bala and Daisy

For Respondents : Mr.S.Gunasekaran
Government Advocate

O R D E R

By consent, the Writ Petition is taken up for final disposal at the admission stage itself.

2. Petitioner is a retired person of the Police Department, who worked as Head Constable and Sub-Inspector of Police. Aggrieved over the impugned order of rejection for notional promotion on completion of 25 years, the present Writ Petition came to be filed.

3. Heard the submissions of the learned counsel appearing for the petitioner and the learned Government Advocate, who accepts notice on behalf of the respondents.

4. The learned counsel appearing for the petitioner submitted that the issue raised is covered by the order passed in W.P.Nos.18554 of 2012 etc., batch, wherein, after taking note of the decision of the Hon'ble Division Bench, it has been held as follows:

"2. The learned counsel appearing on either side has submitted that the issue involved in these Writ Petitions is covered by the Judgment of the Division Bench of this Court in W.A.(MD)Nos.1506 of 2011 etc., batch dated 17.06.2014. It is also submitted by the learned counsel appearing on either side that based upon the same, appropriate direction may be issued to the respondents in favour of the petitioners. In so far as the fixation of the notional promotion is concerned, this Court in W.P.(MD)Nos.15205 to 15207 etc., batch by an order dated 16.11.2013 was pleased to hold as follows:

"7. In my considered opinion, the petitioners herein are similarly placed like that of the respondents in the writ appeals. Therefore, they are also entitled for similar relief. In view of the same, these Writ petitions are allowed with a direction to the respondents to apply the norms reiterated by this Court in the common judgment passed in W.A.(MD) No.1506 of 2011, etc. batch, dated 17.06.2013, in the light of the Government Orders referred to above, and to give promotion as well as seniority to the petitioners herein. Consequently, the connected Miscellaneous Petitions are closed. No costs."

3. It is also submitted that the earlier decision of the Hon'ble Division Bench has also been confirmed by the Hon'ble First Bench of this Court in W.P.No.185 of 2012 dated 31.01.2012, wherein it was held as follows:

"2.The respondent/Writ Petitioner filed the aforesaid writ petition seeking to quash the order passed by the 3rd appellant/third respondent rejecting the request of the respondent/writ petitioner to count seniority of his respective services while serving in different streams of police department and also to give promotion to him. The learned Single Judge, following the earlier order dated 13.04.2006 passed by this Court in W.P.No.27036 of 2005, which was confirmed by the Division Bench of this Court by judgment, dated 16.06.2008 in W.A.No.500 of 2008, allowed the said writ petition and directed the appellants/respondents to pass a revised order within a period of three months from the date of receipt of copy of the order. Hence,the appeal.

3.There is no material brought before us by the learned Additional Government Pleader to show that while the respondent was working as grade II Police Constable in the Tamilnadu Special Police he was transferred to Armed Reserve without foregoing his seniority and promotion. Moreover, before the writ court, the learned Government Advocate on verification of the material has conceded that the issue is fully covered by the decision rendered by this Court in W.A.No.500 of 2005 on 16.06.2008.

4.Hence, we do not find any merit in this writ appeal, which is accordingly dismissed. Consequently, the connected miscellaneous petition is also dismissed. However there will be no order as to costs."

4.Considering the same, the impugned orders are set aside and the respondents are directed to give notional promotion to all the petitioners and thereafter fix the revised pay. Upon such fixation the retiral benefits and the pensionary benefits have to be paid to the petitioners who retired from service within a period of three months from the date of receipt of a copy of this order.

With these directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed."

5.However, the learned Government Advocate submitted that this Court, by an order dated 15.07.2013 in W.P.No.19181 of 2013 has held that on mere completion of 25 years of service, the petitioners are not entitled for upgradation and only on completion of 10 years of service as Head Constable, one can seek for upgradation as Special Sub Inspector of Police, if he has rendered a total service of 25 years of service.

6.This Court is unable to accept the contention of the learned Government Advocate, in view of the decisions of the Hon'ble Division Bench made in W.A.[MD]Nos.1506 of 2011 etc., batch and also in R.A.[MD]Nos.10 to 12 of 2013, by which, this Court has held that on completion of 25 years, the petitioners therein are entitled for upgradation.

7.In view of the same, the Writ Petition is disposed of, on the very same terms in the decision referred supra i.e. in W.P.Nos.18554 of 2012 etc., batch. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

sri

To

1.Secretary to Government,
Home Department,
Fort St.George, Chennai - 600 009.

2.Director General of Police,
Chennai - 600 004.

3.Superintendent of Police,
District Police Office, Dharmapuri District.

+1 cc to The Government Pleader, sr.3778

+1 cc to M/s.Bala & Daisy, Advocates, sr.3445

W.P. No.2042 of 2016

jp co

kra 23.02.2016