

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.22981 of 2010

and

M.P.No.1 of 2010

A.Arokiyanathan Wilson ... Petitioner

Vs.

1.The Commissioner of Police,
Chennai City Police,
Egmore, Chennai - 8.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the impugned order passed in Na.Ka.No.Pa.Pi5(1)/607/100855/2009 dated 25.11.2009 and quash the same and direct the respondents to consider the claim of the petitioner for inclusion of name in the 'C' list of Head Constables fit for promotion as Reserve Sub-Inspector of Police for the year 1999-2000 and promote as Reserve Sub-Inspector of Police and grant all consequential service monetary benefits.

For Petitioner : Mr.A.Antony Robson

For Respondents : Mr.P.Sanjay Gandhi
Additional Government Pleader

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O R D E R

Prayer in the Writ Petition is to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the impugned order passed in Na.Ka.No.Pa.Pi5(1)/607/100855/ 2009 dated 25.11.2009 and quash the same and consequently, direct the respondents to consider the claim of the petitioner for inclusion of his name in the 'C' list of Head Constables fit for promotion as Reserve Sub-Inspector of Police for the year 1999-2000 and promote as

Reserve Sub-Inspector of Police and grant all consequential service as well as monetary benefits.

2. The case of the petitioner is that he entered into service as a Police Constable in Chennai City A.R., on 27.2.1986. He was promoted as Lance Naick on 4.8.1990 and further promoted as Naick on 7.1.1993. Thereafter, he was further upgraded as Head Constable on 25.9.1996. During his service, he had received more than 25 rewards and he had not come to the adverse notice of the respondents so far.

3. While so, for the year 1999-2000, a list viz., 'C' list for promotion to the post of Sub-Inspector of Police, was prepared for 41 vacancies in Chennai City Police. The petitioner also was directed to appear before the Range Promotion Board by the orders of the Commissioner of Police, Chennai. The petitioner also participated. According to him, he had secured more than 50% marks in the written test and thereafter, he was called for oral and drill test. Ultimately, the results were published where the petitioner had secured 52.2 marks. Since cut off marks for selection was fixed as 62.9 marks, the petitioner was not selected. So many persons like the petitioner though had done well both in the written examination and in the oral examination, they had been given lower marks. Therefore, they had requested the respondents for review of their performance for awarding higher marks. Ultimately, the review had been done at least in respect of 9 persons. Pursuant to the review, marks have been invariably increased for all 9 persons ranging from 3.1 to 10 marks for each of the candidate and ultimately, all the 9 persons had reached the cut off marks of 62.9. Ultimately, they had been selected.

4. Only in that circumstances, the petitioner had come forward before this Court with the present Writ Petition challenging the impugned order passed by the first respondent dated 25.11.2009 wherein the first respondent has stated that in the Armed Reserve Category, there are no vacancies and the Sub-Inspector of Police who are already working are more than the actual vacancies and therefore, once vacancy arises, the case of the petitioner would be considered for promotion. Challenging this order dated 25.11.2009, passed by the first respondent, the present Writ Petition has been filed.

5. Heard both sides.

6. The learned counsel appearing for the petitioner would contend that though the petitioner had done well both in the written test and in the oral examination, he had been awarded the poor marks. According to his performance, marks could have been more than the cut off marks fixed by the respondent

i.e. 62.9. In this regard, the learned counsel for the petitioner relied upon a document produced on behalf of the respondents signed by one Administrative Officer, Greater Chennai Police, Vepery, Chennai - 7, according to which, 9 persons whose marks subsequently have been reviewed had been given in the tabulated column. According to which, 9 persons have been given higher marks ranging from 3.12 to 10 marks. By that means, they have reached cut off marks 62.9 and were selected. When that be so, if such review had been made in respect of the petitioner's case, certainly, he would also get higher marks than the cut off one and ultimately, he could have been selected for the promotion to the post of Sub-Inspector of Police.

7. Per contra, the learned Additional Government pleader appearing for the respondents, though produced a voluminous records before this Court pursuant to the orders passed by this Court in the earlier occasions dated 16.8.2013, 26.8.2013 and recently, 11.11.2016, has submitted that since the case of the said 9 persons have been considered by way of review, similar review can be done in respect of the petitioner and ultimately, if the petitioner gets higher marks, certainly, his case would also be considered for promotion.

8. This Court have considered the rival submissions made by the learned counsel appearing for the respective parties.

9. On perusal of the said document consisting of marks awarded to the said 9 candidates, as submitted by the learned Additional Government Pleader, signed by Administrative Officer, Greater Chennai Police, Vepery, Chennai - 7, it shows that in one case, by name R.Kumaresan, originally, 59.8marks was awarded and he had also applied for review. The reason given for the higher marks awarding after review, according to the respondent is that his file was not available. Only because of his file was not available, in respect of the said R.Kumaresan, he was awarded 3.1 marks and ultimately, reached cut off marks i.e. 62.9 marks and he was also selected for promotion. If this is the way in which the review has been done by the respondents and marks were awarded, certainly, there is no plausible reason on the part of the respondents to refuse to consider the case of the petitioner, who is also similarly situated.

10. In this regard, the learned counsel appearing for the petitioner relying upon a Judgment of a Division Bench of this Court in W.P.No.25043 of 2002 dated 18.9.2007 in the matter of N.K.Kaladaran and another vs. State of Tamil Nadu rep.by its Secretary to Government and others where the issue was considered and ultimately, the matter was remitted back to the respondents for reconsideration. Based on the said judgment, it is submitted by the learned Additional Government Pleader

that even in the case of the petitioner, the respondents are ready and willing to review the case of the petitioner in the light of the said judgment as well as review which has been done in respect of the said 9 cases. Subsequently, pursuant to the review, two Government Orders have also been passed in G.O.Ms.No.1623, Home (Pol.V) Department, dated 12.12.2008 and G.O.Ms.No.1026, Home (Pol.V) Department, dated 2.12.2009. Therefore, all these documents would go to show that review had been made in respect of the said promotional test conducted for the year 1999-2000 and as a result, some persons had been given higher marks after review and ultimately, based on such higher marks, they have been considered and given promotion as Sub-Inspector of Police from that date with all consequential benefits.

11. Considering all these aspects, this Court is of the considered view that the petitioner can also be brought in that square under which the petitioner's case also can very well be considered by way of review and ultimately, if the petitioner gets higher marks and if he reaches the cut off marks of 62.9, certainly, the petitioner is also entitled to get promotion along with his junior who had already been promoted as Sub-Inspector of Police.

12. In the result, the Writ Petition is ordered directing the respondents to re-consider the issue of the petitioner's case to the promotion for the post of Sub-Inspector of Police by making a review of the test conducted in the year 1999-2000 wherein the petitioner participated and performed well. Ultimately, if the petitioner is awarded higher marks based on his performance, necessary consequential benefits of promotion as well as service benefits shall be conferred on him along with his juniors promoted and the entire exercise shall be done by the respondents within a period of 3 months from the date of receipt of a copy of this order. It is needless to say that while making review, the modus operandi adopted by the respondents in review case of 9 persons and subsequent Government Orders issued thereon as referred to above, shall be taken into consideration. No order as to costs.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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Copy to:

1.The Commissioner of Police,
Chennai City Police,
Egmore, Chennai - 8.

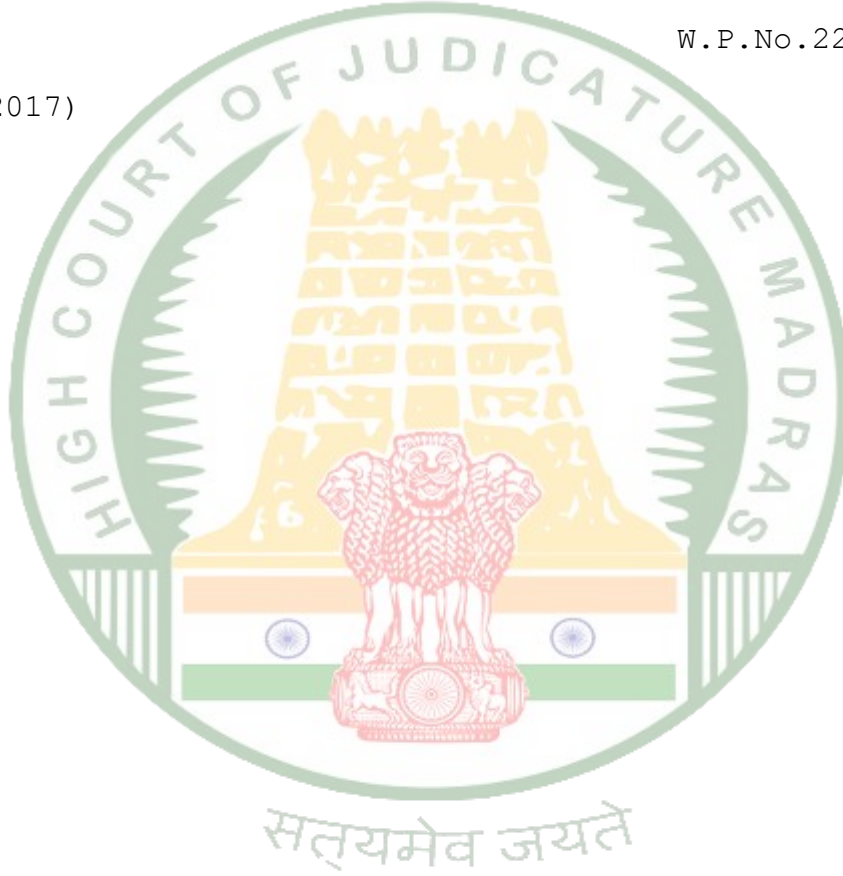
2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

+1CC Mr.A.Antony Rob son, Advocate SR No.68978.

+1CC to the Government Pleader SR No.69249.

W.P.No.22981 of 2010

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