

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.5111 & 5112 of 2015

1.R.Dayasankar
2.L.Gopinath
3.R.Nandan ... Petitioner in W.P.5111 of 2015

1.C.Kalvichelvan
2.K.Palraj
3.K.Arumugam
4.A.Kannan
5.V.Krishna Nantham
6.S.Gopalakrishnan ... Petitioner in W.P.5112 of 2015

Vs.

1.Government of Tamil Nadu
rep. by Secretary to Government,
Home (Police) Department,
Chennai-600 009.
2.The Director General of Police,
Tamil Nadu,
Chennai-600 004. ... Respondents in both WPs

Common Prayer WP.5111 & 5112/2015:Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents to refix the petitioners' seniority with reference to their selection as Police Constable, Grade II, during the year 1991, against 1989-90 year of recruitment and be placed above the selectees of 1993 year Police Constables for all purposes and be granted consequential service benefits fixation of Pay Annual Increment, promotions etc. and all other benefits except back wages.

For Petitioner : Mr.M.Ravi
For respondents : Mr.K.Dhananjayan, Spl GP

COMMON ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, to direct the respondents to refix the petitioners' seniority with reference to their selection as Police Constable, Grade II, during the year 1991, against 1989-90 year of recruitment and be placed above the selectees of 1993 year Police Constables for all purposes and be granted consequential service benefits fixation of Pay Annual Increment, promotions etc. and all other benefits except back wages.

2.The brief facts of the case of the petitioners, are as follows_

2-1.The petitioners herein have joined Police Department, in the post of Police Constable, Grade II during the year 1997/1998, pursuant to the Government Order in G.O.Ms.No.606 Home (Police-III) Department, dated 24.04.1997.

2-2.It is stated by the petitioners that on 04.05.1990, a policy decision was announced in the Tamil Nadu Legislative Assembly to recruit 2000 Police Constables, Grade-II and pursuant to the said announcement, the Director General of Police issued a Notification for Range-wise Selection for Recruitment of Police Constables, Grade-I, II for the year 1989-1990. The Government has also issued G.O.Ms.No.65, Home (Police) Department, dated 11.01.1991, creating 2000 posts of Police Constables, Grade I & II. In pursuance of the publication regarding the said selection, the petitioners had been called to participate in the recruitment to the post of Police Constables, Grade-II for the year 1989-1990. As per Memo No.153312/Rect/90, dated 10.09.1990, they were called to attend Physical Efficiency Test in October, 1990 and they came out successful in the said test. Thereafter, they were called to attend the Written Test on 04.12.1990. They came out successful in the Written Test and were called for viva-voce test in which also they came out successful. Thereafter, they were informed that they have been selected for appointment and were instructed to appear before the concerned Superintendent of Police and fill up the Verification Form. Thereafter, they appeared for the Medical Test in January, 1991 and were also subjected to Police Verification. As the petitioners were found to be fit and eligible in the said process also, they were eagerly expecting order of appointment from the Director General of Police; but, no appointment order was issued to the petitioner.

2-3.It is the specific case of the petitioners that they have been virtually selected for recruitment as Police Constables, Grade-II for the year 1989-1990 and though the vacancy was also notified and available, the petitioners were not given appointment for no fault on their part. In view of the change in the Ruling Party that formed the Government, the

then Government decided to ignore the selectees of the year 1989-1990 batch and proceeded to conduct fresh selection, belying the petitioners' legitimate expectation to obtain appointment orders. However, 600 women constables were selected during the Governor's Regime in the year 1991 and their orders of appointment were issued then and there, while the petitioners were left out.

2-4. Thereafter, fresh selections were made through newly constituted Tamil Nadu Uniformed Services Recruitment Board during the year 1998. Though the petitioners have succeeded in every stage of the selection i.e., Physical Efficiency Test, Written Test and Viva-Voice Test and also they cleared the Medical Fitness Test and Police Verification Test, they have been denied immediate appointment without any basis. Even repeated representations of the petitioners for their appointment failed to evoke any response. Finally, only during the year 1997, the Government took into consideration the grievance of the 1989-1990 selectees, who were selected after the lapse of few years from the date of their actual selection. Eventually, the petitioners were issued with the orders of appointment as Police Constable Grade-II in October 1997, pursuant to G.O.Ms.No.606, Home (Police-III) Department, dated 24.04.1997, which was referred to in the order of appointment. In the appointment order itself, it has been clearly stated that the appointment order is issued only on the basis of 1989-1990 selection for the recruitment to the post of Police Constable, Grade-II. The petitioners joined the post of Police Constables Grade-II at Tamil Nadu Special Police VII Bn, Palani during 1998 and they have been rendering sincere service in the Department. The petitioner made representation on 10.01.2012 to the 1st respondent narrating all the above facts and requesting to refix their seniority with reference to their selection as Police Constable Grade-II during the year 1991 against 1989-90 year recruitment and be placed above the selectees of the year 1993 Police Constables for all purposes and for consequential benefits. Since the petitioners' representation was not considered by the respondents, the petitioners have come forward with the present writ petitions.

3. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that in an identical issue, similarly placed persons filed W.P.Nos.7242 & 7243 of 2009 and this Court by a detailed order dated 12.02.2014, gave a positive direction to the respondents. Thus, he submitted that following the same, a similar order could be passed in the present writ petitions also.

4. The learned Special Government Pleader appearing for the respondents, by filing a detailed counter, would contend that the candidates totaling 1022 including the petitioners selected

for the year 1989-90 and the candidates selected during the year 1995-96 were appointed on 01.11.1997. Regarding their seniority an order has been issued already stating that the candidates including the petitioners selected during the year 1990-91 batch should be placed at the top of 1995-96 batch candidates vide Memo in Rc.No.74699/Rect.3/2002, dated 23.05.2002 of Director General of Police. Therefore, the seniority of the candidates selected for the year 1989-90 / 1990-91 including the petitioners were already considered and that they were placed on the top of 1995-96 recruits. The seniority fixed to them is in accordance with the Rule 24(d) of the TNSPSS and G.O.(Ms). No.606, Home Department, dated 24.04.1997. The question of seniority in the post of Government service will arise only from the date of appointment on regular basis. The petitioners were appointed during 1997 and they were allowed to complete their period of probation on the due date. According to their seniority, they had got due elevations upto the rank of Gr.I PCs / Head Constables. There is no rule provision to consider the pre-employment period prior to joining in the Government service for the purpose of seniority as sought for by the petitioners. Thus, the learned Special Government sought for dismissal of the writ petition.

5. I have carefully heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

6. Considering the facts and circumstances of the case and the submissions made on either side, this Court is not inclined to give any positive direction. However, since it is the assertive submission of the learned counsel for the petitioners that pursuant to the orders passed by this Court in W.P.No.7242 & 7243 of 2009 dated 12.02.2014, appropriate positive orders were passed by the respondents in the case of the similarly placed persons, this Court without expressing any opinion on the merits of the claim of the petitioners directs the petitioners to give a fresh representation to the respondents, along with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the respondents are directed to consider the same and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter.

With the above directions, the writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

To

1.The Secretary to Government,
Government of Tamil Nadu
Home (Police) Department,
Chennai-600 009.

2.The Director General of Police,
Tamil Nadu,
Chennai-600 004.

+2cc to Mr.M. Ravi, Advocate, S.R.No.67289
+1cc to the Government Pleader, S.R.No.67521

kj (CO)
md(09/01/2017)

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