

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 11.11.2016**

**CORAM :**

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR**

**W.P.Nos.29798 & 29799 of 2010**

P.SRIDHARAN PILLAI  
M.BASHEER

.. Petitioner in W.P.No.29798/2010  
.. Petitioner in W.P.No.29799/2010

*Vs.*

1 THE DIRECTOR GENERAL OF POLICE  
MYLAPORE CHENNAI-4.

2 THE COMMISSIONER OF POLICE  
EGMORE CHENNAI-8.

.. Respondents in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus, directing the Respondents herein to include the name of the petitioner in the C-List of Head Constables fit for promotion as Sub Inspectors for the Recruitment conducted by the State Board in the year 1999-2000 and further direct the Respondents to grant all service and monetary benefits in the event of the petitioner being promoted as Sub Inspector from the year 1999-2000.

For Petitioners : Mr.T.T.Ravichandran

For R1 to R3 : Mr. P.Sanjay Gandhi  
A.G.P

**COMMON ORDER**

The prayer in both these writ petitions is for a writ of mandamus, directing the respondents herein to include the names of the petitioners in the C-List of Head Constables fit for promotion as Sub Inspectors for the Recruitment conducted in the year 1999-2000 and further direct the respondents to grant all service and monetary benefits in the event of the petitioners being promoted as Sub Inspectors from the year 1999-2000.

2. The short facts leading to the filing of the writ petitions were that the petitioners were enlisted as Grade -II constables in the year 1984. Thereafter, they were promoted as Head Constables in the year 1988. After having worked as such, the petitioners have to be considered for promotion as Sub Inspectors of Police. For promotion to the Sub Inspectors of Police, a pre-promotional test would be conducted by the respondents and such test was conducted on 19.9.2000. The petitioners also had participated in the test and obtained good marks. In spite of that, they were not considered for promotion as Sub Inspectors of Police.

3. Thereafter, many of the Head Constables, who were fit for promotion as Sub Inspectors of Police and who had also participated in

the said pre-promotional test however, failed to get required marks had been considered for promotion as Sub Inspectors of Police. Number of orders have been passed by the respondents in respect of various persons and some of the orders also have been produced by the petitioners to establish that even juniors of the petitioners had been considered for promotion as Sub Inspectors of Police without having been qualified in the pre-promotional test. Even though the petitioners were temporarily promoted, no benefits of permanent promotion was conferred on them and the petitioners even after several years of services are still continuing as Sub Inspectors of Police. Most of their juniors have been given promotion as Sub Inspectors of Police and were given further promotion. When that being so, the inaction on the part of the respondents in considering the case of the petitioners for promotion is bad and therefore, the petitioners have come out with these writ petitions.

4. Heard both sides.

5. The learned counsel appearing for the petitioners contended that though they have completed long years of services and were fit for promotion as Sub Inspectors of Police in the year 1999-2000 itself,

they were not considered for the same though the petitioners had participated in the pre-promotional test. According to him, the petitioners had written pre-promotional test and also attended physical and viva voce to the satisfaction of the respondent authorities, still the petitioners were not considered for promotion and no communication was received by the petitioners for the non selection of the petitioners for promotion after the pre-promotional test.

6. The learned counsel for the petitioners would also contend that from 2006 onwards, several of their juniors have been promoted time and again as Sub Inspectors of Police, who had also been not qualified in the pre-promotional test conducted in the year 1999-2000 along with the petitioners.

7. Several orders in the year 2006-2007 passed by the respondents have been filed in the typed set of papers to establish the case that many a number of personnel, who are juniors to the petitioners while had been considered, such a gesture had not been shown to the petitioners and the benefits had not been extended to the petitioners. The learned counsel for the petitioners would further contend that in similar circumstances, writ petitions were filed as

against the orders of Tamil Nadu Administrative Tribunal in the year 2004 and ultimately, by order dated 21.4.2006 atleast, in one writ petition, the Division Bench of this Court in **W.P.No.16765 of 2004** in **S.Megakumar Vs. The Director General of Police, Chennai and others** after having considered the relative merits of the issue raised in the writ petition where the petitioner, who was similarly situated like these petitioners had also participated in the pre-promotional test and though he had not been qualified, he was directed to be promoted by the authorities by invoking Rule 39 of the Tamil Nadu Police Subordinate Service Rules which gives power to the Government to relax the condition and to consider the case of the petitioner in the said writ petition for promotion, taking into account of the fact that the said petitioner had also participated in the pre-promotional examination conducted in the year 1991.

8. Relying on the said Judgment, the learned counsel appearing for the petitioners would contend that since the petitioners are also similarly placed and they had also participated in the pre-promotional test on 1999-2000 and subsequently, several of their juniors were promoted, their cases also can be directed to be considered by relaxing the relevant rules under the power vested with the

Government by invoking Rule 39 of the said Rules.

9. Per contra, the learned Additional Government Pleader appearing for the respondents would contend that the pre-promotional test is a means for getting promotion as Sub Inspector of Police and this was conducted in 1999-2000. 584 eligible candidates including the petitioners participated in the test and only 41 successful Head Constables were included in the 'C' list and all those, who were empanelled were promoted as Sub Inspectors (Armed Reserve). However, the petitioners were able to obtain the required marks only in the written test, but could not get through in the remaining tests, namely, drill test and viva voce, service records etc. Resultantly, they failed in these tests. The cut-off marks for inclusion in the 'C' list was fixed as 62.9. The petitioner in W.P.No.29798/10 was able to get only 57.9 (i.e. Written test 33 + other tests 24.9) and the petitioner in W.P.No.29799/10 was able to get only 57.5. (i.e. Written test 33 + other tests 24.5). The same are far below the cut off marks. Based on the performance of the petitioners, they were not included in the 'C' list.

10. The learned Additional Government Pleader would further

contend that after the publication of the 'C' list, several complaints were made as wrong has been done to the candidates in the test and therefore, an enquiry was also conducted in respect of the petitioners' case also, it was taken up for scrutiny, but it was found that everything was done correctly. Therefore, their request to include their names in the 'C' list on par with other personnels were rejected. Vacancy-position is meticulously arrived at, each time, before steps are initiated to convene Range Promotion Board, throughout the state. It is ascertained by the respondents through the counter that none of the persons, who have secured less cut-off marks were included in the 'C' list at any point of time. Therefore, there was absolutely no gain saying to state that the petitioners have been wrongly not included in the 'C' list inspite of their marks. The petitioners since have not reached the cut-off marks fixed out of pre-promotional test, they were not included in the 'C' list. Subsequently, they were given promotion based on seniority and ultimately, they are working as Sub Inspectors. When that being so, absolutely, there is no merit on the claim made by the petitioners in these writ petitions and therefore, the learned Additional Government Pleader want these writ petitions to be dismissed.

11. The rival submissions made by the respective counsels have been considered.

12. With regard to the facts that the petitioners have participated in the pre-promotional test in 1999-2000 and the petitioner in W.P.No.29798/10 obtained only 57.9 and the petitioner in W.P.No.29799/10 obtained only 57.5 whereas the cut-off marks were fixed as 62.9, cannot be denied by the petitioner. Even though certain allegations were made even at the time of publication of 'C' list after the promotional test, the same was addressed and after scrutiny, it was found that everything was correct in respect of the petitioners also. In view of the said factual position, their names were not included in the 'C' list. Insofar as the direction issued by the Division Bench of this Court in the Judgment referred to above in W.P.No.16765 of 2004 dated 21.04.2006 is concerned, similarly placed police constables has initially approached the Tamil Nadu Administrative Tribunal and after having suffered an order therein had approached this Court by way of the said writ petition. The Division Bench of this Court after having considered the relative merits of the issue raised in the writ petition, ultimately passed the following order: Paragraphs 3 and 4 of the order is as follows:

"3. The other writ petitions, such as W.P.Nos.16294 to 16297, 16299, 16300, 16763, 16764, 16766 to 16788, 17003 to 17006, 20557 and 21330 to 21335 of 2004, filed against such common order have been disposed by a separate judgment to-day, i.e., 21.4.2006, wherein it has been observed as follows :-

"11. In such view of the matter, while not interfering with the order of the Tribunal, this Court feels that the petitioners may have a case on equity for consideration of their claim as has been done on the earlier occasion when more than 600 Head Constables were regularised as Sub-Inspector of Police. The Government has power under Rule 39 of the Rules to relax the condition. Therefore, it is appropriate to observe that the Government should consider whether its power under Rule 39 of the Rules should be exercised to extend the benefit of regularisation of temporarily promoted Sub-Inspectors of Police, the petitioners herein, taking into consideration all relevant facts and circumstances narrated above."

4. The learned counsel for the petitioner has however submitted that the case of the petitioner stands on a slightly different footing, as the petitioner was in the waiting list in the selection list prepared in 1991 and thereafter he had been temporarily promoted in 1998 and continued as such for considerable length of time and subsequently after reversion for few months, was again temporarily promoted in June 2001 and he is continuing as such. The learned counsel for the petitioner has further submitted that some of the juniors to the petitioner had been regularly promoted and regularised. It is further contented that as a matter of fact after filing of the Original Application in 2003, the petitioner took steps to appear at the examination held during 2003. But, unfortunately, he was prevented from doing so, since the Government has power under Rule 39 of the Tamil Nadu Police Subordinate Service Rules to relax. It is for the Government to consider these aspects. In such view of the matter, we dispose of the writ petition with the observation that the case of the petitioner may be considered by extending the benefit of Rule 39 of the Tamil Nadu Police Subordinate

Service Rules and by taking into account various relevant facts and circumstances, including the fact that the petitioner had once appeared in the year 1991 and thereafter the petitioner was not able to appear during 2003. Subject to the aforesaid observation, the Writ Petition is disposed. No costs. "

13. The power to relax the Rules is existing under Rule 39 of the Tamil Nadu Police Subordinate Service Rules and if the State Government is satisfied that there are reasons under which the case of the petitioners can be considered by relaxing the relevant rules, for the purpose of promotion of the petitioners, it is always open to the State Government to invoke the said Rule 39 and only in that context the Division Bench has passed the order as referred to above.

14. In view of the above said facts and circumstances, these writ petitions are disposed of with the following directions:

(1) that the case of the petitioners seeking promotion from the date of their juniors have been promoted shall be considered by the respondents by seeking relaxation from the State Government under Rule 39 of the Tamil Nadu Police Subordinate Service Rules.

(2) If such a proposal is submitted to the State Government for

relaxation of the rule by invoking Rule 39 of the said rule, the needful shall be done by the State Government within a period of three months from the date of receipt of such proposal and there upon pass orders on merits and in accordance with law, considering the long services of the petitioners as well as the fact that they had participated in the pre-promotional test conducted in 1999-2000 where they obtained more than 57 marks.

No costs. Consequently, connected miscellaneous petition is closed.

**11.11.2016**

Index : Yes/No  
Internet : Yes/No  
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**R.SURESH KUMAR,J.**

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