

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.40433 of 2016

N.Vellaicholai

... Petitioner

Vs.

- 1 State of Tamil Nadu
Rep. by its Home Secretary,
Fort St. George,
Chennai - 600 009.
- 2 The Director General of Police
Kamarajar Salai,
Mylapore,
Chennai - 600 004.
- 3 The Deputy Inspector General of Police
Post Box No.601, Dr.Radha Krishna Salai,
Mylapore, Chennai - 600 004. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to dispose of the representation dated 26.07.2016 to grant notional promotion along with consequential monetary and service benefits such as re-fixation of seniority, pay and pension within a time frame.

For Petitioner : Mr.R.Karthikeyan

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The present writ petition has been filed seeking a Mandamus directing the second respondent to dispose of the representation dated 26.07.2016 to grant notional promotion along with consequential monetary and service benefits such as re-fixation of seniority, pay and pension within a time frame.

3.The petitioner was inducted as a Grade II Police Constable under the Tamil Nadu Police Service on 13.12.1973 and was promoted as Grade I Police Constable on 20.02.1993.

4.The grievance expressed by the petitioner is that since he was given promotion after a long lapse of 20 years, the subsequent promotions were also delayed and therefore, it was not in conformity with the principles of fairness and justice. The petitioner would further state that the upgradation to the post of Grade I Police Constable ought to have been made in accordance with the Government Orders in G.O.Ms.No.844 Home (Pol.V) Department dated 03.06.1997.

5.The petitioner would further state that some of his juniors were promoted to the rank of Deputy Superintendent of Police by fixing seniority based on G.O.Ms.No.844 Home (Pol.V) Department dated 03.06.1997, but the petitioner's case was not considered and he retired as a Sub Inspector of Police on 30.11.2010 on reaching the age of superannuation. The petitioner made representation dated 26.07.2016 for grant of notional promotion. But till date, it was not considered. Hence, this petition.

6.The learned counsel appearing for the petitioner would submit that this Court vide order dated 13.07.2016 made in W.P.No.23849 of 2016 has referred to the order which was passed in W.P.Nos.16728 of 2012, etc. batch dated 03.07.2012 which was passed based on the earlier Division Bench judgment made in W.A.No.500 of 2008 dated 16.06.2008 and has directed the second respondent therein to consider the representation of the petitioners therein, in the light of the orders passed in W.A.No.500 of 2008, dated 16.06.2008; W.P.Nos.23909 of 2010, etc. batch, dated 29.10.2010 and W.P.(MD).Nos.16728 of 2012, etc. batch, dated 03.07.2012 and pass orders bearing in mind the Government Orders in G.O.Ms.No.844, Home Department, dated 03.06.1997, within a time frame and prays for similar orders.

7.I have also heard the submissions of the learned Special Government Pleader who takes notice for the respondents.

8.The relevant portions of the order dated 13.07.2016 made in W.P.No.23849 of 2016 namely, paragraph nos.4, 5 and 9 reads as follows:

"4.Identical cases came up for consideration before this Court in a batch of cases in W.P.Nos.16728 of 2012, etc. batch, this Court, after hearing the learned counsel for the parties, disposed of the writ petitions by a common order dated 03.07.2012. The operative portion of the order reads as follows :-

"4.According to the petitioners, based on the Government Orders issued in G.O.Ms.No.844, Home Department, dated

03.06.1997; G.O.Ms.No.13 Home (Police-V) Department, dated 06.01.2010; and the Government Letter dated 7.1.1988, upgradation was granted to 2589 Grade II Police Constables appointed on 1.1.1984 as Grade-I Police Constables with effect from 25.7.1995, instead of 22.7.1997 and further upgraded as Head Constables with effect from 22.7.2002, instead of 25.7.2000. The Government has also issued G.O.Ms.No.15 Home (Police -V) Department, dated 7.1.2010 delegating powers to the Superintendents of Police and Deputy Inspectors General of Police for granting promotion on completion of 10/5 years period in each individual case.

5. The petitioners have retired from service and they are claiming notional promotion and consequent monetary benefits. The said claims were rejected by the second respondent by the impugned orders which are challenged in these writ petitions.

6. Learned counsel for the petitioners submitted that similar issue was considered by this Court in W.P.Nos.23909, 23974 and 23975 of 2010 and an order was passed on 29.10.2010 granting relief to the similarly placed persons, even after retirement. The said order was passed based on the earlier Division Bench Judgment made in W.A.No.500 of 2008, dated 16.6.2008.

7. It is the contention of the petitioners that even though they are retired from service they are also entitled to get upgradation, atleast for the purpose of notional fixation and revision of pension. The said submission is justified.

8. The learned Special Government Pleader submitted that for notional promotion and revision of pension, the respondents may be directed to reconsider the matter and pass fresh orders.

9. In the light of the said submission, respective impugned orders dated 3.6.2011, 7.6.2011, 11.4.2011, 18.4.2011, 21.4.2011 are set aside. The respondents are directed to reconsider the claim made by the petitioners, based on the Government Orders

referred to above, bearing-in-mind the earlier orders and pass fresh orders. Necessary orders are directed to be passed within a period of four months from the date of receipt of a copy of this order."

5. It is seen that the above referred order was passed based on the order passed in a batch of writ petitions in W.P.No.23909 of 2010, etc. dated 29.10.2010 and the said order was passed based on the earlier Division Bench judgment in W.A.No.500 of 2008, dated 16.06.2008. It appears that the benefits have already been extended to those petitioners.

9. Accordingly, there will be a direction to the second respondent to consider the petitioner's representation dated 1.4.2016, in the light of the orders passed in W.A.No.500 of 2008, dated 16.06.2008; W.P.Nos.23909 of 2010, etc. batch, dated 29.10.2010 and W.P.(MD).Nos.16728 of 2012, etc. batch, dated 03.07.2012 and pass orders bearing in mind the Government Orders in G.O.Ms.No.844, Home Department, dated 3.6.1997, within a period of three months from the date of receipt of a copy of this order."

9. Considering the submissions made on either side and without going into the merits of the case, this Court directs the petitioner to give a copy of the representation dated 26.07.2016, along with a copy of this order to the respondents, within a period of two weeks from the date of receipt of a copy of this order and the respondents on receipt of the same, are directed to consider the said representation and pass appropriate orders, on merits and in accordance with law and in the light of the orders passed in W.A.No.500 of 2008, dated 16.06.2008; W.P.Nos.23909 of 2010 etc. batch, dated 29.10.2010 and W.P.(MD).Nos.16728 of 2012, etc. batch, dated 03.07.2012 and pass orders bearing in mind the Government Orders in G.O.Ms.No.844, Home (Pol.V) Department, dated 03.06.1997, within a period of three months thereafter.

10. The writ petition is disposed of accordingly. No costs.

Sd/-
Asst.Registrar

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Sub Asst. Registrar

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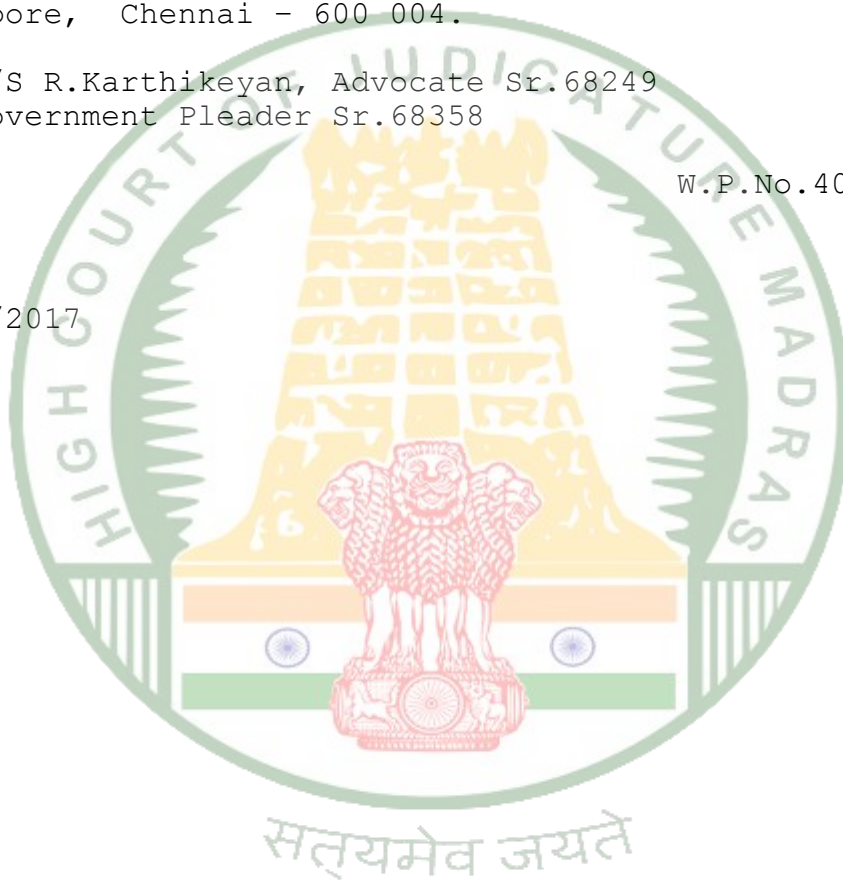
To

- 1 The Home Secretary, State of Tamil Nadu
Fort St. George,
Chennai - 600 009.
- 2 The Director General of Police
Kamarajar Salai, Mylapore,
Chennai - 600 004.
- 3 The Deputy Inspector General of Police
Post Box No.601, Dr.Radha Krishna Salai,
Mylapore, Chennai - 600 004.

+1cc to M/S R.Karthikeyan, Advocate Sr.68249
+1cc to Government Pleader Sr.68358

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NM(CO)
RVR 09/01/2017



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