

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017
CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.38357 of 2004

S.Chandrabose
S/o.Sivasubramanin

.... Petitioner

versus

1.State of Tamil Nadu
Rep. by its Secretary
Home (Pol.IV) Department
Fort St.George,
Chennai-600 009.

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

3.The Inspector General of Police
Intelligence,
Chennai-600 002.

4.The Deputy Inspector General of Police
(CID) Intelligence
Chennai-600 002.

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents 1 to 4 to reinstate the petitioner in service giving effect to the orders of the Hon'ble Administrative Tribunal in O.A.No.5190/2002 dated 22.05.2003.

For Petitioner : Mr.R.Ravichandran
For Respondents : Mr.M.Elumalai
Government Advocate

O R D E R

The prayer sought for in this writ petition is to direct the respondents 1 to 4, to reinstate the petitioner in service, giving effect to the orders of the Hon'ble Administrative Tribunal in O.A.No.5190/2002 dated 22.05.2003.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows:-

2.1 The petitioner, while he was working as Sub-Inspector of Police, was suspended from service on 03.07.1997. Thereafter, by way of disciplinary action, he had been dismissed from service on 03.02.1998. Challenging the said disciplinary action / dismissal from service, the petitioner approached the Tamil Nadu Administrative Tribunal, by filing OA.No.5190 of 2002, which was finally decided by the Tribunal on 22.05.2003, whereby the punishment was set aside and the petitioner was given the relief of reinstatement with continuity of service and other benefits. However, the petitioner was denied entitlement of full wages from the date of suspension till the date of order of the Tribunal.

2.2. Subsequently, though some litigation went on, as the respondent filed a writ petition in WP.No.15150 of 2005, challenging the Tribunal order, ultimately, the respondents lost in the legal battle and therefore, they have re-instated the petitioner in the post of Sub-Inspector of Police on 20.01.2007. The petitioner also joined duty as Sub-Inspector of Police on 20.01.2007.

2.3. Subsequently, it seems that since the petitioner was senior to number of persons, who had been subsequently promoted, when the petitioner was out of service, hence, he had requested the respondents to give promotion as Inspector of Police. Considering the said request of the petitioner, he was promoted as the Inspector of Police from 30.11.2001 notionally, as he was re-instated and joined duty only on 20.01.2007. From that date onwards, the petitioner's pay and other benefits were directed to be paid to him. Subsequently, on regular basis, the petitioner had been promoted and joined duty as Inspector of Police functionally on 27.04.2010 and thereafter, the petitioner had been further promoted on the last day of his service i.e. 31.03.2016 as Deputy Superintendent of Police and on his superannuation, the petitioner was retired from service. Therefore, the present controversy, according to the petitioner is that though he joined service after re-instatement on 20.01.2007, he would not be entitled to get back the salary as fixed for the Inspector of Police, because till 19.01.2007, though the petitioner was promoted as Inspector of Police notionally, he was not paid the salary, as he cannot claim the same, because he was not working during that period. However, when he worked in the Department, after re-instatement i.e. from 20.01.2007, he would be entitled to get full salary in the post of Inspector of Police till he made functionally, as Inspector of Police from 27.04.2010.

3. I have heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

4. The learned counsel for the petitioner has brought to the notice of this Court that, the subsequent proceedings issued by the respondents i.e. the Commissioner of Police, Chennai, dated 10.12.2013, wherein, the entire pay anomaly insofar as the petitioner request has been regularised and re-fixed from 01.07.1997 to 01.10.2013. According to the said proceedings of the Commissioner of Police, the petitioner had been given notional promotion as Inspector of Police from 30.11.2001 and his pay had also been accordingly fixed. According to the said table, on 12.12.2007, the petitioner's Grade pay was enhanced to Rs.17,350 + 4,900/- in total Rs.22,250/-. Though such enhancement of pay has been fixed to be payable to the petitioner, it is the claim of the petitioner that he had not been paid the said demands of pay equal to the claim comparing his service between 20.01.2007 and 27.04.2010. Therefore, the learned counsel for the petitioner would submit that a direction may be issued to the respondents, to pay the said pay benefits, which was not paid to him between 20.01.2007 and 27.04.2010.

5. Per contra, the learned Government Advocate appearing for the respondents would submit that the petitioner against the disciplinary action, had approached the Tamil Nadu Administrative Tribunal, where he got a favourable order and subsequently, he had filed the present writ petition, seeking for mandamus, only to implement the order passed by the Tribunal, in his favour. Subsequently, the litigation between the parties had been pending for some years and ultimately, the petitioner had been re-instated and he joined duty on 20.01.2007. He had not made any claim to get the salary for the post of Inspector of Police, for the said period from 20.01.2007 to 27.04.2010. Therefore, at this point of time, as the prayer in the present writ petition had already been implemented by the respondent, it cannot be stretched apart from seeking for any relief, on payment of any pay parity for the subsequent period and therefore, the said relief sought for by the petitioner, without having any prayer cannot be granted.

6. I have considered the said submissions made by both sides and perused the materials placed before this Court.

7. It is not in dispute that the petitioner after become successful in the legal battle, had been re-instated into service and joined the post on 20.01.2007. Though he was notionally promoted as Inspector of Police from 30.11.2001, the said status was continued, even after he joined service on 20.01.2007. Though he had been given promotion notionally from 30.11.2001, he may not be entitled to claim his salary, as he did not work for the Department, till 19.01.2007. Once, he joined service after re-instatement on 20.01.2007, he would be entitled to get back the full salary, as he had been worked for

the Department i.e. from 20.01.2007.

8. Only considering these aspects, the Commissioner of Police vide his proceedings referred to above dated 10.12.2013 has passed the following order:

"4. Accordingly, his pay is regulated as per ruling 17 under FR 27 as detailed below :

Date	Post	Details	Amount	
1.7.1997	S.I of Police	Lastly granted increment	Rs.6500 TSP 5300-150-8300	
28.9.1997	S.I of Police	Pay notionally fixed as SI SG	Rs.6500+150 MEF 27.4.2010	
1.7.98	S.I of Police SG	Notionally granted increment	Rs.6700+150 MEF 27.4.2010	
1.7.99	S.I of Police SG	Notionally granted increment	Rs.6850+150 MEF 27.4.2010	
1.7.2000	S.I of Police SG	Notionally granted increment	Rs.7000+150 MEF 27.4.2010	
1.7.2001	S.I of Police SG	Notionally granted increment	Rs.7300+150 MEF 27.4.2010	
30.11.2001	Inspector of Police	Pay notionally fixed as / Inspector of Police u/r 22(b)	Rs.7500+150 MEF 27.4.2010	
1.10.2002	Inspector of Police	Notionally granted increment	Rs.7700+150 MEF 27.4.2010	
1.10.2003	Inspector of Police	Notionally granted increment	Rs.7900+150 MEF 27.4.2010	
1.10.2003	Inspector of Police	Notionally granted increment	Rs.8100+150 MEF 27.4.2010	
1.10.2004	Inspector of Police	Notionally granted increment	Rs.8300+150 MEF 27.4.2010	

Date	Post	Details	Amount	
1.10.2005	Inspector of Police	Notionally granted increment	Rs.8500+150 MEF 27.4.2010	
1.1.2006	Inspector of Police	Pay notionally fixed as per G.O.Ms.No.234, Fin (PC) Dept., dated 1.6.2009	Rs.16090+4600/ MEF 27.4.2010 P.B.9300-34800+4600	
.....2006	Inspr. of Police	Pay notionally fixed as per G.O.Ms.No.234, Fin (PC) Dept., dated 1.6.2009	Rs.16090+4600/ MEF 27.4.2010 P.B.9300-34800+4600	Pay notionally fixed as per G.O.242, Fin (PC) Dept., Dt:22.7.2013 M.B.F.1.4.2013.
1.10.2006	Inspr. of Police	Notionally granted increment Rs.620/-	Rs.16710+4600 MEF 27.4.2010	
1.10.2007	Inspr. of Police	Notionally granted increment Rs.640/-	Rs.17350 + 4600 (21950) MEF 27.4.2010	
12.12.2007	Inspr. of Police	Grade Enhanced Pay	Rs.17350+4900 (22250) MEF 27.4.2010	Pay revised as per G.O.242 Fin (PC) Dept., Dt:22.7.2013 M.B.F.1.4.2013 17350+5100 G.P. (22450)
1.10.2008	Inspr. of Police	Notionally granted increment Rs.670/-	Rs.18020+4900 (22920) MEF 27.4.2010	18030+5100 G.P. (23130) M.B.F.1.4.2013
1.10.2009	Inspr. of Police	Notionally granted increment Rs.690/-	Rs.18710+4900 (23610) MEF 27.4.2010	18730+5100 G.P. (23830) M.B.F.1.4.2013
1.10.2010	Inspr. of Police	Granted increment Rs.710/-	Rs.19420+4900	19450+5100 G.P. (24550) M.B.F.1.4.2013

Date	Post	Details	Amount	
1.10.2011		"Postponement of increment for one year without cumulative effect in P.R.67/2011, u/r 3(a), dt.1.8.2011		
1.10.2011 MEF 1.10.2012	Inspr.of Police	Re-granted increment Rs.730/-	Rs.20150+4900 (25050)	20190+5100 G.P.(25290) M.B.F.1.4.2013
1.10.2012	Inspr.of Police	Granted Increment Rs.760/-	Rs.20910+4900 (25810)	20950+5100 G.P.(26050) M.B.F.1.4.2013
1.10.2013	Inspr.of Police	Granted Increment Rs.780/-		21740+5100 G.P.(26840)

5) The earlier orders issued in the reference eight cited is hereby cancelled.

6) Next increment is due on 01.10.2013.

7) The arrears of pay and allowance if any which will be drawn and paid to him separately."

9. When it is specifically mentioned in the above said proceedings of the Commissioner of Police that, the arrears of pay and allowance, if any, will be paid to the petitioner separately, there can be no quarrel that the petitioner would be entitled to claim the arrears of pay and allowance for the period from 20.01.2007 to 27.04.2010.

10. It is also brought to the notice of this Court by the learned counsel for the petitioner that, the pay Drawing Officer cum Superintendent of Police, under whom, he worked, had given a non-drawal certificate stating that, the petitioner had not drawn the revised full pay as the Inspector of Police for the period from 20.01.2007 to 27.04.2010. In this regard, the relevant contents of the said certificate is extracted hereunder for easy reference:

NON-DRAWAL CERTIFICATE

Certified that the revised pay fixation arrears from 01.01.2007 to 30.04.2010 was not drawn and paid to Tr.S.Chandrabose, Inspector of Police, formerly Sub-Inspector of Police, Security Branch CID, Chennai - 28.

Sd/-
Police,

For Superintendent of
Security Branch CID, Chennai 28.

11. On perusal of the aforesaid documents, it discloses that the petitioner had been re-instated into service on 20.01.2007 and before which, he had already been notionally promoted as Inspector of Police from 30.11.2001 and he had not been paid the revised salary for the post of Inspector of Police, even after he joined service, after re-instatement from 20.01.2007 to 27.04.2010 and considering the same, it was specifically directed that the pay arrears and allowance, if any, shall be drawn and to be paid to the petitioner separately, as per the proceedings of the Commissioner of Police dated 10.12.2013 and the Superior Officer also had given a non-drawal certificate certifying that the petitioner had not drawn the said pay and allowance as admissible and allowable to him. This Court is of the firm view that, the petitioner shall be entitled to get the said salary and allowance of arrears for the period between 20.01.2007 and 27.04.2010.

12. In view of the above, by moulding the relief sought for in this writ petition, since the prayer sought for in this writ petition has already been accomplished, this Court is inclined to pass the following order:

(a) The petitioner shall make specific request, claiming the salary and allowance arrears as Inspector of Police from 20.01.2007 to 27.04.2010, to the respondent, within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such request from the petitioner, the respondents shall consider the same and pay the pay and allowance arrears to the petitioner, for the said period i.e. from 20.01.2007 to 27.04.2010, pursuant to the order passed by the Commissioner of Police, Chennai, vide his proceedings in No.304/68517/P.F.II(1)/2013, CPO.No.3381/2013, dated 10.12.2013, within a period of eight weeks, thereafter.

13. With these directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary
Home (Pol.IV) Department
Fort St.George, Chennai-600 009.

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

3.The Inspector General of Police
Intelligence,
Chennai-600 002.

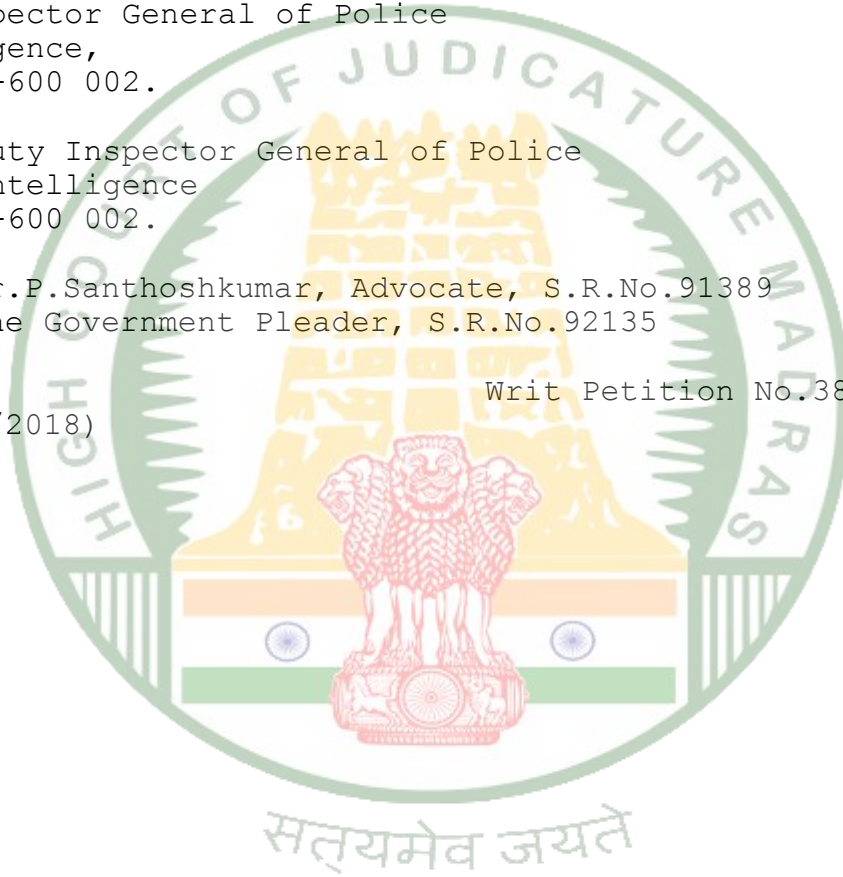
4.The Deputy Inspector General of Police
(CID) Intelligence
Chennai-600 002.

+1cc to Mr.P.Santhoshkumar, Advocate, S.R.No.91389

+1cc to the Government Pleader, S.R.No.92135

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RRK(09/02/2018)



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