



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2017

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD) No.10974 of 2014

M.Rajkumar

...Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by
The Secretary to Government,
Home Department, Secretariat,
St.George Fort, Chennai.

2.The Inspector General of Police,
(South Zone), Madurai.

3.The Commissioner of Police,
Madurai City, Madurai.

4.The Deputy Superintendent of Police,
Madurai City, Madurai District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to take necessary action on the basis of the petitioner representation dated 20.03.2014 with regard to promote the petitioner as Head Constable w.e.f., from 13.09.2007, when the juniors were promoted, without reference we to the check period in the light of full bench decision in the Deputy Inspector General of Police Vs. V.Rani reported in 2011 (4) MLJ 1 and by considering the petitioner's representation dated 20.03.2014, within the period that may be stipulated by this Court. with all consequential benefits.

For Petitioner :Mr.D.Anbarasu

For Respondents :Mr.S.Kumar
Additional Government Pleader

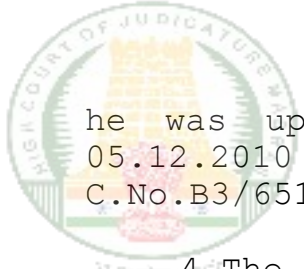
O R D E R

This writ petition has been filed to take necessary action on the basis of the petitioner's representation dated 20.03.2014 with regard to promote the petitioner as Head Constable with effect from 13.09.2007, when the juniors were promoted, without reference to the check the period in the light of Full Bench decision in the Deputy

Inspector General of Police Vs. V.Rani reported in 2011 (4) MLJ 1 and by considering the petitioner's representation dated 20.03.2014.

2.The learned counsel for the petitioner would submit that the petitioner was working as Police Constable at Sellur Police Station, Madurai and appointed as Grade II Police Constable on 16.04.1997 and he has worked to the utmost satisfaction of his superiors without giving any room for complaint for the past 7 years. When he was working at Karimedu Police Station, a charge memo was issued under rule 3(b) of Tamil Nadu Subordinate Services (D&A) Rules, 1955 in P.R.No.192 of 2004 alleging that a girl with motive made a complaint against him and subsequently, she has withdrawn the same. Based upon the complaint, he was temporarily suspended on 02.07.2004 and subsequently, it was cancelled. When the said case was withdrawn by the girl and the criminal case has been dropped, he made detailed representation to the respondents to consider his case for promotion, but no action was taken. The punishment period was over on 30.12.2006 and he has been promoted as Police Constable Grade-I with effect from 13.09.2007 and he also completed 10 years of service in the Police Constable Grade I and he was entitled to become a Head Constable, after completion of 10 years of service as Police Constable Grade I and he has also satisfied all the requirements prescribed for the post of Head Constable. However, his name was not included in the seniority list of Head Constable, even though he is fit for the post of Head Constable from the year 2007. The concept of 5 years check period in respect of any punishment other than censure was cancelled by the Full Bench judgment of this Court in the case of The Deputy Inspector General of Police Vs. V.Rani reported in 2011 (4) MLJ 1 and therefore, his request for promotion, after completion of currency of punishment cannot be denied by the respondent police. Though the representations were made by the petitioner in the year 2010 and on 24.03.2014 to the respondent for his promotion to the post of Head Constable, the same were not considered and the respondent ought to have considered the petitioner for promotion to the post of Head Constable without reference to the concept of check period. Hence, he filed the present writ petition.

3.The learned Additional Government Pleader had also filed a counter. The contentions and the allegations are that the petitioner was involved in a criminal case in Cr.No.1834 of 2004 of C5 Karimedu Police Station under Sections 323, 376, 511 and 506(ii) IPC. He was placed under suspension with effect from 02.07.2004 vide C.P.O.No.988/04 dated 02.07.2004 and the departmental enquiry was initiated as against him in P.R.No.192/04 u/r 3(b) and awarded with the punishment of "Reduction in time scale of pay by two stages for two years without cumulative effect" by the Deputy Commissioner of Police law and order, Madurai City on 26.11.2008. Hence, he was not considered for up-gradation as Grade I Police Constable along with his batch mates on 01.05.2007. He was released from suspension and reported for duty on 18.05.2006 and the said punishment was completed on 04.12.2010 A.N. After completion of punishment period,



he was upgraded as Grade I Police Constable with effect from 05.12.2010 by the City Police order No.416/11 and in C.No.B3/65108/290/10, dated 22.02.2011.

4.The learned Additional Government Pleader would also submit that since the petitioner was enlisted as Grade II Police Constable on 16.04.1997, he ought to have been upgraded as Grade I Police Constable on 01.05.2007, after completion of 10 years service. But the Departmental proceedings initiated against him was completed on 04.12.2010. Hence, he was upgraded as Grade I Police Constable with effect from 05.12.2010. As per the G.O.M.S.No.15, Home (Pol.V) dated 07.01.2010 as on completion of 5 years service as Grade I Police Constable from the order dated 05.12.2010, he would be eligible for up-gradation as Head Constable, on merits. He cannot claim his right to be upgraded as Grade I Police Constable on 01.05.2007 and Head Constable on 01.05.2012 along with his batch mates. Since he was involved in the criminal case and the departmental proceedings, the petitioner had requested to cancel the awarded punishment in P.R.No.192/2004 and thus given a representation dated 20.03.2014 and the same has been forwarded to the Government for passing necessary orders.

5.Heard both sides and perused the materials available on record.

6.In view of the Judgment of the full bench of this Court wherein, it is stated that a person can be considered for promotion to the next post only after the currency of punishment period is over, if otherwise eligible and the embargo put on him for being considered for promotion for a further period after the period of minor punishment is over in the name of check period, is illegal and impermissible.

7.In view of the above statement, this writ petition is disposed of. If the period of punishment is over and the petitioner has been reinstated into service, the respondents are directed to consider the case of the petitioner if he is otherwise eligible as per law prevailing within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(Crl.Side)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
Home Department,
Secretariat,
St.George Fort,
Chennai.



2.The Inspector General of Police,
(South Zone),
Madurai.

3.The Commissioner of Police,
Madurai City,
Madurai.

4.The Deputy Superintendent of Police,
Madurai City,
Madurai District.

W.P. (MD) No.10974 of 2014
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