



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2017

Pronounced on : 15.12.2017

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CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.(MD)Nos.910 to 912 of 2016
and
C.M.P.(MD) Nos.5410, 5412 and 5413 of 2016

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai - 600 004.

3.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

4.The Accountant General,
(Accounts & Entitlements)
Pension Section - 15,
361, Annasalai,
Chennai - 600 018.

... Appellants in all
appeals

vs.

Muthiah

... Respondent in
W.A.910/2016

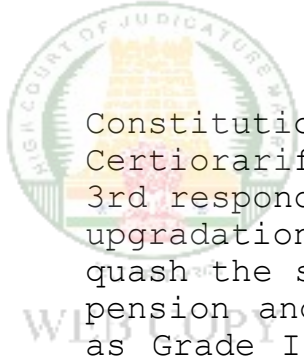
M.Arumugam

... Respondent in
W.A.911/2016

K.Petchimuthu

... Respondent in
W.A.912/2016

Common Prayer : Writ Appeal filed under clause 15 of the Letters Patent, to set aside the order dated 26.02.2013 made in W.P.(MD) No.222, 215 and 225 of 2013 on the file of this Court.



Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in connection with the impugned order of rejection of upgradation passed in Na.Ka.No. A2/16185/2011 dated 17.06.2011 and quash the same and consequently direct the respondents to revise the pension and other retirement benefits by advancing the upgradation as Grade I Police Constable / Head Constable on completion of 10/5 years and upgrade as Special Sub Inspector of Police on completion of 25 years of service and also upgrade to the higher posts notionally in the light of Government Orders and order made in WP No. 11544 to 11550 of 2012 dated 28.06.2012 on the file of the Honourable Principal Seat at Madras which were extended to the Petitioner's Juniors.

Prayer in WP(MD). 215/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in connection with the impugned order of rejection of upgradation passed in Na.Ka.No.A2/037359/2011 dated 21.02.2012 and quash the same and consequently direct the respondents to revise the pension and other retirement benefits by advancing the upgradation as Grade I Police Constable/Head Constable on completion of 10/5 years and upgrade as Special Sub Inspector of Police on completion of 25 years of service and also upgrade to the higher posts notionally in the light of Government Orders and order made in W.P. No.11544 to 11550 of 2012 dated 28.06.2012 on the file of the Honourable Principal Seat at Madras, which were extended to the Petitioner's Juniors.

Prayer in WP(MD). 225/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in connection with the impugned order of rejection of upgradation passed in Na.Ka.No. A2/13767/2011 dated 14.09.2011 and quash the same and consequently direct the respondents to revise the pension and other retirement benefits by advancing the upgradation as Grade I Police Constable / Head Constable on completion of 10/5 years and upgrade as Special Sub Inspector of Police on completion of 25 years of service and also upgrade to the higher posts notionally in the light of Government Orders and order made in WP No. 11544 to 11550 of 2012 dated 28.06.2012 on the file of the Honourable Principal Seat at Madras , which were extended to the Petitioner's Juniors.

For Appellant

: Mr.T.S.Md.Mohideen, A.G.P.

<https://hcservices.ecourts.gov.in/hcservices/>
For Respondents

: Mr.K.Gurunathan for
Mr.G.Thalaimutharasu

COMMON JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

The State of Tamil Nadu has filed these intra court appeals questioning the orders dated 26.2.2013 allowing the writ petitions filed by the respective respondents herein.

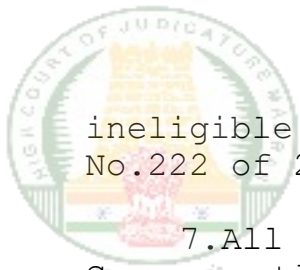
2.The respondents in these writ appeals were enlisted as Grade II Police Constables. They were upgraded as Grade I Police Constables and then promoted as head constables. They reached the age of superannuation even before completing 10 years of service as head constables. They retired as head constables. Several years after retirement from service, they submitted representations seeking up-gradation as Special Sub Inspectors of Police. Their requests were rejected. The orders of rejection passed by the department were questioned in W.P. MP Nos.222, 215 and 225 of 2013. All the writ petitions were allowed by the learned Judge. The orders impugned in the writ petitions were set aside. The authorities were directed to consider the claim of the writ petitioners afresh in the light of the observations made in the orders allowing their writ petitions. Aggrieved by the same, the State Government is on appeal.

3.Heard the Addl. Govt. Pleader appearing for the appellant and the learned Counsel appearing for the respondents.

4.It is true that the writ petitioners had put in more than 25 years of service in the police department. But that cannot by itself confer the right to be upgraded as Special Sub Inspectors of Police. The essential requirement to be made as Special Sub Inspector of Police is that the head constable concerned must have completed 10 years of service in that grade. In this case, none of the writ petitioners had completed 10 years of service as head constable. Therefore, the basic eligibility requirement is absent. A writ of mandamus can be issued only if there is a legal right inhering in the writ petitioner. Such a right cannot be made out in this case.

5.As rightly pointed out by the Addl. Govt. Pleader appearing for the government, the scheme of upgradation in the police department was issued only in the year 1992 vide G.O. Ms. No.1681 (Home-Police 5) department dated 12.10.1992. The time-bound up-gradation scheme introduced by the government later can be given effect to only from the date of issuance of the government order and not with retrospective effect. Such an order was issued only vide G.O. Ms. No.844 dated 3.7.1997.

6.In the present case also, the writ petitioners have sought to raise the issue long after they had already retired from service. The writ petitioners cannot be allowed to agitate stale and



ineligible claims. The orders dated 26.2.2013 allowing W.P.(MD) No.222 of 2013, 215/2013 and 225/2013 are set aside.

7.All these writ appeals stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (AS)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Home Department,
Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Kamarajar Salai, Mylapore,
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3.The Superintendent of Police,
Thoothukudi District, Thoothukudi.

4.The Accountant General,
(Accounts & Entitlements)
Pension Section - 15,
361, Annasalai,
Chennai - 600 018.

+One cc to Mr.G.Thalaimutharasu, Advocate, SR.No.75460
+One cc to The Special Government Pleader, SR.No.93200

Arul

RL/7C/4P/SV/MMS/SAR1/17/1/2018

Judgment made in

W.A. (MD) Nos.910 to 912 of 2016

and

C.M.P. (MD) Nos.5410, 5412 and 5413 of 2016