

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2018

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.6592 of 2008

1.M.R. Madhavan
2.M.Jayaraman
3.K.Varadappan
4.P.Samundi
5.G.Dheenadayalan
6.A.Sayad Abbas
7.N.William
8.R.Bhoopathy
9.S.Mani
10.A.Akbar Sherrif
11.N.Kannan
12.N.Thankaraj
13.K.N.Thulasiraman
14.R.Kannan
15.K.Sivalingan

... Petitioners

Vs.

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

2.Director General of Police,
Mylapore, Chennai-4.

3.Superintendent of Police,
Vellore, Vellore District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to accord Selection / Special Grade scale of pay on the date of completion of 10/20 years of service as Police Constable Grade II/Grade I and other benefits thereto in so far as the petitioners herein are concerned respectively and to consequently revise and refix the pension and pensionary benefits forthwith.

For Petitioners : Mr.L.Chandrakumar

For Respondents : Mrs.Thanga Vandhana Balakrishnan

ORDER

The Petitioners have filed the Writ of Mandamus directing the respondents to accord Selection / Special Grade scale of pay on the date of completion of 10/20 years of service as Police Constable Grade II/Grade I and other benefits thereto in so far as the petitioners herein are concerned respectively and consequently to revise and refix the pension and pensionary benefits forthwith. The Petitioner and 14 others have filed this writ petition from the same address at No.19, Subramani Iyar Street, Gas Godown Backside, Vasanthapuram, Vellore Taluk and District.

2. The case of the petitioner is that they are seeking extension of applicable selection Grade and Special Grade respectively consequent on the completion of requisite number of 10/20 years of such service in the cadre of Police Constable.

3. The petitioners further submit that they were all initially appointed as Grade II constables and promoted as Grade I constable and then as Head Constable in which post they are all reached the age of superannuation. While working as constable, a scheme known as Flexible Complementing Scheme was issued by the Government in G.O.Ms.No.1050, Finance (PC) Department dated 05.10.1978. As per the said scheme on and after completion of 10/20 years in a post without any promotional prospectus the individual was extended in a better scale of pay known as Selection Grade/Special Grade scale of pay. This was again reiterated by another Government Order of the Personnel Department in G.O.Ms.No.68 dated 23.01.1986 wherein certain guidelines were issued. By another Government Order from P & AR Department in G.O.Ms.No.276 dated 07.08.1992 all that which was required to obtain the Selection Grade/Special Grade was withdrawn and it further expanded that mere rendition of 10 to 20 years of service in a post would automatically entail the officer concerned to avail the said benefit. Since the petitioners have rendered more than 10/20 years of service in a post and they were not extended with the benefit of the G.O, either under Selection Grade/Special Grade which is continuous cause of action since it would have a bearing on the regular monthly emoluments as well as that of pension even after their retirement.

4. A collective representation was put before the authorities in Lok Adalath and referred to the Legal Services Authority. The said authority in a proceedings dated 11.12.2007, closed the petition and permitted the petitioners to

approach the Hon'ble High Court. Since the respondents did not come for a settlement of the legal Services Authority, aggrieved by the arbitrary act of the respondents in not considering the legal claim as per the Government Orders, the petitioners have filed this Writ Petition.

5. The petitioners would also contend that when they approached the Legal Services Authority, it was explained that in so far as Constable Grade I and II are concerned, the Selection Grade is not allowed and through another scheme also it came to be explained that the same is effective from 07.08.1992 and subsequent thereafter the petitioners have not rendered the requisite number of service hence, they are not entitled to the said benefit. The reasoning explained by the respondent is without any basis since it would be the Government Order which would prevail upon and not any administrative instructions and that too, without any specific reference either by way of another Government Order or otherwise as to why the Police

Department alone did not allow selection Grade and Special Grade and due to which, the officers were stagnated without promotion. The respondents ought to have given the reason that as to why the same was not extended and granted without any reservation in the promotional avenue. It is denial of accrued service rights and fixation of Selection / Special Grade scale of pay. The various Government Orders would show that the petitioners all have rendered clear and satisfactory record of service and the respondents ought to have consider the case of the petitioners herein. They would also submit that most of them have crossed the age of 65 years and they sought for speedy disposal of this writ petition.

6. The counter affidavit filed by the respondents stating that the first petitioner is the Retired Head Constable of Vellore District and he has filed the affidavit on behalf of 14 other reitred police personnel also. The service records of the first petitioner were examined along with that of three other petitioners who are identified as the retired Police Personnel. The identity of the remaining Petitioners is not identified and their service records are not examined. As the first petitioner has deposed in the afidavit that the claims of all the petitioners are similar in nature with regard to their service claim, the Service records o the following identified petitioners and the particulars of due service and monetary benefits extended to them during thier service are furnished as under:-

S. No	Name and Category	Date of Birth	Date of Enlistment & Educational Qualification	Date of Promotion as Gr.I	Date of movement of Selection Grade / Spl.Grade in Gr.II PC	Date of upgradation to the category of HC	Date of Retirement
1	M.R.Madhavan, HC.2360 (SI.No.1)	15.11.1947	01 / 05 /66 VIII Std	21.02.1993	01.12.1982-SG 27.06.1989-Spl.Gr.	15.01.1998	30.11.2005
2	N.Thulasi Raman, HC.1057 (SI.No.13)	15.10.1946	20.12.1965 IX Std	20.02.1993	14.09.1981- SG 27.06.1989-Spl.Gr.	15.01.1998	31.10.2004
3	K.Sivalingam, HC.2443 (SI.No.15)	01 / 07 / 42	02.09.1963 IV Form	25.02.1993	21.12.1982 - SG 27.06.1989-Spl.Gr.	15.01.1998	30.06.2000
4	M.Jayaraman, HC 2403 (SI.No.2)	03 / 04 /48	10.12.1968 VIII Std	24.02.1993	01.01.1984 - SG 27.06.1989 - Spl.Gr.	15.01.1998	30.04.2006

7. From the above particulars of the tabular column, it could be seen that the individuals were extended all the service benefits due to them during their service in accordance with the service rules prevailing then and no service / monetary benefits due to them from the respondent and the petitioners claim is based on assumption that they are entitled for movement of selection grade in the constabulary posts on completion of 10/20 years of service in a category as a matter of routine. The same is not supported by any orders in force while they were in service. The Flexible complementing Scheme was a forerunner to the introduction of Selection Grade to the constabulary force and it preconditioned with passing of test empanelment in the 'C' list of Grade II Police Constables fit for promotion as Grade I Police Constables. The G.O.No.1050, Finance (Pay Commission) Department, dated 05.10.1978 is the notification

issued by the Government on the recommendation of the Third Tamil Nadu Pay Commission and it provides promotion aspects under the scheme of Flexible Complementing Comprising (i) Movement of Selection / Special Grade on completion of stipulated satisfactory service (ii) Advancement to Higher Grade (iii) Sanctioning stagnation increment once in service with cumulative effect. The Grade II Police Constables were under the category of advancement to higher Grade and the time bound advancement was called Special Temporary Posts. It is found that the individuals were moved to selection Grade only on passing the test on scrutiny of their service records. The scrutiny of the service records reveals that the individuals were extended such benefit of special Grade with effect from 27.06.1989 and the Government Orders cited were issued regarding movement of Selection Grade and Special Grade to the Government Servants which were issued at various points of time in the process of simplification of movement of Selection Grade and Special Grade. The G.O.Ms.No.68, Personnel and Administrative Reforms dated 23.01.1986, streamlined the movement of Selection Grade / Special Grade and re-introduced the concept of "satisfactory Service", originally recommended by the Third Pay Commission. For that one should possess the qualification and pass the tests, if any prescribed for next higher posts, to earn Selection Grade and Special Grade. In the G.O.Ms.No.276, Personnel and Administrative Department dated 7.8.1992, the Government has removed the preconditions of possessing qualification or passing test moving for Selection Grade / Special Grade. The constabulary posts in the Police Department were not governed by movement to Selection Grade and Special Grade originally and governed by flexible complementing, as enshrined in G.O.Ms.No.487, Personnel and Administrative Department dated 18.04.1979. Only after Fifth Pay Commission Report and G.O.Ms.No.304, Finance (Pay Commission) Department dated 28.03.1990, the constabulary posts were brought into the Selection Grade and Special Grade on completion of 10 / 20 years of service with effect from 27.06.1989 as a matter of routine. The petitioners served the force with reference to the service rules prevailing during the service period and extended the service benefits due to them on par with their contemporaries. Their claim to the benefits extended subsequently to the holders of the posts at later period to the Government Servants also, such as the petitioners with retrospective effect will amount to reversion of time machine and will also result in unending chaos and all the retired Police Personnel will knock the doors of the court by filing writ petitions similar to that of the petitioners. Before the Legal Services Authority, the petitioners were appraised all the Legal position and the petitioners did not accept the same. Hence they filed this writ petition. The petitioners claim is based on the assumption that they are entitled to monetary benefits extended to a posts

at different points of time in the process of improvisation of service conditions since for valid reasons, at a given point of time. The petitioners were given all the benefits which were entitled to them, nothing survives in this writ petition. Hence, prayed for dismissal of the Writ Petition.

8. The petitioners filed the rejoinder to the counter stating that since the respondents had not given any details regarding the petitioners, the petitioners in the rejoinder have given a Tabular Column stating the date of appointment and date of retirement of the petitioners.

S.N o	NAME	ENLISTMENT NUMBER	DATE OF APPOINTME NT	DATE OF RETIREMENT
1	M.R.MADHAVAN S/o.M.Raman	HC. 2360	01/ 05 / 66	31.11.2005
2	M.JAYARAMAN S/o. Munisamy	HC.2403	10/12/68	30.04.2006
3	K.VARADAPPAN S/o.Krishnas amy Naidu	HC. 2424	10/12/68	31.07.2005
4	P.SAMUNDI S/o. Pathinatha Gounder	HC. 1013	10/03/67	31.07.2002
5	G.DHEENADAYA LAN S/o. Gopal	HC. 2820	11/01/74	31.05.2007
6	A.SAYAD ABBAS S/o. Abdullah	HC. 1610	21/11/62	30.06.1996
7	N.WILLIAM S/o. Nathanvel	HC. 284	01/12/64	01/05/01
8	R.BHOOPATHY S/o. Raja	HC. 809	08/01/62	31.03.2001
9	S.MANI S/o. Subarayan	HC. 2556	01/06/63	31.05.1999

S.N o	NAME	ENLISTMENT NUMBER	DATE OF APPOINTME NT	DATE OF RETIREMENT
10	A.AKBAR SHERRIF S/o.Ameer Sahib	HC. 602	15/08/68	30.06.2006
11	N.KANNAN S/o. Narayana manthiri	HC. 2589	01/09/63	30.06.2002
12	N.THANKARAJ S/o. Narayanasamy	HC.1831	15/11/69	30.09.2006
13	K.N.TULASIRA MAN S/o. Neelakandapi llai	HC.1057	20/12/65	31.10.2004
14	R.KANNAN S/o. Ramalingam	HC. 1794	01/05/66	31.05.2005
15	K.SIVALINGAM S/o. K.Kannan	HC. 2443	02/09/63	30.06.2000

The Petitioners stated that from the above tabular column, it is clear that they are entitled to the benefits arising out of various Government orders stated supra, on completion of 10 / 20 years of service.

9. Heard both the counsels and perused the records.

10. It could be seen that the bald statement made in the affidavit that the petitioners 1 to 15 all are residing at the 1st petitioner's residence and the writ petition is being filed. Only plea, that they are all Grade -II constables and thereafter to be promoted to Grade I constables and Head Constables or the posts which they have been already holding without getting any promotion. The petitioners claim that though after completion of 10 / 20 years of service in the post without any promotional prospectus, they should have been extended with better scale of pay as the Selection Grade/Special Grade scale of pay by applying various Government orders issued in this regard. The petitioners in this affidavit, filed in support of the writ petition have not stated any details about their individual date of appointment and service rendered and even date of

superannuation. Only in the rejoinder filed on 11.03.2013 they have given the said details. The petitioners are not made any individual representation before the authorities. Only the 1st petitioner has made the representation on 15.12.2006 to the respondents stating that the Selection Grade should be given under the above said G.Os. The respondents in their reply dated 11.07.2007 have categorically denied the said request made by the 1st petitioner holding that the 1st petitioner had rightly drawn his pay duly regulated as per the orders in force and he has been drawing pension as the selection grade Police Constable - Grade II. Stating the reasons that the petitioners being paid the scale of pay as per the post he was holding the respondents rightly rejected the claim of the 1st petitioner. Hence this court is not inclined to grant any orders infavour of the petitioners and the same is rejected.

11. The Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

drl

To

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

2.The Director General of Police,
Mylapore, Chennai-4.

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

4. The Public Prosecutor,
High Court, Madras.

+1cc to the Government Pleader, S.R.No. 76800

W.P.No.6592 of 2008

SAI (CO)
GN(22/02/2019)