

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.06.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.32242 of 2014

E.Ravi

... Petitioner

Vs

1.The Commissioner of Police,
Greater Chennai Police Office,
Vepery, Chennai 600 007.

2.The Joint Commissioner of Police,
West Zone, Ambattur Estate,
Chennai 600 058.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in his Na.Ka.No.Papi.5(1)/283/144074/2012 dated 08.01.2013 and quash the same and consequently direct the respondents herein to promote the petitioner as Grade I Police Constable with effect from 09.06.2003 and as Head Constable with effect from 09.06.2008 with all consequential service and monetary benefits.

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mrs.P.Rosekamalam,

Additional Government Pleader

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O R D E R

Heard Mr.Ravi Shanmugam, learned counsel for the petitioner and Mrs.P.Rosekamalam, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in his Na.Ka.No.Papi.5(1)/283/144074/2012 dated 08.01.2013 and quash the same and consequently direct the respondents herein to promote the petitioner as Grade I Police Constable with effect from 09.06.2003 and as Head Constable with effect from

09.06.2008 with all consequential service and monetary benefits."

3. The case of the petitioner is as follows:-

The petitioner joined the state police force as Grade II Police Constable on 09.06.1993 in Armed Reserve. In July 1998, the petitioner was served with a charge memorandum charging that he allowed to escape one prisoner from his custody and an enquiry was conducted into the charge memorandum and ultimately the petitioner was dismissed from service on 21.10.1998. The said dismissal order was a subject matter of challenge before this Court in W.P.No.13326 of 2006. This Court vide its order dated 30.06.2009, modified the penalty on the ground that the punishment of dismissal from service was too excessive and harsh and the said punishment was substituted with stoppage of increment for a period of two years with cumulative effect.

4. The learned Judge of this Court has also made very clear that the petitioner was not entitled to backwages for the period of non-employment and however, being entitled to count the period of non-employment for the purpose of calculation of pension and seniority. The operative portion of the order passed by the learned Judge in paragraph No.9 is reproduced below:-

"9. It is true that no hard and fast rule could be followed in a matter of this nature, but I feel that the murdering of the escaped prisoner by his rivals weighed the mind of the disciplinary authorities and other authorities to impose the punishment of dismissal. However, if the totality of the circumstances is taken into consideration, I am of the considered view that the punishment of dismissal from service is too excessive and consequently the same is modified into a punishment of stoppage of increments for a period of two years with cumulative effect. It is made clear that the petitioner is not entitled to backwages and the period from the date of dismissal upto the date of reinstatement will not be considered for any purpose excepting for his calculation of pension and seniority."

5. According to the petitioner, during the pendency of the disciplinary action, he was due for promotion as Grade I Police Constable on 09.06.2003, on completion of ten years of service as Grade II Police Constable and was again due for promotion as Head Constable on 09.06.2008, on completion of five years of service as Grade I Constable as per the Government guidelines. In view of the disciplinary action culminated in order of dismissal from service, he could not be promoted as above. In pursuance of the orders passed by this Court on 10.12.2010, the petitioner was reinstated in service. Thereafter, the petitioner submitted a representation on 28.04.2012, claiming for his

seniority in terms of the orders passed by this Court. However, the said representation was rejected by the first respondent vide his proceedings dated 08.01.2013. According to the said proceedings, the petitioner would be completing the modified penalty only in October 2013 and thereafter, he would be considered for promotion as per his request. The said proceedings is put to challenge in the present writ petition.

6. The learned counsel for the petitioner would submit that once this Court has given a specific direction for protecting the seniority of the petitioner and on being reinstated in service, the petitioner is entitled to be considered for consequential relief in terms of the restoration of his seniority. The impugned proceedings stating that he would be considered for promotion only after October 2013, runs contrary to the specific direction of this Court and therefore, the same is liable to be interfered with.

7. The learned counsel for the petitioner would rely on the decision passed by this Court under similar circumstances in W.P.No.30556 of 2012 dated 11.04.2018. He would particularly place reliance to paragraph Nos.10,11 and 12, which are reproduced below:-

"10. This Court finds some force in the contention put forth by the learned counsel for the petitioner. Once the learned Tribunal has set aside the order of removal from service and ordered reinstatement and denied him back wages for the period of non-employment as the means of punishment, it must be construed that the petitioner is deemed to have worked for the period of employment, earned his back wages and yet to be foregone by means of punishment imposed on him in which it must be construed for all practical purposes that the petitioner is deemed to have served the Department and that non-employment period is also to be reckoned for the purpose of grant of benefit of upgradation.

11. Moreover, once the competent authority has passed the order granting the petitioner the benefit of fixing his seniority from the date of his original appointment i.e., 24.05.1999, there cannot be any justification for denying the benefit of service deemed to have rendered by the petitioner during the period of his non-employment. Since the service benefit of seniority cannot be divorced from actual service and once the authority has regulated the period of non-employment of the petitioner, such regularisation will have effect to the petitioner that he is deemed to have served the Department during the period of his non-employment.

12. For all the above said reasons, this Court does not find any justification in upholding the impugned order passed by the respondent denying the benefit of upgradation to the petitioner along with his batch mates. In such view of the matter, the impugned order passed in C.No.A2(1)/47580/2009 dated 13.09.2012, is set aside. The respondent is directed to grant the benefit of upgradation to the petitioner with effect from the date when his batch mates were granted in 2009 and grant him all attendant benefits on such upgradation. The respondent is directed to implement the order passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order."

The learned counsel for the petitioner would therefore submit that the petitioner is entitled to grant of relief as prayed in the writ petition.

8. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and made her submissions.

9. This Court is of the considered view that the issues raised in the writ petition are very simple and straight forward. Once this Court has considered the various factors and allowed the writ petition in favour of the petitioner herein and modified the penalty of dismissal from service into one of stoppage of increment for a period of two years with cumulative effect, except the benefit which stood excluded by a specific direction, all other benefits were to be made available to the petitioner in the normal course.

10. In the instant case, this Court has given a specific direction that the period of non-employment is to be counted only for the purpose of calculation of pension and seniority. In such event, the promotion is a natural corollary to the seniority and without the benefit of promotion, the restoration of seniority of the petitioner has no meaning at all. If any meaning to be given to the seniority in service jurisprudence, the seniority must be accompanied by promotional prospects. In the instant case, once the seniority is ordered to be restored, the petitioner becomes automatically entitled to the benefit of seniority viz., periodical promotion as Grade I Constable as well as Head Constable in terms of the regulations by counting the service of the period of non-employment as deemed service.

11. In the instant case, the petitioner having been reinstated in service on the basis of the modified penalty, is automatically entitled to count the service for the purpose of other service benefits with exception of back wages. In the said circumstances, the impugned communication dated 08.01.2013 stating that the petitioner would be considered for due

promotion only on completion of the modified penalty on October 2013, cannot be sustained both in law and on facts. Therefore, the impugned proceedings of the first respondent in Na.Ka.No.Papi.5(1)/283/144074/2012 dated 08.01.2013, is hereby quashed. The respondents are directed to grant promotion to the petitioner as Grade I Police Constable with effect from 09.06.2003 and as Head Constable with effect from 09.06.2008 with monetary benefits on notional basis. The orders shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The Commissioner of Police,
Greater Chennai Police Office,
Vepery, Chennai 600 007.
- 2.The Joint Commissioner of Police,
West Zone, Ambattur Estate,
Chennai 600 058.

+1cc to Mr.RAVI SHANMUGAM, Advocate, S.R.No. 38854
+1cc to the Government Pleader, S.R.No. 39129

W.P.No.32242 of 2014

TR(03/07/2018)

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