

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM  
and  
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.405 of 2018  
and  
CMP.Nos.3435 & 3461 of 2018

1. The State of Tamil Nadu, rep. By  
its Secretary to Government,  
Home-III Department,  
The Secretariat, Chennai-600 009.
  2. The Additional Director General of Police,  
Armed Police, Kilpauk,  
Chennai-600 010.
- ... Appellants/Responents

-Vs-

Mr.P.Mahimainathan,  
Sub-Inspector of Police,  
Security Branch CID  
Chennai-28.

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters of Patent Appeal, against the order dated 01.12.2016 passed in WP.No.36344 of 2016 and Writ Petition filed under Article 226 of the Constitution of India,praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent and quash the impugned Endorsement letter dated 01.08.2016, vide R.c.No.ESTT.II(2).8896/2015 passed by the second respondent as null and void and consequently direct the second respondent to include the name of the petitioner at the appropriate place below the name of his immediate senior Mr.Sivaganesan found in Sl.No.30 and above his immediate junior Mr.R.Munusamy found in Sl.No.31 in the approved list of candidates dated 15.04.2013, vide Rc.No.A1/6212/2013 of the second respondent found fit for promotion to the post of Inspector of Police (General) for the year 2013-14 with all attendant benefits.

For Appellant : Mr.P.S.Shivashanmughasundaram  
Special Government Pleader  
For Respondent:Mr.K.Ravi Anantha Padmanaban

## JUDGMENT

[Judgment of the Court delivered by C.T.SELVAM, J.]

This writ appeal challenges the order dated 01.12.2016 passed by learned single Judge in WP No.36344 of 2016, seeking quash of Endorsement letter dated 01.08.2016, vide R.c.No.ESTT.II(2).8896/2015 on the file of the second respondent.

2. Heard Mr.P.S.Shivashanmughasundaram, learned Special Government Pleader appearing for appellants and learned counsel for respondent.

3. In allowing the writ petition learned Single Judge has reasoned as follows:-

" 5. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the check period came to an end as early as on 16.07.2004. He further submitted that the petitioner's seniority has to be counted from the date of appointment and not according to the date of confirmation, whereas the petitioner's seniority was counted from the date of confirmation in the year 2004, i.e. after punishment. In this regard, learned counsel for the petitioner relied on a decision of the Supreme Court reported in 1990 (2) SCC 715 (Direct Recruit Class II Engineering Officers' Assn. Vs. State of Maharashtra), wherein it has been held that once an incumbent is appointed to a post according to Rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation and that, seniority cannot be determined on the sole test of confirmation.

6. Heard the learned Special Government Pleader appearing for the respondents on the above aspects.

7. On a perusal of the impugned order, I find that the reason assigned in the impugned order (Endorsement) for not including the petitioner's name in the panel for the year 2013-2014 for promotion to the post of Inspector of Police is that the punishment of Censure was imposed on the petitioner covering the period from 17.07.2003 to 16.07.2004 and after expiry of the said punishment period, i.e. on 17.07.2004, he had been promoted as Sub-Inspector of Police by including his name in the 'C' list for the year 2005-2006, considering his eligibility as on 31.12.2004. In my considered opinion, as per the said judgment of the Supreme Court reported in 1990 (2) SCC 715 (cited supra), the petitioner's seniority ought to have been fixed based on the date of his appointment and not according to the date of confirmation.

8. In the instant case, the petitioner had been appointed as Sub-Inspector of Police on temporary basis on 12.01.2001. Further, on the date of preparing the panel, there is no currency of punishment as against the petitioner and therefore, there is no impediment for including the name of the petitioner in the panel for the year 2013-2014. Hence, the impugned Endorsement is liable to be quashed."

4. We find no reason to interfere with the order under challenge. We would support the finding of learned Single Judge by referring the judgment of this Court in V.Ramesh Vs. The General Manager and another [2011 3 CTC 129], wherein this Court had held the imposition of Censure does not amount to punishment. There is no reason why the rationale of such finding should not be extended to the respondent in the instant case.

5. This Writ Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-  
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

kmi  
To

1. The Secretary to Government,  
Home-III Department,  
The Secretariat, Chennai-600 009.
2. The Additional Director General of Police,  
Armed Police, Kilpauk,  
Chennai-600 010.

+1 CC to Mr.K.Ravi Anantha Padmanaban, advocate sr 13739.  
+1 Cc to The Govt. Pleader sr 14047.

W.A. No.405 of 2018

MR(CO)  
SP(07/03/2018)