

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-02-2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13679 of 2017

And

W.M.P.No.14860 of 2017

And

Contempt Petition No.1632 of 2017

Mrs.M.Sujatha ... Petitioner in WP 13679/2017 and in
Cont.P.1632/2017

-vs-

1. Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai-4.
2. The Additional Director General of Police (Admin),
Dr.Radhakrishnan Road,
Mylapore, Chennai-4.
3. The D.I.G. of Police,
Kancheepuram Range,
Office of D.I.G. of Police,
Kancheepuram District.
4. The Superintendent of Police,
District Police Office,
Kancheepuram District.
5. Mrs.Gowri ... Respondents in WP 13679/2017

Mr.Santosh Hadimani,
The Superintendent of Police,
District Police Office,
Kancheepuram District. ... Respondent in Cont.P.1632/2017

WP No.13679 of 2017 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records and quashing the impugned order dated 27.1.2017 vide Na.Ka.No.A2/05/284/2017 of the fourth respondent and consequently, direct the respondents 3 and 4 to grant retrospective promotion to the

petitioner on par with the fifth respondent, so as to fix the seniority of the petitioner in between her senior Mr.Deivasigamani and the fifth respondent shown as Sl.Nos.3 and 4 in the 'Modification of the Date of Promotion of Head Constables (AR) - Orders issued' list dated 16.12.2016 issued by the fourth respondent with all attendant benefits.

Contempt Petition No.1632 of 2017 is preferred under Sections 10 and 11 of the Contempt of Courts Act, 1971 against the interim order dated 1.6.2017 passed by this Court in WMP No.14680 of 2017 in WP.13679 of 2017.

For Petitioner in WP & Contempt
Petition - Mr.K.Ravi Anantha Padmanaban

For Respondents 1 to 4 in - Mrs.Narmadha Sampath,
WP & for respondent in Additional Advocate General
Contempt Petition assisted by Mr.M.Elumalai,
Government Advocate.

For Respondent-5 in WP - No Appearance

ORDER

The writ petition has been directed against the impugned order dated 27.1.2017 issued by the Superintendent of Police, Kancheepuram, fourth respondent herein and consequently, direct the respondents 3 and 4 to grant retrospective promotion to the petitioner on par with the fifth respondent so as to fix the seniority of the petitioner in between her senior Mr.Deivasigamani and the fifth respondent shown as Serial Nos.3 and 4 in the modification of the date of promotion of Head Constables (AR) orders issued list dated 16.12.2016 issued by the fourth respondent with all attendant benefits.

2. The learned counsel for the petitioner submitted that the petitioner joined in the Police Department as Grade II Constable on 31.10.1997. After completing the requisite training, the petitioner was posted to Tamil Nadu Special Police/Battalion. However, based on the vacancy arose in Armed Reserve during the year 2004, she was given conversion by the Department itself as Grade II Police Constable in Armed Reserve, as the salary for the Head Constable Grade II Head Constable in the Tamil Nadu Special Police/Battalion and the Armed Reserve are one and the same. Accordingly, the petitioner entered the Armed Reserve as Grade-II Police Constable on 14.9.2004. Similarly, the fifth respondent also entered Armed Reserve. After sometime, the fifth respondent and the petitioner were promoted as Grade-II Police Constable in Armed Reserve by the Superintendent of Police, Kancheepuram.

3. In the meanwhile, several persons belonging to their batch were sent to Law and Order work as per the Chief Office (DGP) directive on 6.4.2005 from Kancheepuram Armed Reserve to Sriperumbudur Law and Order. The petitioner also took up the Law and Order work on 8.4.2005. Later, on 27.6.2005, she was re-transferred/repatriated back to Armed Reserve Division of Kancheepuram. Since she worked only for a short period of 2 months and 19 days, she was made to serve in the Law and Order Division and subsequently, brought back to Armed Reserve. While-so, the Superintendent of Police, Kancheepuram/fourth respondent herein, vide order dated 16.12.2010, has given promotion both to the petitioner and the fifth respondent as Head Constable. Even in the said order of promotion, the petitioner was shown above the fifth respondent. Therefore, for all purposes and for any future promotion, the petitioner should be given preference than the fifth respondent.

4. The stand taken by the fourth respondent in the counter-affidavit also supports the case of the petitioner that she is senior to the fifth respondent. Referring to paragraph-8 of the counter-affidavit filed by the fourth respondent, the learned counsel for the petitioner submitted that the petitioner was enlisted as Grade II Police Constable on 31.10.1997 Afternoon, whereas the fifth respondent/Woman Head Constable 1239 (Gowri) was enlisted as Grade II Police Constable on 1.11.1997. It clearly shows that the petitioner is senior to the fifth respondent, because she was enlisted as Grade II Police Constable on 31.10.1997 and the fifth respondent was enlisted as Grade II Police Constable one day after the date of the petitioner i.e., on 1.11.1997. Therefore, the fourth respondent cannot say that the fifth respondent was enlisted on the same day, namely 31.10.1997 as that of the petitioner. Hence, the contention of the fourth respondent that petitioner shall be placed below the fifth respondent cannot be sustained.

5. As per Rule 24(d) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, the seniority of Police Constables who are appointed on or after 1st July 1977 according to rule of reservation shall be determined with reference to the marks obtained by them in the final examination conducted at the Recruits Schools. Against the said dispute regarding the application of Rule 24(d) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, the learned counsel for the petitioner submitted that only the Special Rules for Tamil Nadu Police Subordinate Service alone will apply to decide the case of the petitioner.

6. Since the learned counsel for the petitioner has raised the basic question, this Court directed the Superintendent of Police, Kancheepuram to be present before this Court with the

service records of both the petitioner and the fifth respondent. Pursuant thereto, the Superintendent of Police, Kancheepuram produced the service records of both the petitioner and the fifth respondent.

7. A perusal of service records of both the petitioner and the fifth respondent clearly shows that both the petitioner and the fifth respondent (Gowri) were enlisted as Grade II Police Constable on the same day i.e., on 31.10.1997.

8. Secondly, the learned Additional Advocate General, appearing on behalf of the respondents 1 to 4, disputing the claim made by the learned counsel for the petitioner submitted that Rule 24(d) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 alone will be applied. Referring to clause (d) of Rule 24 of the said Rules, the learned Additional Advocate General submitted that since both were enlisted on the same day, namely on 31.10.1997, applying the Rule 24(d) of Tamil Nadu Special Police Subordinate Service Rules, 1978, the marks secured by both the petitioner and the fifth respondent were taken into account for the purpose of placing them in the seniority list. Since the petitioner has secured 296 marks, she cannot be placed before the fifth respondent (Gowri), who secured 335 marks.

9. At this juncture, it is relevant to refer to Rule 24(d) of Tamil Nadu Special Police Subordinate Service Rules, 1978, extracted as under:-

"24. Seniority.--

(a)

(d) the seniority of Police Constables who are appointed on or after 1st July 1977 according to rule of reservation shall be determined with reference to the marks obtained by them in the final examination conducted at the Recruits Schools. In the case of those secured same marks, the seniority shall be decided with reference to their date of birth."

10. On perusal of the abovesaid Rule, it clearly shows that the seniority of Police Constables who are appointed on or after 1st July 1977, according to rule of reservation, shall be determined with reference to the marks obtained by them in the final examination conducted at the Recruits Schools.

11. Therefore, when the abovesaid Rule is very clear, moreover, when the petitioner and the fifth respondent were enlisted on the same day, namely, on 31.10.1997, it goes without saying that the fifth respondent is always senior to the

petitioner. In some of the communications, the respondent-Department has committed serious error by stating that the petitioner was enlisted on 31.10.1997 and the fifth respondent was enlisted on 1.11.1997 and that was the main source for the confusion created in the minds of the petitioner, which has led to this litigation and therefore the respondents should be imposed with the costs of Rs.5,000/-, but I refrain from doing so. Registry shall return the original Service Records in respect of the petitioner and the fifth respondent, produced before this Court, to the fourth respondent.

12. In this view of the matter, the writ petition fails and it is dismissed accordingly. In the light of the above order, nothing survives in the contempt petition. Accordingly, the contempt petition is also dismissed and the contemnor is discharged. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn

To

1. Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai-4.
2. The Additional Director General of Police (Admin),
Dr.Radhakrishnan Road,
Mylapore, Chennai-4.
3. The D.I.G. of Police,
Kancheepuram Range,
Office of D.I.G. of Police,
Kancheepuram District.
4. The Superintendent of Police,
District Police Office,
Kancheepuram District.

+1cc to Mr.K.Ravi Anantha Padmanaban, Advocate, S.R.No.9278

W.P.No.13679 of 2017

And

Contempt Petition No.1632 of 2017

KAN(CO)

CS/28/02/18