

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.30556 of 2012

J.Chandrasekar

... Petitioner

-Vs-

The Superintendent of Police,
District Police Office,
Vellore District, Vellore-9.

... Respondent

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 of the respondent herein passed in his C.No.A2(1)/47580/2009 dated 13.09.2012 and quash the same and consequently, direct the respondent herein to upgrade the petitioner as Grade I Police Constable with effect from 24.05.2009 from the date of promotion of the petitioner's immediate junior with all consequential service and monetary benefits.

For Petitioner : Mr.Ravi Shanmugam
For Respondent : Mr.J.Pothiraj,
Special Government Pleader

O R D E R

Heard Mr.Ravi Shanmugam, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondent.

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 of the respondent herein passed in his C.No.A2(1)/47580/2009 dated 13.09.2012 and quash the same and consequently, direct the respondent herein to upgrade the petitioner as Grade I Police Constable with effect from 24.05.2009 from the date of promotion of the petitioner's immediate junior with all consequential service and monetary benefits."

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

The petitioner joined the police service as Grade II Police Constable on 24.05.1999. He was sent for police training at Police Training School, Cuddalore, on 23.05.1999. On 21.06.1999, according to the petitioner, he sustained internal injury due to an accident during the period of his training. Since he was undergoing training, according to the petitioner, he was not granted any leave. Therefore, he was forced to remain absent for some time for taking medical treatment.

4. Thereafter, when the petitioner reported for duty, he was refused to be taken back to duty by the respondent. On 21.07.1999, the petitioner was treated as deserter and a charge memo was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D & A) Rules, 1955. On the basis of the charge memo, eventually the petitioner was removed from service by order dated 10.12.1999. Further, an appeal to the Deputy Inspector General of Police was also rejected on 22.12.1999.

5. The petitioner approached the then Tamil Nadu Administrative Tribunal in O.A.No.7821 of 2000, challenging the order of removal passed against him. On 03.07.2003, the Tribunal allowed the original application filed by the petitioner herein by passing the following order in paragraph Nos.9 and 10, are reproduced below:-

"9. The applicant seems to be having good antecedents and is a young man, has been married and got children. For the charge of unauthorized absence, the punishment of removal from service has thrown him out of employment. The punishment must be only proportionate to the proved charge.

10. In the said circumstances, the order of removal is set aside. The applicant can be adequately punished by denying the back wages for the period of unemployment between 1999 till the date of reinstatement. Therefore, the application is allowed, the order of removal passed by the respondents are set aside and the respondents are directed to reinstate the applicant and depute him to continue his training and the applicant shall be denied the back wages for the period of unemployment."

6. In pursuance of the directions passed by the learned Tribunal, the petitioner was reinstated in service on 06.08.2005. The period of non-employment of the petitioner was also treated as leave without pay. After reinstatement, the Director General of Police, also issued a memorandum fixing the seniority of the petitioner from 24.05.1999, the date of his original appointment. According to the petitioner, his batch mates who were appointed along with him on 24.05.1999, were upgraded as Grade I Constable with effect from 24.05.2009. However, he was not granted the benefit of upgradation.

7. In the above circumstances, the petitioner submitted a representation on 22.09.2010. On consideration of his representation, an order was passed by the respondent on 13.09.2012, stating that the petitioner was not eligible for upgradation as Grade I Police Constable along with his batch mates, stating that the period from 24.06.1999 to 05.08.2005, was treated as leave without pay, as he has not completed 10 years of actual qualifying service. The said order is put to challenge in the present writ petition.

8. Upon notice, learned Special Government Pleader appearing for the respondent, entered appearance and filed a detailed counter affidavit. In the counter affidavit, the reasons for denying the benefit of upgradation to the petitioner is rather stated elaborately and the substance of resistance was to the effect that the petitioner did not complete 10 years of actual qualifying service, had rendered only three years and ten months and therefore, he cannot be considered for the benefit of upgradation as his period of non-employment cannot be considered to be one of actual service.

9. Per contra, learned counsel for the petitioner would submit that once the Director General of Police has fixed the seniority of the petitioner vide memo dated 26.07.2007, stating that the seniority would be counted from 24.05.1999, from the date of the petitioner's original appointment, the question of non-consideration of the non-employment period for the purpose of upgradation, cannot be countenanced in law. He would submit that once the punishment of removal from service is set aside by the competent Judicial forum, it should be construed that the employee is deemed to have served for the period of non-employment.

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.

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

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsk

To

The Superintendent of Police,
District Police Office,
Vellore District, Vellore-9.

+1 cc to the Govt pleader sr 27275

+1 cc to M/s.Ravi Shanmugam Advocate sr 26942

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