

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.31963 of 2012

R.Babu

... Petitioner

Vs

The Commissioner of Police,
Greater Chennai,
Chennai City Police Office,
Egmore, Chennai-8.

... 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 of the respondent in connection with the impugned order passed by him in Rc.No.Estt V(1)/165/86649/2012 dated 03.08.2012 and quash the same and direct the respondent to revise the seniority of the petitioner in the cadre of Head Constable w.e.f 30.06.1999 and notionally promote the petitioner as Sub-Inspector of Police w.e.f the date on which the promotees of the Range Promotion Board of the year 2002 and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkata Ramani (SC) for
Mr.M.Muthappan

For Respondent : Mr.D.Venkatachalam,
Additional Government Pleader

O R D E R

Heard Mr.K.Venkata Ramani, learned senior counsel for the petitioner and Mr.D.Venkatachalam, learned Additional 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 of the respondent in connection with the impugned order passed by him in Rc.No.Estt V (1)/165/86649/2012 dated 03.08.2012 and quash the same and direct the respondent to revise the seniority of the petitioner in the cadre of Head Constable w.e.f 30.06.1999 and notionally promote the petitioner as

Sub-Inspector of Police w.e.f the date on which the promotees of the Range Promotion Board of the year 2002 and grant him all consequential service and monetary benefits."

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

The petitioner was appointed as Grade II Police Constable in Chennai City Police Armed Reserve (AR) on 08.09.1988. He was deputed to Railway Police and was working there from 1994-99. During the time he was deputed to Railway Police Force, the petitioner's juniors in the Armed Reserve were upgraded as Grade I Police Constable on 01.03.1996 and promoted as Head Constable on 29.05.1998. The petitioner was also on deputation with immigration Department from May 2005 to October 2011. On his repatriation to the City Armed Reserve, he was also granted promotion as Head Constable on par with immediate junior with effect from 29.05.1998.

4. However, subsequently, when the Department drawn the seniority list, the petitioner was shown to have been appointed as Head Constable only on 31.07.2000 and therefore, he made a representation to revise his seniority from 30.07.2000 to 29.05.1998. Since, no action was forthcoming, the petitioner approached this Court in W.P.No.25660 of 2006 and this Court disposed of the writ petition on 16.08.2006, directing the authority to pass orders on petitioner's representation. In pursuance of the direction, the respondent had passed an order on 24.10.2006, rejecting the request of the petitioner.

5. The petitioner was once again constrained to approach this Court, challenging the rejection order of the respondent in W.P.No.43088 of 2006 and after hearing the parties, this Court was pleased to direct the respondent to revise the seniority of the petitioner from 31.07.2000 to 30.06.1999 vide its order dated 14.02.2011. Thereafter, the order passed by this Court was implemented by the respondent on 13.05.2011, granting the petitioner's seniority from 30.06.1999 as Head Constable.

6. According to the petitioner, having been granted seniority from 30.06.1999, he became eligible to participate in the Range Promotion Board for preparation of "C" list for Sub-Inspector of Police (AR) for the year 2002. However, the petitioner was not allowed to participate in the Range Promotion Board, whereas his juniors were allowed to participate. The reason for not allowing the petitioner to participate in the selection to the post of Sub-Inspector (AR) was that he was appointed as Head Constable only in 2000 and his probation was not declared and also he has not completed four years of service as Head Constable, since, the crucial date for consideration for the panel year 2002 was 01.07.2002. According to the petitioner,

even for subsequent years till 2005, the petitioner was not considered for promotion as Sub-Inspector (AR).

7. After 2006, due to modification in the service rules, no Range Promotion Board was conducted and the promotions were effected entirely on the basis of seniority. Although, many of the petitioner's juniors were promoted as Sub-Inspector (AR), the petitioner alone was left languishing in the post of Head Constable for more than ten years. Such predicament of the petitioner was entirely due to misunderstanding of the relevant rules which govern the subject promotion on the part of the respondent. In this regard, the petitioner submitted a representation on 26.02.2012. Since no action was forthcoming, the petitioner once again approached this Court in W.P.No.9764 of 2012. This Court disposed of the writ petition on 17.04.2012, directing the respondent to consider the representation dated 26.02.2012, in accordance with law, within a period of eight weeks.

8. In pursuance of the direction, the respondent by impugned proceedings dated 03.08.2012, rejected the claim of the petitioner on the ground that he has not completed four years of service as Head Constable at the time of conducting the promotional test for the year 2002 and crucial date for consideration of the eligible candidate was fixed as 01.07.2002. The said rejection is put to challenge in the present writ petition.

9. Upon notice, learned Additional Government Pleader appearing for the respondent, entered appearance and filed a detailed counter affidavit. In the counter affidavit, the reasons as stated is similar to the reasons stated in the impugned proceedings viz., that the petitioner's probation was not declared at the time when the candidates were considered for the year 2002 i.e., as on 01.07.2002 and the petitioner not completed four years of service as Head Constable as he was appointed on 30.06.1999. Therefore, the respondent has rightly rejected the claim of the petitioner as being without merits.

10. The learned senior counsel for the petitioner would strenuously submit contend that the petitioner having been appointed in a temporary capacity on 29.05.1998, had completed four years of service as on 01.07.2002 and therefore, he was very much eligible for being considered for promotion as Sub-Inspector (AR) in 2002. The fact that the petitioner was appointed in temporary capacity as Head Constable on 29.05.1998, has been admitted in the counter affidavit. However, the case of the respondent is that the petitioner has not completed four years of regular service as on 01.07.2002.

11. At this, learned senior counsel for the petitioner would draw the attention of this Court to Rule 3(d) of the Tamil Nadu Police Subordinate Service Rules, which reads as under:-

"Rule 3.Method of Appointment and Promotion

(a).....

(b).....

(c).....

(d) In the list of Head Constables or Head Constables (AR) fit for promotion as Sub-Inspectors of Police or Sub-Inspectors of Police (AR) as the case may be, only men satisfying the following qualification shall be included.

G.O.Ms.No.410, dated 19.04.2001

(i) Must have a good working knowledge of English.

(ii) Must have completed a total service of seven years and must have served as Head Constable or Head Constable (AR) as the case may be, whether permanent or officiating for a period of not less than four years on the date of commencement of training."

12. As per the above rule, even the officiating period has to be counted as qualifying service for consideration for promotion to the post of Sub-Inspector (AR). The learned senior counsel would contend that admittedly the petitioner was appointed as Head Constable on 29.05.1998 and therefore, his service has counted from that date, then the petitioner was very much eligible and qualify for consideration for promotion as Sub-Inspector in 2002.

13. The learned senior counsel would also draw the attention of this Court that the learned Judge of this Court vide his order dated 02.08.2011 in W.P.No.13584 and 13585 of 2007, has concurred that the directions of the Tamil Nadu Administrative Tribunal in regard to application of Rule 3(d) of the special rules for the Tamil Nadu Police Subordinate Service, which held that even officiating service has to be reckoned for the purpose of qualifying four years of service as Head Constable. The paragraph Nos.8 and 9 of the order of the learned Single Judge, are reproduced below:-

"1.....

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4.....

5.....

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7.....

8. The service rendered by the petitioners as temporary Head Constables was sought to be excluded. The issue is as to whether the petitioners' temporary service as Head Constable could be counted under the

Rule 3d(iii) of the Special Rules referred to above. If the service rendered by the petitioners as Head Constables on temporary basis is treated as the service that comes under "officiating service", the impugned orders are not correct in seeking to delete the names of the petitioners from the 'C' list. As rightly contended by learned counsel for the petitioners, the Dictionary meaning for the word "officiating" is to mean to act or discharge the duties of an office. While passing the interim orders, the tribunal has held that the temporary service rendered by the petitioner should be termed as officiating. Paragraph No.5 of the interim order is extracted in this regard:-

"5. The relevant Rule is 3(d) of the special Rules for Tamil Nadu Police Subordinate Service. One of the requisite qualification for selection to the post of sub-Inspector is that a person must have served in the department at least for seven years, out of which he must have served as Head Constable for a period of four years whether permanent or officiating. The specific words used in the Rule is that a person must have served as Head Constable either in substantive post or in a officiating post. The applicants have been working as Head Constable from January and May 1998 and they appeared for the selection held in the year 2002 and the cut of date is 01.07.2002. Therefore, they appear to have got the qualifying service as Head Constables even though they have been acting temporarily and regularization was done only subsequently in 1999."

9. I am in entire agreement with the view expressed by the Tribunal, in the interim order. The respondents are not correct in excluding the services rendered by the petitioners as temporary Head Constables. Hence, the impugned orders are liable to be set aside and accordingly, it is set aside."

Therefore, the learned senior counsel would submit that the issue is squarely covered by the decision of the learned Tribunal as well as by this Court in the aforesaid writ petitions.

14. This Court having considered the Rule position and the orders passed by the Tamil Nadu Administrative Tribunal and by this Court, is entirely in agreement with the submission made by the learned senior counsel for the petitioner. The petitioner's service as Head Constable, even the temporary capacity has to be taken into consideration as a qualifying service for

consideration of promotion as Sub-Inspector (AR). Admittedly, the petitioner was appointed as Head Constable on 29.05.1998 and if such appointment is taken into consideration, then the petitioner has very well completed four years of service much before the actual date of consideration i.e., 01.07.2002. Moreover, when the juniors of the petitioner were considered from that date and granted promotion, denial of the same to the petitioner is per se discriminatory, arbitrary and constitutionally cannot be countenanced.

15. As rightly contended by the learned senior counsel that when the rules are very clear, even the officiating period was to be taken into consideration for promotion to the post of Sub-Inspector (AR), this Court does not see on what legal basis the respondent can deny the petitioner the benefit of considering him for grant of promotion as Sub-Inspector for the year 2002. In this case, as stated above that the appointment of the petitioner as Head Constable on 29.05.1998, was admitted by the respondent himself in the counter affidavit filed in the present proceedings. Such being the case, this Court does not see any kind of justification for rejecting the claim of the petitioner.

16. For the aforesaid reasons, this Court is of the considered view that the petitioner has made out a clear case for grant of relief. In the said circumstances, the impugned proceedings in Rc.No.Estt V(1)/165/86649/2012 dated 03.08.2012, is set aside and consequently, the respondent is directed to promote the petitioner as Sub-Inspector (AR) by taking into consideration his period of officiation as Head Constable from 29.05.1998, for the year 2002 and grant him all other attendant and monetary benefits that otherwise admissible to the petitioner. The direction is passed by this Court, in view of the fact that the Range Promotion Board done away in 2006. The direction of this Court shall be complied with by the respondent, within a period of eight weeks from the date of receipt of a copy of this order. It is also made clear that the attendant benefits shall exclude arrears of actual monetary benefits on the ground that the petitioner has not worked in the higher post in the relevant period.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsk

To

The Commissioner of Police,
Greater Chennai,
Chennai City Police Office,
Egmore, Chennai-8.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.13456

+1cc to the Government Pleader, S.R.No.13224

W.P.No.31963 of 2012

KAN(CO)
RRK(02/03/2018)



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