

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.16734 of 2008 and
M.P.Nos.1 and 2 of 2008 and 1/2011

N.Karthikeyan

... Petitioner

Vs

1. The Commissioner of Police,
Salem City Police,
Salem.

2. K.Gopalakrishnan, I.P.S.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order of the 1st respondent in C.P.O.No.367/2008 (C.No.A3/134/7854/2008) dated 23.6.2008 and quash the same.

For Petitioner : M/s.A.M.Amutha Ganesh

For 1st Respondent : Mr.K.Ravi Kumar,
Addl. Govt. Pleader

ORDER

Challenging the order of the 1st respondent, namely, the Commissioner of Police, Salem City Police, Salem, in C.P.O.No.367/2008 (C.No.A3/134/7854/2008), dated 23.6.2008, to quash the same, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner submitted that the petitioner, who joined the Tamil Nadu State Police Service on 16.6.1993, after completion of the training, was posted at Palani and thereafter, transferred to Armed Reserve Force, Salem. Subsequently, he was promoted as Head Constable by order in C.O.P.A3/7688/2002 dated 29.8.2002 w.e.f. 05.09.2002. On 19.12.2002, again, he was transferred to Police Local and posted in Town Police Station, Salem as Grade-I Police Constable.

3. The learned Counsel for the petitioner further submitted that the petitioner was reverted back to Armed Reserve Force, Salem, permanently on 20.12.2007 on his own request by order in Na.Ka.No.A2/657/25400/2007 on condition that he should not ask for transfer to Local Police and he should not ask for the original seniority. Accordingly, the petitioner was posted as a last person in seniority in

16.6.1993 batch whereas similarly placed persons who were reverted back to Armed Reserve Force from Local Police were placed on their original seniority. One Mr.Johnson, who was junior to the petitioner in the 16.6.1993 batch, was also working as a Head Constable and he was expecting his promotion as Sub-Inspector of Police. In the meanwhile, the Commissioner of Police, Salem, the 1st respondent herein, has passed an order in C.P.O.255/2008 dated 07.05.2008, promoting 3 Grade I Police Constables to the post of Head Constable. Among them, Grade I Police Constable 970 Rajakrishnan and Grade I Police Constable 1605 Prabakaran belong to 25.10.1993 batch and they are far juniors to the petitioner and they were promoted to the post of Head Constable, which is highly discriminatory in nature.

4. The learned Counsel for the petitioner also submitted that while so, to the shock and surprise of the petitioner, the 2nd respondent, on the verge of his retirement on 30.06.2008, citing one 1987 Memorandum, transferred the petitioner along with two other persons from Armed Reserve Unit to Local Police, without obtaining his willingness, consequently, affecting his seniority with mala fide intention to pave way for the promotion of the persons nearer to the 2nd respondent. It is also pleaded that as per the existing norms, no police personnel can be transferred from the Armed Reserve Unit to Local

Police and vice versa, without their willingness. Since the impugned order would deprive the petitioner's right of promotion, the same has been questioned in the present Writ Petition as it is discriminative in nature, passed arbitrarily with malafide intention.

5. It is also stated by the learned Counsel for the petitioner that when the petitioner has been serving in the Armed Reserve Unit, he should not be transferred to Local Police Unit without obtaining his willingness for such transfer as it is going to badly affect the petitioner's seniority and promotional aspects. Further, when the petitioner was already transferred to the Armed Reserve Unit permanently by order dated 20.12.2007 passed by the 1st respondent, asking him to forego his seniority again and the petitioner also has given his consent and willingness to forego his seniority while transferred back to the Armed Reserve from the Local Police accepting the undertaking that he would not claim any seniority in the Armed Reserve and he would not ask for transfer to Local Police from Armed Reserve, the impugned order should not have been passed, it is pleaded.

6. Referring to two other orders retaining the similarly placed persons in the Armed Reserve after they were transferred from Local Police stated that in the same Salem District, the Commissioner of

Police, Salem, has already passed several orders retaining the police personnels in the Armed Reserve after transferring them from the Local Police at their request with their original seniority and they were also given further promotion in the Armed Reserve Force, namely, in the case of one Kuppan, Head Constable 993, by order dated 23.4.2008 of the Superintendent of Police, Namakkal and also in the case of one Rajkumar, Grade II Police Constable 1402 of Traffic North, Salem City by order dated 23.10.1998 of the Inspector General and Commissioner of Police, Salem, the respondents cannot pass the impugned transfer order.

7. A detailed counter affidavit has been filed by the Commissioner of Police, Salem City Police, Salem, the 1st respondent herein.

8. Learned Additional Government Pleader appearing for the 1st respondent supporting the impugned order stated that initially, the petitioner was transferred from Armed Reserve to Local Police by proceedings in CPO No.773/2002, C.No.A3/27640/2002 dated 02.12.2002 and later on, on his request, he was transferred back to Armed Reserve in CPO No.949/2007 C.No.A3/25486/2007 dated 20.12.2007. Since the order of transfer to Armed Reserve is in

contravention of the instructions issued by the Director General of Police in Chief Office Memo Rc.No.199297/NGB III (3)/86 dated 24.01.1987, K.Dis.230107/NGB.III (1) /86 dated 09.03.1987 and Chief Office Memo in Rc.No.265397/NGB II (2)/ 2007 dated 30.01.2007, he was again transferred back to Local Police as per CPO No.367/2008, C.No.A3/7854/2008 dated 23.06.2008. Therefore, the allegation made by the petitioner that only to promote certain police personnels, the 2nd respondent has wrongly transferred him to Local Police is not acceptable, since there was an order issued by the Chief Office stating that no police personnel can be transferred from Armed Reserve to Local Police. Hence, the petitioner cannot be again transferred back to Armed Reserve. However, in view of the order of stay granted by this Court, he was not relieved from Armed Reserve, as a result, he has been continuing there for the last more than ten years. When there is no malafide intention to promote any other police personnel, it is not open to the petitioner to make an allegation that the impugned order of transfer has been passed to send the petitioner away from the Armed Reserve. Therefore, the present Writ Petition is liable to be dismissed.

9. Heard the learned Counsel on either side.

10. A similar issue has been raised in W.P.Nos.15398 and 15399 of 2008 by the petitioners therein wherein it was argued that if a police constable is transferred from Armed Reserve to Local Police, who already came on transfer to Local Police on his willingness, he should not be again transferred back to Armed Reserve as it is contrary to the Circular Memorandum dated 24.01.1987. In the light of the said circular, if any police constable is transferred to Local Police from Armed Reserve without notice, the same cannot be questioned as the retransfer to Local Police is effected only on the basis of the Circular Memorandum dated 24.01.1987.

11. But, in the case on hand, the petitioner herein stands in a different footing for the following reasons, namely, firstly, the petitioner joined the Tamil Nadu State Police Service on 16.06.1993 and after completion of the training period, he was posted at Palani and thereafter, transferred to Armed Reserve Force, Salem. Subsequently, he was promoted as Head Constable by order in C.O.P.A3/7688/2002 dated 29.8.2002 w.e.f. 05.09.2002. Again, he was transferred to Local Police on 19.12.2002 and posted in Town Police Station, Salem as Grade-I Police Constable. When the petitioner made a request for his transfer to Armed Reserve, Salem, by order dated 20.12.2007, he was reverted back to Armed Reserve Force, Salem permanently on condition

that he should not ask for transfer to Local Police and he should not ask for original seniority. The petitioner, accepting these conditions joined the Armed Reserve Force on 20.12.2007 and he was also placed as a last person in the seniority list of 16.6.1993 batch.

12. At this stage, it is pertinent to note that even similarly placed persons were also reverted to Armed Force from Local Police. In the case of one Mr.Rajkumar Grade II Constable 1402 of Traffic North, Salem City, he has been transferred to Armed Reserve, Salem City, on condition that he should not request for re-transfer to Salem Local Police. Obtaining his undertaking, he was transferred back to Armed Reserve by order dated 'Nil' (signed on 23.10.1998) passed by the Inspector General and Commissioner of Police, Salem City, which is reproduced here under:

"Gr.II Police Constable 1402 J.Rajkumar of Traffic North, Salem City is transferred to Armed Reserve, Salem City at his request on condition that he should not request again for transfer to taluk police. An undertaking was obtained from his to this effect.

2. Inspector of Police, Traffic North, Salem City will relieve the Police Constable with instruct him to report before the Inspector of Police, Armed Reserve, Salem City

immediately.

3. The date of relief and joining of the Police Constable should be reported to this Office promptly."

13. Yet another Memorandum dated 25.07.2008 issued by the Director General of Police in this regard clearly shows that the Commissioner of Police, Salem City is the competent authority to revert any police personnel back to Armed Reserve from Local Police. The relevant portion is extracted here under :

"Attention of the Commissioner of Police, Salem City is drawn to the letter in the reference cited.

2. The Commissioner of Police, Salem City himself is the competent authority to revert PC 1402 Rajkumar back to Armed Reserve from local subject to the condition if the period was within 3 years from the date of joining in Local Police and no ratification is necessary for that purpose."

Therefore, when the Commissioner of Police is considered as the competent authority, citing a different reason that in view of the Circular Memorandum dated 24.01.1987 passed by the Chief Office, wrong transfer order has been passed transferring the petitioner from Local Police to Armed Reserve is unjustifiable. When the Commissioner

of Police, Salem is the competent authority, who has accepted the request of the petitioner to transfer him from Local Police to Armed Reserve and imposed two conditions that the petitioner should not ask for original seniority and he should not ask for transfer again back to Local Police, subsequently, the petitioner was reverted back to Armed Reserve, Salem permanently on 20.12.2007 in Na.Ka.No.A2 /657/ 25400/2007.

14. Thirdly, when the petitioner was approached this Court against the impugned order of transfer, thereby disturbing the petitioner again from Armed Reserve to Local Police, he obtained an order of stay on 16.07.2008 and by virtue of the said interim stay, since the petitioner has been serving in the Armed Reserve for the last one decade, due to the long passage of time, if the petitioner is disturbed after 11 years from the Armed Reserve, not only the petitioner but also the department would face the seniority issue. Therefore, considering the case of the similarly placed persons, namely, Mr.Rajkumar Grade II Constable 1402 of Traffic North, Salem City, who has been transferred to Armed Reserve by order dated 23.10.1998 of the Inspector General and Commissioner of Police, Salem City followed by the Memorandum dated 25.07.2008, showing that the Commissioner of Police is the competent authority to revert the Grade II Police

Constable 1402 Rajkumar from Armed Reserve to Local Police, Salem City on condition that if the period was within 3 years from the date of joining in the local police and that one Mr.Kuppan was also transferred back to Armed Reserve from Local Police and he was given promotion to the post of Head Constable in Armed Reserve by order dated 13.08.2013 and the same Kuppan was further given promotion to the post of Sub-Inspector of Police in Armed Reserve by order dated 24.10.2014 of the Superintendent of Police, Namakkal District, this Court is of the view that discriminating the case of the petitioner alone is unjustifiable.

15. In view of the foregoing reasons, the impugned order of the 1st respondent, namely, the Commissioner of Police, Salem City Police, Salem, in C.P.O.No.367/2008 (C.No.A3/134/7854/2008) dated 23.6.2008, transferring the petitioner back to Local Police, Salem from Armed Reserve is liable to be set aside and the same is accordingly set aside and the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.04.2019

Index:Yes/ No
 Internet:Yes/No
 Speaking /Non-speaking order
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T.RAJA, J.

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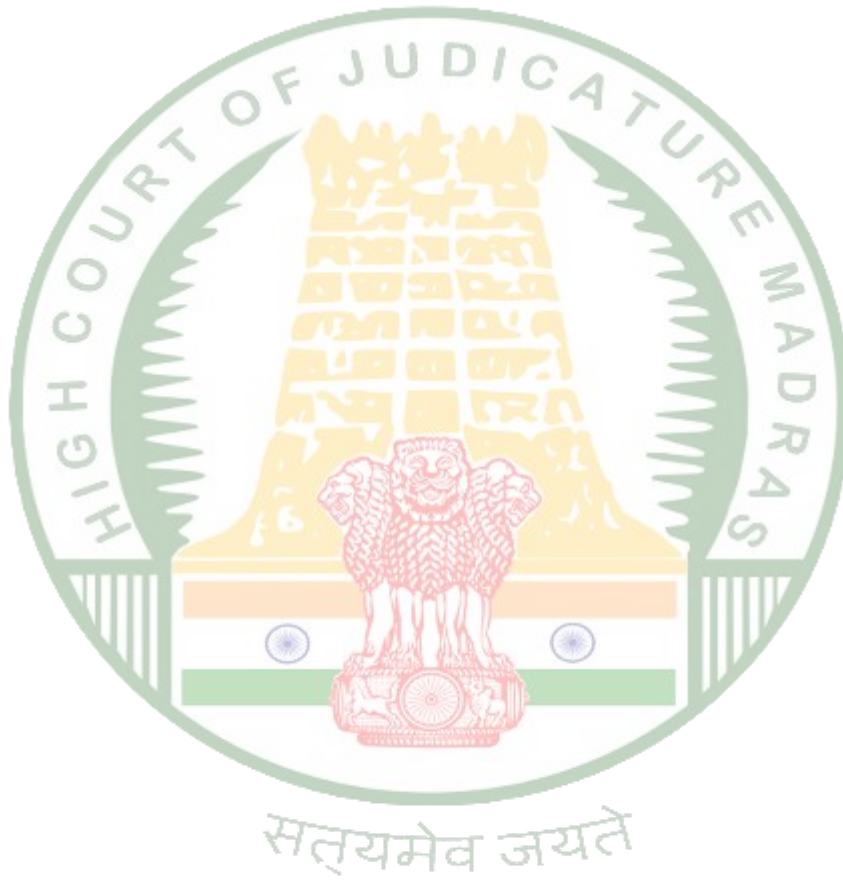
To
The Commissioner of Police,
Salem City Police,
Salem.



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