



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN

and

THE HONOURABLE MR.JUSTICE P.D. AUDIKESAVALU

W.A. (MD) No. 1547 of 2018

and C.M.P. (MD) No. 11043 of 2018

1. The Inspector General of Police,
South Zone,
Madurai.
 2. The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.
 3. The Superintendent of Police,
Tirunelveli Range,
Tirunelveli.
 4. The Superintendent of Police,
Kanniyakumari District.
 5. The Superintendent of Police,
Ramanathapuram.
- ... Appellants/Respondents

-vs-

K. Govindasamy ... Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 02.03.2018 in W.P. (MD) No. 3403 of 2018 on the file of this Court and allow the Writ Appeal.

Prayer in WP(MD). 3403/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records relating to the orders Transfer and posting of Police Constable vide D.O.984/2017 in C.No.A4/43015/2017 dt.29/11/2017 passed by the 4th respondent and the consequential order Transfer and Postings in C.No.A3/31356/2017,D.O.No.134/2018 dated 09/02/2018 passed by the 5th respondent and quash the same and consequently direct the respondents to grant all attendant monetary benefits as per promotion order passed by the 4th respondent dt.30/08/2016 with effect from 01/03/2016 as Grade I PC to the petitioner.



For Appellants/Respondents : Mr. A.K. Baskarapandian,
Special Government Pleader.
For Respondent/Petitioner : Mr. R. Murugan

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J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

This intra-Court Appeal is preferred against the order dated 02.03.2018 in W.P. (MD) No. 3403 of 2018 passed by the Writ Court in which the Appellants were the Respondents. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner joined in service as Grade-II Police Constable in the armed reserve at Nagercoil in Kanniyakumari District on 01.12.2003 and he was normally due for up-gradation as Grade-I Police Constable with effect from 01.12.2013. However, due to the pendency of the certain disciplinary proceedings that had been initiated against him, there was postponement of his increments and the said penalties are subject matter of certain legal proceedings which are still pending. Taking into consideration the punishments imposed upon the Petitioner, the Fourth Respondent, viz., the Superintendent of Police, Kanniyakumari District, by proceeding No. D.O. 728/2016 in C. No. A4/35799/2016 dated 30.08.2016 issued orders for the up-gradation of the Petitioner as Grade-I Police Constable with effect from 01.03.2016 forenoon and his pay band of Grade-I Police Constable was fixed as Rs.5200 - 20200 + G.P. 2400 as per Ruling 17 of FR 27.

3. While matter stood as narrated supra, the Petitioner was transferred and posted to Ramanathapuram District, on administrative grounds by proceeding No.D.O.984/2017 in C.No.A4/43015/2017 dated 29.11.2017 issued by the Fourth Respondent and the general number of the Petitioner as PC 1255/KKI, Armed Reserve, Kanniyakumari District, has been assigned as PC 1260/RMD in Ramanathapuram District, by proceeding No. D.O. 134/2018 in C. No. A3/31356/2017 dated 09.02.2018 issued by the Fifth Respondent. The Petitioner has filed W.P. (MD) No. 3043 of 2018 for calling for the records relating to the orders 'Transfer and posting of Police Constable' vide D.O. 984/2017 in C. No. A4/43015/2017 dated 29.11.2017 passed by the Fourth Respondent and the consequential order 'Transfer and Postings' in C. No. A3/31356/2017, D.O. No. 134/2018 dated 09.02.2018 passed by the Fifth Respondent and to quash the same and consequently direct the Respondent to grant all attendant monetary benefit as per promotion order passed by the Fourth Respondent dated 30.08.2016



with effect from 01.03.2016 as Grade-I Police Constable to the Petitioner.

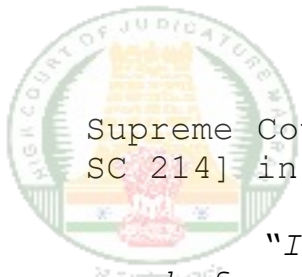
4. The Writ Court by order dated 02.03.2018 disposed that Writ Petition, in which it has been stated as follows:-

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"...2. When the matter was taken up for hearing for final disposal, the learned Government Advocate appearing on behalf of the Respondents would point out that since the Petitioner did not accept the order of up-gradation, he continues to be treated as Police Constable Grade-II. This Court is unable to accept the said version. Normally Person will forego up-gradation if it involves transfer from one place to another place. The Petitioner has silently accepted the transfer and moved from Nagercoil to Ramanathapuram. Therefore, there is no earthly reason not to accept the order of promotion. Therefore this Court is of the view that the Petitioner is entitled to be given the benefit of up-gradation as Police Constable Grade-I with effect from 01.03.2016. The Petitioner is to be given the consequential monetary benefits also. The order impugned in this Writ Petition is quashed. It is made clear that the Petitioner's challenge to the order of punishment is still pending before this Court and therefore, the Petitioner's case for up-gradation to the post of Grade-I Police Constable from an earlier date will depend on the outcome of the other Writ Petition filed by the Writ Petitioner. The Respondents are directed to grant the attendant monetary benefits to the Petitioner within a period of eight weeks from the date of receipt of a copy of this order.

3. Accordingly, the Writ Petition is allowed and the orders impugned herein stands quashed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed."

5. We have heard Mr. Murugan, learned Counsel for the Petitioner and Mr. A.K. Basakarapanidan, Special Government Pleader, appearing for the Respondents. On a bare perusal of the proceeding No.D.O.728/2016 in C.No.A4/35799/2016, dated 30.08.2016 issued by the Fourth Respondent, it could be seen that the Petitioner had been given up-gradation with effect from 01.03.2016 F.N. and his pay was directed to be fixed in the manner stated therein, which the Respondents are bound to comply. It is rather surprising that the Respondents have come out to a strange plea that the order passed by the Fourth Respondent could not be given effect to for the reason that the Petitioner had not received the same. Reference may be made to the decision of the Hon'ble



Supreme Court of India in **State of Punjab -vs- Khemi Ram** [AIR 1970 SC 214] in which it has been held as follows:-

"It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned, the authority making such order would be in a position to change its mind and modify it if it though fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no change whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus may go away from the address given by him for service of such orders, or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'communication' ought not to be given unless the provision in question expressly so provides." (emphasis supplied on the underlining)

It would be evident from those principles laid down in that binding decision that the despatch of the order by the authority passing the order would suffice for the purpose of communicating the same and its actual delivery to the addressee is not necessary. It is also not the case of the Respondents that the aforesaid proceeding No. D.O. 728/2016 in C. No. A4/35799/2016 dated 30.08.2016 sought to be enforced by the Petitioner had been rescinded or had been kept in abeyance or that the Petitioner was not attending to duty. It is seen from the materials borne out of the records that the Petitioner continued to work under the control of the Fourth Respondent till his transfer to Ramanathapuram District, under administrative grounds and there is no dispute that he has obeyed the same and worked there. In such circumstances, the question of up-gradation order received by the Petitioner is immaterial and cannot be of any consequence so as to deny him the benefits



3. The Superintendent of Police,
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Tirunelveli.

4. The Superintendent of Police,
Kanniyakumari District.

5. The Superintendent of Police,
Ramanathapuram.

Copy to:

1. The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

2. The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court,
Madurai.(For Reporting Compliance)

+1 cc To Mr.R.Murugan, ADVOCATE IN SR NO.97136

+1cc to Special Government Pleader Sr.No.97346

Vjt

MK/KK/SV/SAR 3/31.12.2018/6P/10C

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