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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P No.10037 of 2018

C.Selvan

... Petitioner

vs.

1. The Principal Secretary to Government,
Home (Police) Department,
Fort St. George, Chennai - 600 009.
2. The Director General of Police,
Mylapore, Chennai 600 004.
3. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 2nd respondent in proceedings RC.No.72928/NGB V(2)/2012 dated 05.04.2019 and quash the same and consequently direct the respondents to retrospectively promote the petitioner to the post of Sub Inspector of Police by including his name in the 'C' list of Head Constables (AR) fit for promotion as Sub Inspector (AR) drawn for the year 2002 and further promote him to the post of Inspector of Police in the 'C' list of the year 2011 on par with his junior Mr.M.Venkatesan with all consequential service and monetary benefits.

Prayer amended as per Court order dated 02.08.2019 in WMP.No.22324 of 2019 in W.P.No.10037 of 2018

For Petitioner : Ms.Swadhi Subramaniam

For Respondents: Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader for R1 & R2

Mr.M.Devendran
Standing Counsel for R3



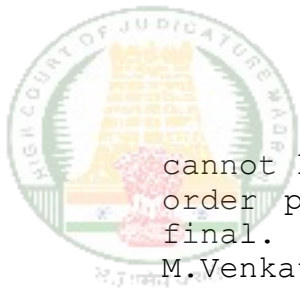
ORDER

This writ petition has been filed by the petitioner challenging the impugned order passed by the 2nd respondent and for consequential direction to the respondents to promote the petitioner to the post of Sub Inspector of Police by including his name in the "C" List of Head Constable drawn during the year 2002 and further promote him to the post of Inspector of Police in the "C" List of the year 2011 on par with his junior.

2.The case of the petitioner is that he was appointed as a Grade II Police Constable on 20.12.1986 and was temporarily promoted as a Head Constable on 03.07.1998. The petitioner was regularly promoted to the post of Head Constable on 30.06.1999 and thereafter as a regular Sub-Inspector of Police in June 2017.

3.The grievance of the petitioner is that one M.Venkatesan who was appointed as a Grade II Police Constable only in the year 1988 had marched past the petitioner in the list than the petitioner and he was allowed to participate in the range promotion board 2002 for promotion to the post of Sub Inspector of Police and he was promoted as a Sub Inspector of Police by an order dated 31.03.2003, whereas the petitioner who is senior to him was made a Sub Inspector much later and he was not allowed to participate in the range promotion board for the year 2002. When the petitioner made a representation in this regard, the 2nd respondent by his proceeding dated 06.12.2017 had rejected the claim made by the petitioner on the ground that the petitioner did not satisfy the requirements during the relevant point of time.

4.The learned counsel for the petitioner submitted that M.Venkatesan was admittedly a junior to the petitioner and there was no reason as to why the said M.Venkatesan was allowed to participate in the range promotion board and the petitioner was discriminated. The learned counsel for the petitioner further submitted that the 2nd respondent had rejected the request made by the petitioner only on the ground that the promotion for the said M.Venkatesan was given only because of the orders passed by this Court and in fact originally the order said that it was a wrong judgment. The learned counsel submitted that while the writ petition filed by the said M.Venkatesan was considered by this Court, this Court had clearly interpreted the meaning of the word "Officiating" and it was held that even the Head Constable who is working in the said post temporarily can be considered to be a person "Officiating" in the said post. The learned counsel submitted that the same interpretation will apply to the petitioner also and therefore, the petitioner has satisfied all the requirements. The learned counsel further submitted that the promotion given to the said M.Venkatesan



cannot be said to be illegal, since, it was given pursuant to an order passed by this Court and the said order has also become final. Therefore, whatever was held in favour of the said M.Venkatesan must also enure to the benefit of the petitioner.

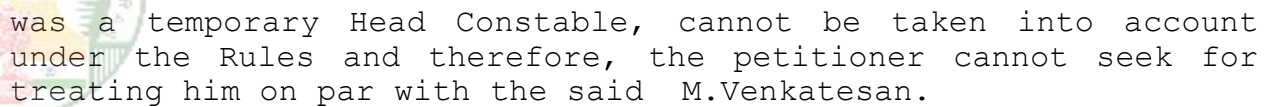
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5.Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the petitioner did not complete four years of service as a regular Head Constable on the crucial date on 01.07.2002, therefore, the petitioner was not allowed to participate in the range promotion board in the year 2002. The learned counsel submitted that the petitioner was promoted only as a temporary Head Constable and the same was regularized only on 30.06.1999. Therefore, the learned counsel submitted that the temporary promotion as a Head Constable cannot be taken into account while considering the petitioner for promotion under Rule 3(d)(iii) of the Special Rules. The learned counsel further submitted that M.Venkatesan was given the benefit only because of the orders passed by this Court and that does not in any way prevent the respondents from independently assessing, whether the petitioner had the prescribed qualifications at the time of being considered. Therefore, the learned counsel submitted that the order that was passed in favour of M.Venkatesan cannot be taken advantage by the petitioner.

6.This Court has carefully considered the submissions made on either side and also the materials available on record.

7.It is an admitted fact that the above said M.Venkatesan is junior to the petitioner since the petitioner was appointed as Grade II Police Constable on 20.02.1986 and the said M.Venkatesan was appointed as a Grade II Police Constable on 25.05.1988. Therefore, there is not much of controversy on the seniority of the petitioner. The entire dispute arose since the said M.Venkatesan was allowed to participate in the range promotion board during the year 2002 for promotion to the post of Sub Inspector of Police and he was promoted as a Sub Inspector of Police by an order dated 31.03.2003, whereas, the petitioner was promoted as Sub-Inspector of Police on 22.05.2017.

8.The impugned order that was passed by the 2nd respondent primarily raised two grounds against the petitioner. The 1st ground that is raised against the petitioner is that the benefit was given to the above said M.Venkatesan only due to the orders passed by this Court in W.P.Nos.13584 & 13585 of 2017 and therefore, it is not necessary to apply the same order in favour of the petitioner. The second ground that has been raised against the petitioner is that the petitioner had not completed four years of service as a regular Head Constable on the crucial date on 01.07.2002 and the period during which the petitioner



10.This word has been interpreted by this Court in the judgment that was given in favour of M.Venkatesan. The relevant portions in the judgment is extracted hereunder:

"3(d) In the list of Head Constables fit for promotion as Sub Inspectors of Police only men satisfying the following conditions shall be included:-

(ii) Must not have completed 53 years of age on the first day of July of the year in which the selection for promotion of Head Constables as Sub Inspectors is held.

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

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



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"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 1.7.2002. Therefore, they appear to have got the qualifying service as Head Constables even though they have been acting temporarily and regularisation 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.

10.It is now stated that since the writ petitions are pending, the petitioners are not granted any service benefits in the post of Sub Inspector of Police. Since the impugned orders are quashed, the respondents are directed to give all service benefits payable to the post of Sub-Inspector of Police, to the petitioners within a period of eight weeks from the date of receipt of a copy of this order.

11.It is clear from the above judgment that this Court has treated even the service rendered as a Head Constable on temporary basis to come within the term "Officiating Service". This Court had held that the moment a person acts or discharges the duty of an office, he can be brought under the term



"Officiating". This order has become final and this Court does not find any reasons to disagree with the finding of the learned Single Judge.

12.If the above judgment is accepted, the benefit that was given to M.Venkatesan must also enure to the benefit of the petitioner herein. The petitioner is denied the promotion only on the ground that he was promoted as a Head Constable on a temporary basis on 03.07.1998 and he was regularized only on 30.06.1999 and therefore, he did not complete the mandatory four years of service as Head Constable as on 01.07.2002. In the considered view of this Court, the petitioner cannot be treated differently and the petitioner must also get the same benefit which M.Venkatesan had obtained before this Court.

13.In the result, the impugned order passed by the 2nd respondent in proceedings RC.No.72928/NGB V(2)/2012, dated 05.04.2019 is hereby quashed and there shall be a direction to the respondents to grant all the consequential benefits to the petitioner on par with his junior M.Venkatesan and this exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order.

14.This writ petition stands allowed with the above direction. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Principal Secretary to Government,
Home (Police) Department,
Fort St. George, Chennai - 600 009.
2. The Director General of Police,
Mylapore, Chennai 600 004.
3. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.



4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Prem Narayan, Advocate, S.R.No.104194

+1cc to the Government Pleader, S.R.No.104872

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PPA(CO)
CS/08/01/2020