

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 08.03.2019

ORDER PRONOUNCED ON : 15.03.2019

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.18459, 18460, 18461, 20413, 20414 & 20415 of 2013
and W.M.P.No.8969 & 9186 of 2017

K.Rajagopalan .. Petitioner in W.P.No.18459 of 2013
S.Shanmugasundaram .. Petitioner in W.P.No.18460 of 2013
K.Mahendran .. Petitioner in W.P.No.18461 of 2013
M.Ashok Kumar .. Petitioner in W.P.No.20413 of 2013
P.Selva Kumar .. Petitioner in W.P.No.20414 of 2013
M.Murugan .. Petitioner in W.P.No.20415 of 2013

Vs.

The President-cum-Deputy Commissioner,
Washermenpet, Greater Chennai Police,
Head Constable Promotion Special Board,
Chennai. Respondent in W.P.Nos.18459 to
18461 of 2013

1 The State Rep.By,
The Secretary to Government
Home (Police) St.George Fort, Chennai.

2 The Director General of Police,
Mylapore, Chennai.

3 The Commissioner of Police,
Egmore, Chennai.

4 The President cum Deputy Commissioner,
Washermenpet, Greater Chennai Police,
Head Constable Promotion Special Board,
Chennai. Respondents in W.P.Nos.20413 to
20415 of 2013

COMMON PRAYER in W.P.No.18459 to 18461 of 2013: These Writ

Petitions has been filed under Article 226 of the Constitution of India, praying in the nature of Writ of Certiorarified Mandamus, to call for the records in letter Na.Ka.No.Pa.Pi.5(1) 46/42889/2013 dated 18.06.2013 calling for test on 10.07.2013 issued by the respondent.

COMMON PRAYER IN W.P.Nos.20413 to 20415 of 2013:-

These Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to promote the petitioner within a stipulated time in accordance with the G.O.Ms.No.1055 and 1056 dated 01.11.2006 based on seniority and service records.

For Petitioner
in W.P.No.20414
& 20415 of 2013 : Mr.R.Jayaprakash

For Petitioner
in W.P.Nos.18459 to
18461 & 20413 of 2013 : No appearance

For Respondent
in all W.Ps. : Mr.Akhil Akbarali
Government Advocate

C O M M O N O R D E R

Since the issues involved in all the six (6) Writ Petitions are same, these Writ Petitions are being disposed of by this Common Order.

Brief facts leading to the instant petitions are as follows:-

2. The averments of all the Writ petitions are more or less same. All the petitioners were initially recruited as Grade-II Police Constables on 14.07.1981 and were promoted as Head Constables on 08.05.1985. They were promoted as Sub-Inspector of Police in the year 2005 as against actual batch of 1992-1992 "C" List fit for Promotion.

3. It is the contention of the petitioners that their juniors were promoted as Sub-Inspectors retrospectively with effect from the original year 1991-1992 and they are now holding the post of Deputy Superintendent of Police, whereas, the petitioners are continuing only as Sub-Inspectors. The petitioners submitted that their juniors approached this Court and obtained orders in their favour. The petitioners also submitted that since their juniors have been promoted by orders of this Court, the same benefits must be extended to the petitioners more so because they are seniors. The learned

counsel for the petitioners have relied upon a judgment of the Hon'ble Division Bench of this Court in the case of Megakumar Vs. the Director General of Police, Chennai and others in W.P.No.16765 of 2004, dated 21.04.2006. The said order, which is quoted in the memo of the Writ Petition reads as follows:-

"The learned counsel for the petitioner has however submitted that the case of the petitioner stands on slightly different footing, as the petitioner was in the waiting list in the selection list prepared in 1991 and thereafter he had been temporarily promoted in June 2001 and he is continuing as such. The learned counsel for the petitioner has further submitted that some of the juniors to the petitioner has been regularly promoted and regularized. It is further contended that as a matter of fact after filing of the Original Application in 2003, the petitioner took steps to appear at the examination held during 2003. But unfortunately, he was prevented from doing so, since the Government has power under Rule 39 of the Tamil Nadu Sub-ordinate Service rules to relax. It is for the Government to consider these aspects. In such view of the matter, we dispose of the Writ Petition with the observation that the case of the petitioner may be considered by extending the benefit of Rule 39 of Tamil Nadu Police Subordinate Service Rules and by taking into account various relevant facts and circumstances, including the fact that the petitioner had once appearing in the year 1991 and thereafter, the petitioner was not able to appear during 2003. Subject to the aforesaid observation, the Writ Petition is disposed. No costs."

4. The petitioners have relied upon another judgment of this Court dated 15.06.2010 in W.P.Nos.11933 and 11947 of 2010. The relevant portion of the order reads as under:-

"3. In W.P.No.25043 of 2002 filed by two Constables working in the Motor Transport Wing of the Police Department, a Division Bench of this Court passed an order dated 18.09.2007 directing the respondents to consider the date of recruitment as the basis for fixing seniority and to effect promotion and include the names of those petitioners in the 'C' list. The order passed by the Division Bench was also implemented by the Government in G.O.Ms.No.1623, Home (Pol.V) Department, dated 12.12.2008.

4. Thereafter a series of writ petitions were filed by similarly placed petitioners and those writ petitions were also allowed. The Government Advocate on a specific query, submitted that no appeals were filed against the orders passed in subsequent writ petitions.

5. It is on the basis of the aforesaid orders, that the petitioners have come up with these writ petitions, after their representations were rejected by the respondents. Unfortunately, the rejection of their representation had been ordered on the basis that other persons came to Court and obtained orders. No other details are mentioned in the impugned orders about the eligibility of the petitioners.

6. It is not clear from the affidavits filed by the petitioners in support of the writ petitions as to whether the petitioners actually belong to the Motor Transport Department. Though the petitioners have filed a list dated 30.03.1988 wherein, the issue is not very clear. Therefore, in the circumstances, I am of the view that the respondents should be directed to consider the case of the petitioners with reference to the orders passed by the Division Bench, after finding out if the petitioners actually belong to the Motor Transport Department. Accordingly, the writ petitions are disposed of directing the respondents to consider the claim of the petitioners on par with those who had obtained orders in the earlier writ petition, provided the petitioners are identically placed and they also belong to the Motor Transport Wing of Police Department. The respondents shall pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs."

5. The petitioners also relied upon an order dated 24.11.2016 of this Court passed in W.P.No.36097 of 2015, which reads as under:-

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 1st respondent in G.O.(D).No.864, Home (Police-3) Department, dated 22.10.2013 and to quash the same and consequently, to

direct the respondents to include the name of the petitioner in the 'C' list of Head Constables (Armed Reserve) fit for promotion as Sub-Inspector of Police (Armed Reserve) for the year 1991-92 at the appropriate place and to give consequential promotions with all monetary and other attendant benefits.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1. The petitioner was appointed as Police Constable on 13.05.1981 in Armed Reserve, Chennai City Police and thereafter, he was promoted as Havildar (equivalent to Head Constable) on 26.12.1984. One Mr. Megakumar, who was appointed as Police Constable on 13.10.1981, is junior to the petitioner. The petitioner's next avenue of promotion was to the post of Sub-Inspector of Police. In the year 1991-92, Range Promotion Test was conducted for the post of Sub-Inspector, in which both the petitioner and his junior Megakumar participated, but not selected. Thereafter, no selection was conducted for the post of Sub-Inspector of Police till 2000.

2-2. While so, in the year 1998, the petitioner was promoted as Sub-Inspector of Police on temporary basis and within six months, he was reverted back to the post of Head Constable for want of vacancy. Again in the year 2001, the petitioner was promoted as Sub-Inspector of Police and when he was working as such, he attended the Range Promotion Board in the year 2003 and consequently, the petitioner's name found place in the list drawn for that year. Consequent to the same, the petitioner was promoted as Sub-Inspector of Police on regular basis on 26.07.2004 and his probation was also declared on 29.06.2006 and based on the same, the petitioner's name was brought into 'A' list of Sub-Inspector of Police.

2-3. It is further stated by the petitioner that a combined seniority list of Head Constables was published by the 3rd respondent vide his proceedings dated 28.11.2001 in which the petitioner's name was found at Serial No.49 and his junior Megakumar's name was found at Serial No.53. The petitioner was sent for deputation to Central Bureau of Investigation, South Zone and he worked there for eight years. Thereafter, he came to his parent department. The petitioner was shocked to know that his juniors

including Megamukar were given further promotion as Inspector of Police, whereas, the petitioner was still working as Sub-Inspector of Police. The said Megakumar, who was junior to the petitioner and temporarily promoted as Sub-Inspector of Police, approached the 1st respondent for relaxing the Rules and the 1st respondent also considering his case included his name in the list of Head Constable fit for promotion for the post of Sub-Inspector of Police of the year 1991-92, by relaxing the relevant service Rules. The 1st respondent also issued an order in G.O.No.349, Home (Police 3) Department, dated 14.03.2008, to that effect. Based on the same, the Megakumar was further promoted as Inspector of Police in the year 2009 itself, whereas the petitioner was promoted as Inspector of Police only on 26.11.2012, though he was senior to him.

2-4. Subsequently, one Mr. Manavalan and 7 others working in Chennai City Police approached the 1st respondent for similar relief and the 1st respondent also considered their case favourably and issued G.O.Ms.No.82, Home (Police 3) Department, dated 03.02.2011 in and by which, their names were included in the 'C' list of Head Constables fit for promotion for the post of Sub-Inspector of Police for the year 1991-92. Since the petitioner was also similarly placed person, he also approached the respondents, to extend the same benefits as was given to Mr. Megakumar and others. The 2nd respondent also recommended the petitioner's case to the 1st respondent to relax the service Rules as was done in respect of Megakumar, who was also similarly placed and who was junior to the petitioner. The 1st respondent instead of relaxing the said Rules and extending the benefits to the petitioner, rejected the request of the petitioner vide his order in G.O.(D).No.864, Home (Police 3) Department, dated 22.10.2013. The said order was serviced on the petitioner on 14.12.2013 by the Deputy Superintendent of Police, Vellore. Challenging the same, the petitioner has come forward with the present writ petition before this Court for the relief as stated supra.

3. When the matter is taken up for consideration, the learned senior counsel appearing for the petitioner submitted that the 1st respondent by relaxing the Rules has given promotion to one Megakumar, who is junior to the petitioner. When the petitioner approached the respondents, the 2nd

respondent has recommended the petitioner's case to the 1st respondent. In this regard, the learned senior counsel for the petitioner has also invited the attention of this Court to the recommendation made by the 2nd respondent vide his letter dated 25.05.2011 in Rc.No.234039/NGB.V(2)/2010. But, without considering the recommendation made by the 2nd respondent, the 1st respondent has rejected the claim of the petitioner by the impugned order dated 22.10.2013. The learned senior counsel for the petitioner submitted that when the petitioner's juniors were given promotion, the petitioner is also entitled for the same. Thus, learned senior counsel for the petitioner sought for quashing the impugned order and for suitable direction to the respondents.

4.Per contra, the learned Special Government Pleader by filing a detailed counter would contend that earlier the said Megakumar, Temporary Sub-Inspector of Police (AR) filed a writ petition in W.P.No.16765 of 2004 and this Court by order dated 21.04.2006 directed the respondents to consider the claim of the said Megakumar by extending the benefit of Rule 39 of the Tamil Nadu Police Subordinate Service Rules. Thereafter, based on the recommendation of the Director General of Police, Chennai, the Government vide order in G.O.(Ms).No.349, Home (Pol-3) Department, dated 14.03.2008, has relaxed Rule 3(d) of the Special Rules for the Tamil Nadu Police Subordinate Service, relating to the selection made by the Range Promotion Board in favour of Thiru.S.Megakumar and his name was included in the 'C' list of Sub-Inspector of Police (Armed Reserve) for the year 1991-92 and accordingly, he was promoted as Sub-Inspector of Police (Armed Reserve) on par with his immediate junior. Thereafter, one Manavalan and seven others filed writ petitions in W.P.Nos.22766 to 22770, 27419, 27420 & 27431 of 2008 before this Court seeking to direct the respondents to include their name in the 'C' list of Head Constables (Armed Reserve) fit for promotion as Sub-Inspector of Police (Armed Reserve) for the year 1991-92, in relaxation of Rule 3(d) of the Tamil Nadu Police Subordinate Service Rules. This Court by order dated 24.08.2009 had given direction to the respondents to consider their claim. Pursuant to the orders of this Court, the Government has relaxed Rule 3(d) of the Special Rules in favour of the said Manavalan and 7 others. The petitioner herein had earlier filed a petition in O.a.No.4134 of

2000 before the Tamil Nadu Administrative Tribunal, Chennai, which was subsequently transferred to this Court and renumbered as W.P.No.40520 of 2010. This Court by order dated 23.09.2010 directed the petitioner to approach the Government of his grievance. Thereafter, the petitioner gave a representation to the Government to include his name in the 1991-92 Sub-Inspector of Police (Armed Reserve) 'C' list. The matter was referred to the 2nd respondent, for which the 2nd respondent has reported to the Government that totally 340 police personnel appeared 1991-92 Range promotion Test and some unsuccessful participants have obtained favourable orders from the Court and got them included in the 'C' list of 1991-92. Hence, the 2nd respondent had reported to the Government that if the Government considered the claim of the such petitioners favourably, it would open flood gates for claiming promotion on par with these candidates and it would affect the merits of other eligible candidates and it would create administrative imbalance. After careful examination, the Government vide G.O.(D).No.864, Home (Pol.3) Dept, dated 22.10.2013 has rejected the representation of the petitioner since it would affect the merits of the eligible candidates and would create administrative disparity. Hence, there is no infirmity in the impugned order.

5.It is further submitted by the learned Special Government Pleader that one Tvl.J.Jayakumar & 14 others, Armed Reserve Police personnel of Greater Chennai Police, have filed a writ petition in W.P.No.1694 of 2010 before this Court praying to quash the G.O.(Ms).No.349, Home (Police-3) Department, dated 14.03.2008 issued in favour of Thiru.S.Megakumar. Simiarly, Tvl.K.Baskara & 14 others, Armed Reserve Police personnel of Greater Chennai Police have filed a writ petition in W.P.No.18686 of 2011 before this Court praying to quash the G.O.(Ms).No.82, Home (Police-3) Department, dated 03.02.2011 and not to relax Rule 3(d) of the Tamil Nadu Police Subordinate Service in favour of any of the candidates as it was done in favour of contesting respondents therein. The said writ petitions are pending before this Court. The learned Special Government Pleader further stated that the impugned order does not require any interference from this Court and thus, he sought for dismissal of the writ petition.

6.Heard the submissions made on either side and perused the materials available on record.

7.It is the main grievance of the petitioner that by relaxing the Rules, promotion was given to his junior Megakumar by including his name in the 'C' list of the year 1991-92. This fact was not denied by the respondents. Similarly, one Manavalan and 7 others approached the 1st respondent for similar relief and the 1st respondent has also considered their case favorably and issued G.O.Ms.No.82, Home (Police-3) Department dated 03.02.2011, in and by which their names were included in the 'C' list of Head Constables fit for promotion for the post of Sub-Inspector of Police for the year 1991-92, by relaxing the Rule. When the petitioner's juniors were given promotion, the petitioner is also entitled for the relief sought for. In fact, a recommendation was also made by the 2nd respondent to the 1st respondent vide his proceedings dated 25.05.2011 in Rc.No.234039/NGB.V (2)/2010 and the relevant portions in the said recommendation are as follows:-

"6.The service particulars of Thiru.S.Megakumar and writ petitioner Thiru.S.Inbaraj are furnished below:

S. No.	Name	Rank	D/o enlistment	D/o. Promotion as HC	D/o promotion as Ty. SI	D/o promotion as SI
1.	Megakumar	SI (AR)	13.01.81	17.12.1984	01.01.1998	20.11.2007
2.	Inbaraj	SI (AR)	13.05.81	17.12.1984	14.01.1998	26.07.2004

Tr.Megakumar, subsequently included in the 'C' list of the year 1991-1992 as Sl.No.24A w.e.f. 31.12.2001. As per seniority in the feeder category as well as on appointment, petitioner is senior to Tr.Megamumar. The petitioner is representing for such promotions on par with his batchmates serving in Ar.

7.Further the Commissioner of Police, Chennai Police in letter dated 21.04.2011 has informed that after verifying the available records, it is ascertained that Tr.S.Inbaraj, SI (AR) has participated in 1991-1992 promotion Board and not included in the 'C' list of HCs fit promotion as SI (AR). The marks obtained by the individual and cut of marks fixed for the respective Board could not be

assessed due to non-availability of relevant Board file.

8. Since the Hon'ble High Court of Madras have given direction to the Government to consider the representation of Thiru.S.Inbaraj on merits and in accordance with law, the representation of Thiru.S.Inbaraj is forwarded to the Government and I request the Government to consider the request of the writ petitioner Thiru.S.Inbaraj for relaxing under rule 39, since the Government have relaxed the same Rule in respect of Tri.Megakumar, who is also similar case and Junior to the writ petitioner."

8. It is the only contention of the learned Special Government Pleader that if the claim of the petitioner is considered favourably, it would open flood gates for claiming promotion by the personnel on par with the petitioner and it would affect the merits of other eligible candidates and it would create administrative imbalance. Moreover, W.P.No.1694 of 2010 which was filed questioning G.O.(Ms).No.349, Home (Police-3) Department, dated 14.03.2008 issued in favour of Thiru.S.Megakumar and another writ petition in W.P.No.18686 of 2011 which was filed praying to quash the G.O.(Ms).No.82, Home (Police-3) Department, dated 03.02.2011 and not to relax Rule 3(d) of the Tamil Nadu Police Subordinate Service in favour of any of the candidates, are still pending before this court. As such, according to the learned Special Government Pleader, the petitioner's claim for promotion cannot be considered.

9. But, in my considered opinion, when the respondents have chosen to give promotion to the junior to the petitioner, now the reasons assigned by the respondents for not considering the claim of the petitioner for promotion, are not legally sustainable. Therefore, I am of the opinion that the impugned order is liable to be quashed and a suitable direction could be given to the respondents.

10. Accordingly, the impugned order dated 22.10.2013 is quashed. The respondents are directed to include the name of the petitioner in the 'C' list of Head Constables (Armed Reserve) fit for promotion as Sub-Inspector of Police (Armed Reserve) for the year 1991-92 at the appropriate place and give consequential promotions with all monetary and other attendant benefits, subject to the result of the writ

petitions in W.P.No.1694 of 2010 & W.P.No.18686 of 2011, within a period of six weeks from the date of receipt of a copy of this order.

With the above terms, the writ petition is allowed. No costs.

6. The petitioners would also rely upon the following judgments:-

- (i) Order dated 23.07.2009 of this Court in W.P.No.14064 of 2009 filed by Tr.K.Marcelin;
- (ii) Order dated 15.06.2010 of this Court in W.P.No.11933 of 2010 filed by Tr.C.Velu;
- (iii) Order dated 20.07.2010 of this Court in W.P.No.15549 & 15550 of 2010 filed by Tr.V.R.Muthuveerappan and S.Kumar; and
- (iv) Order dated 06.08.2010 of this Court in W.P.No.17868 of 2010 filed by Tr.G.Murugan.

7. The petitioners stated that Government Orders have been passed in all the above matters and they have been implemented. The learned counsel appearing for the petitioners submitted that for one of the Writ Petitioners viz., P.Selvakumar in W.P.No.20414 of 2013, the Government has passed G.O.(Ms).No.92, Home (Pol.V) Department dated 08.02.2011, which reads as under:-

"3. The High Court of Madras in its order dated 26.08.2010 in W.P.No.19477 to 19480 of 2010 filed by Tvl.G.Mohana Rangam, Head Constable 1558, Chennai Suburban, P.Sarath Chandrakumar, R.Mugundan, Head Constable 10583, Special Branch, Criminal Investigation Department, Chennai and P.Selvakumar, Head Constable 8930, Special Branch, Criminal Investigation Department, Chennai, has directed the respondents to consider the representation of the petitioners dated 17.08.2010, 17.08.2010, 19.08.2010 and 20.08.2010 in accordance with the decision rendered by the Division Bench of High Court of Madras in W.P.No.25043/2002, dated 18.09.2007 and G.O.Ms.No.1623, Home (Pol.V) Department, dated 12.12.2008 and also by considering as to whether the case of the petitioners are on par with others to whom the benefits have been extended and pass appropriate orders within a period of eight weeks."

8. A perusal of the said G.O. shows that the relief as prayed for in W.P.No.20414 of 2013 has to be allowed straight away. The learned counsel appearing for the respondent would

submit that Writ Appeals have been filed against few of the orders. When the learned counsel was asked as to whether the judgments of the single Judge have been stayed, the learned counsel fairly submitted that there is no stay of the judgment of the learned single Judge.

9. In view of the above and considering the fact that several persons, who are juniors to the petitioners, have been retrospectively promoted as Sub-Inspectors with effect from 1991 to 1992, there is no reason as to why the same benefit should not be extended to the petitioners herein also.

Accordingly, these Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The President-cum-Deputy Commissioner,
Washermenpet, Greater Chennai Police,
Head Constable Promotion Special Board, Chennai.
- 2 The Secretary to Government
Home (Police) St.George Fort, Chennai.
- 3 The Director General of Police,
Mylapore, Chennai.
- 4 The Commissioner of Police, Egmore, Chennai.

+2 cc to Mr.R.Jayaprakash, Advocate Sr.No.25361 &25362 (21.03.19)

CSL/20.03.2019

W.P.Nos.18459, 18460, 18461,
20413 to 20415 of 2013 and
W.M.P.No.8969 & 9186 of 2017