

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.02.2019

CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.3200 of 2009

M.R.Maria Joseph

..Petitioner

-vs-

1.The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore-18.

2.The Superintendent of Police,
District Police Office,
The Nilgiris District @
Udhagamandalam.

3.PrabhakaranRespondents

(3rd respondent impleaded as per order
of this Court dated 11.03.2010)

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified mandamus to call for the records relating to the endorsement issued by the second respondent herein in his proceedings No.A1/39874/08 dated 11.12.2008 rejecting the petitioner's request to be promoted as Sub Inspector of Police and quash the same and consequently direct the first respondent herein to consider the petitioner's case for promotion as Sub Inspector of Police and promote him as Sub Inspector of Police with effect from 10.10.2008, the date of promotion of his immediate junior with all consequential monetary and service benefits.

For Petitioner :: Mr.Ravi Shanmugam

For Respondents:: Mr.K.Ravikumar,
Additional Government Pleader
for R1 and R2

No appearance for R3

ORDER

The writ petition has been filed challenging the correctness of the endorsement issued by the second respondent herein in his proceedings No.A1/39874/08 dated 11.12.2008 rejecting the petitioner's request to be promoted as Sub

Inspector of Police and seeking a direction to the first respondent herein to consider the petitioner's case for promotion as Sub Inspector of Police and promote him as Sub Inspector of Police with effect from 10.10.2008, the date of promotion of his immediate junior with all consequential monetary and service benefits.

2. According to the learned counsel appearing for the petitioner, the petitioner joined the service as Grade II Police Constable on 19.07.1977 and he was promoted as Grade-I Police Constable on 12.08.1994 and was further promoted as Head Constable on 19.12.1998. As no disciplinary proceedings either under Rule 3(a) or 3(b) is pending against him, he was due to retire on attaining the age of superannuation on 31.05.2009. In this regard, learned counsel appearing for the petitioner would submit that by D.O. No.799/94 dated 12.08.1994, in accordance with the orders of the Director General of Police, the Superintendent of Police, Nilgiris District had promoted 26 Police Constables of Nilgiris District as Grade-I Police Constable and the petitioner was included at Sl.No.18 in the list. However, in the subsequent promotion list namely, for the post of Head Constable, the petitioner's name was included at Sl.No.18 and the name of one Prabhakaran, the third respondent herein was included at Sl.No.38. According to the learned counsel appearing for the petitioner, when the petitioner was promoted as Grade-I Police Constable, the name of the third respondent was not found place in the promotion list and only at a later date, the third respondent has been promoted as Grade-I Police Constable.

3. Learned counsel appearing for the petitioner would further submit that an order dated 01.02.2007 was passed fixing the date of upgradation as Head Constable to all the Head Constables of Nilgiris District and the same was not communicated to the petitioner. When the petitioner coming to know the same on 08.08.2008, he preferred a representation to the Superintendent of Police, Nilgiris District stating that he may be moved to selection grade Head Constable and considered for promotion as Special Sub-Inspector of Police on completion of ten years as Head Constable, but the same was returned with an endorsement by the second respondent stating that orders of upgradation issued on 01.02.2007 was cancelled vide D.O.353/2007 dated 27.04.2007 and the upgradation of the petitioner as Head Constable is only with effect from 19.12.1998. As the third respondent being admittedly junior to the petitioner, the seniority list issued on 19.12.1998, placing the petitioner at Sl.No.18 and the third respondent at Sl.No.38 would prevail as per the orders of the second respondent. In this regard, the petitioner preferred a petition to the Deputy Inspector General of Police, Coimbatore Range pointing out that the third respondent, who is junior to the petitioner, has been promoted

as Sub Inspector of Police based on the seniority and he has not been considered for promotion. However, the second respondent vide order dated 11.12.2008 rejected the representation of the petitioner seeking promotion as Sub Inspector of Police. Therefore, the petitioner has come to this Court.

4. According to the learned counsel appearing for the petitioner, when the petitioner was placed in the seniority list of Head Constable at Sl.No.18 and the third respondent was placed at Sl.No.38, promoting the petitioner's juniors as Sub Inspector of Police and cancelling the seniority fixed before ten years is contrary to rules and therefore, the impugned order is liable to be quashed.

5. Reiterating the averments made in the counter affidavit, learned Additional Government Pleader appearing for respondents 1 and 2 would submit that the writ petition was filed comparing the case of the petitioner with the third respondent which is unjustified and untenable. However, the third respondent was recruited as Grade II Police Constable on 12.07.1973 which is four years much prior to the recruitment of the petitioner, whereas, the petitioner was appointed as Grade II Police Constable only on 19.07.1977. Although the third respondent was given upgradation as Grade I Police Constable along with the petitioner as he was not having prescribed qualification, both the petitioner and the third respondent were given promotion on the same date. Subsequently, the Chief Office, by Memo Rc. No.253182/NGB III(2)/06 dated 28.12.2006 has issued clarification to fix up the seniority of the police personnel those who are appointed prior to 1976 after scrapping of Range Promotion Board test in G.O. Ms. No.1055 Home (Police III) Department dated 01.11.2006. Therefore, the impugned order passed by the second respondent cannot be questioned.

6. It is seen from the records that the third respondent has completed 10+5+10 years of service as Grade II Police Constable, Grade I Police Constable and Head Constable respectively and he was given promotion as Sub Inspector of Police on 10.10.2008 and therefore, the petitioner cannot claim seniority comparing with the third respondent, as he has not rendered 10+5+10 years of service as Grade II Police Constable, Grade I Police Constable and Head Constable respectively. Therefore, this Court finds no merit in the writ petition and the same is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

1.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore-18.

2.The Superintendent of Police,
District Police Office,
The Nilgiris District @
Udhagamandalam.

+1cc to Mr.Ravi Shanmugam, Advocate, S.R.No.16286

+1cc to the Government Pleader, S.R.No.16661

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CP(CO)

RRS (03/04/2019)



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