

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.08.2019	Delivered on: 16.10.2019
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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**W.P. Nos. 8575, 11527, 11788, 13872, 13873,
22051, 22052, 26354 & 26355 of 2009
and M.P. No. 1 of 2009**

(W.P. No. 8575 of 2009)

P.Rengasamy

.. Petitioner

Vs.

1. The Principal Secretary to Government,
Home Department, Secretariat,
Fort St. George,
Chennai 9.

2. The Director General of Police,
Chennai.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent pertaining to the Government Letter No.114014/Police-3/2008-2 dated 12.02.2009 and G.O.Ms.No.1281 dated 22.09.1999 in so far as fixation of seniority below 1997-98 batch and quashed the same and direct the 2nd respondent to re-fix the seniority of the petitioner by placing below 1994-95 batch of Sub Inspectors of Police or at the appropriate place.

For Petitioner : Mr.K.Ravi Anantha Padmanabhan

For Respondent : Mrs.Narmadha Sampath,
Additional Advocate General
assisted by
Ms.R.Janaki,
Additional Government Pleader

COMMON ORDER

W.P. No. 8575 of 2009 is filed calling for the records on the file of the 1st respondent pertaining to the Government Letter No.114014/Police-3/2008-2 dated 12.02.2009 and G.O.Ms.No.1281 dated 22.09.1999 in so far as fixation of seniority below 1997-98 batch and quash the same and direct the 2nd respondent to re-fix the seniority of the petitioner by placing below 1994-95 batch of Sub Inspectors of Police or at the appropriate place.

2.The issue in all the Writ Petitions are interlinked and therefore, they are disposed of by this Common Order.

Case of the Petitioner:

3.All the petitioners were initially appointed as Grade II Police Constables on 25.05.1988 and various dates. On 01.01.1994, the Tamil

Nadu Uniformed Services Recruitment Board had notified direct recruitment of 500 Sub Inspectors of Police for the year 1994-1995. The selection was conducted from 21.06.1995 to 26.10.1995. All the petitioners participated in the selection process and they were successful in selection having passed all the test and Police verification. The Tamil Nadu Uniformed Services Recruitment Board selected 1198 candidates. The petitioners were included in the list.

3(a). Initially, 500 persons were appointed as Sub Inspectors of Police and sent for training on 01.03.1996. Subsequently, 600 candidates were appointed as Sub Inspectors of Police and sent for training on 02.06.1997. Remaining 98 selected candidates including the petitioners were not given appointment order and not sent for training. The 1st respondent issued G.O. Ms. No. 1317 Home (Police III Department) dated 08.09.1997 for direct recruitment of 1000 Sub Inspectors of Police for the year 1997-1998. The Tamil Nadu Uniformed Services Recruitment Board conducted recruitment and selected 1000 candidates. Out of 1000 candidates, 570 candidates were appointed and sent for training on 15.04.1999 in the first batch. Remaining 430 candidates were appointed and sent for training on 22.05.2000. 98 candidates including the petitioners selected in the year 1994-1995

were not given appointment and were not sent for training along with candidates sent for training on 01.03.1996 and 02.06.1997.

3(b). The petitioners and others filed Original Application for a direction to send them for training. The said O.A. was dismissed by the Tribunal. The petitioners and other affected candidates were making repeated representations. The 1st respondent issued G.O. Ms. No. 1281 Home (Police III) Department dated 22.09.1999, relaxing the age rule, etc., enabling 98 candidates including the petitioners to be appointed as Sub Inspectors of Police. Accordingly, the petitioners and others were appointed as Sub Inspectors of Police and sent for training along with second batch of Sub Inspectors selected for the year 1997-1998 on 22.05.2000 and fixed the seniority of the petitioners at the bottom of 1000 Sub Inspectors selected for the year 1997-1998. The petitioners were appointed as Sub Inspectors only based on the selection held in the year 1995 and they were not appointed on any fresh selection. On the anticipation that the petitioners would be appointed as Sub Inspectors of Police on the selection held in the year 1994-1995, the petitioners did not participate in the selection held subsequently. It is not the case of the respondents that due to 98 candidates' ineligibility or laxity they were not appointed, but they were not appointed

immediately along with their batch mates only due to administrative lapse of the respondents. The petitioners made representations to the respondents to re-fix their seniority at the bottom of 1100 candidates who were selected in the year 1995 along with the petitioners. The request of the petitioners was rejected by the 1st respondent by impugned order dated 12.02.2009 which was served on the petitioners on 11.03.2009.

3(c). The petitioners have come out with the present Writ Petitions to quash the order dated 12.02.2009 and the portion of G.O. Ms. No.1281 Home (Police III) Department dated 22.09.1999, fixing seniority of the petitioners below 1997-1998 batch and for a direction to the 2nd respondent to re-fix the seniority of the petitioners by placing them below 1994-1995 batch of Sub Inspectors of Police.

3(d). The learned counsel appearing for the petitioners contended that there is no delay on the part of the petitioners in approaching this Court for the relief now sought for. At the time of appointment and training, the petitioners were forced to give an undertaking that they will not claim any seniority or seek transfer to other category. When one of the 98 candidates during training period sought for re-fixing seniority,

he was issued warning memo. Subsequently, the 2nd respondent sought for the consent of the petitioners for transfer from category III to category I. The petitioners gave their consent and they were transferred to category I from category III. Subsequently, the 2nd respondent informed the petitioners that due to pendency of litigations, their request for re-fixing seniority cannot be considered.

3(e). The 1st respondent rejected the request of the petitioners for fixing the seniority along with 1994-1995 batch by impugned order dated 11.03.2009 and immediately they have filed the Writ Petitions. The dismissal of three Writ Petitions filed by the three other persons will not be a bar to the petitioners claiming the seniority. The said Writ Petitions were of the year 2010 and the relief sought for therein is also different. The Writ Petitions were dismissed at the stage of admission itself and pendency of the present Writ Petitions were not brought to the notice of this Court. The portion of the Government Order in G.O. Ms. No. 1281 Home (Police III) Department dated 22.09.1999 placing the petitioners below 1000 candidates selected during 1997-1998 batch is arbitrary and illegal. The petitioners were forced to accept the said condition and give an undertaking. The said portion (para 5 of the G.O. Ms. No. 1281 Home (Police III) Department dated 22.09.1999) is

against the principles of natural justice, equity, fair play and against Article 14 of the Constitution of India. The principle of legitimate expectation will apply in case of the petitioners. The date of selection is the criteria for fixing the seniority and not the date of appointment. When persons are appointed in single selection, their seniority must be fixed along with batch mates even if they were appointed and sent for training later.

3(f). Originally 500 post of Sub Inspectors of Police was notified in the year 1994-1995. Subsequently, 600 post were notified by the Uniformed Services Recruitment Board. The Uniformed Services Recruitment Board selected 1198 candidates taking into consideration the present and anticipated vacancy. Only 1100 candidates were appointed and sent for training. The respondents have not given any reason for not appointing and sending the remaining 98 selected candidates for training. The contention of the respondents that there was no vacancy more than 1100 post of Sub Inspectors of Police is not correct, as in September 1997 they issued G.O. Ms. No. 1317 Home (Police III) Department dated 08.09.1997 for appointment of 1000 vacancies for the recruitment of the year 1997-1998. Even out of 1100 selected candidates sent for training, 24 candidates out of 500 in the

first batch and 50 candidates out of 600 candidates sent for training in the 2nd batch did not report for training. In the year 1997 itself, there were 74 vacancies out of 1100 vacancies notified by the respondents. The respondents could have appointed 74 persons from and out of 98 persons already selected in the year 1994-1995. The learned counsel appearing for the petitioners contended that in case of some of the women Sub Inspectors of Police who were selected in the year 2001-2002 but joined duty in the year 2004-2005 they were given seniority based on the date of selection.

3(g). The learned counsel appearing for the petitioners referred to proviso to Rule 25(a) of the Special Rules for Tamil Nadu Police Subordinate Services and contended that the seniority of the directly recruited Sub Inspectors of Police has to be fixed only based on the marks obtained by them in the final examination in the Police Training College. In the present case, without considering the said rule, the respondents have placed the petitioners and others below the 1000 candidates selected in the selection held during 1997-1998.

3(h). The learned counsel appearing for the petitioners relied on the following judgments:

(I) (2010) 12 SCC 517 [Dr. Zakir Hussain Primary Teachers Training College and another -v- State of Bihar and others]:

"13. At this stage, the learned counsel appearing for the Board submitted that the Board did not get an opportunity to file its counter-affidavit before the High Court since the writ petition was dismissed mainly on the ground of delay and laches. Counter-affidavit for the first time was filed before this Court along with a copy of the Order dated 9-4-2009 issued by the Department of Human Resources, Government of Bihar cancelling the earlier Order dated 4-9-1997 stating that the said order passed was against the provisions of the NCTE Act, 1993. To examine the various contentions raised by the parties and also the effect of the various orders produced before us, a detailed examination of the facts is necessary. Since the writ petition was dismissed mainly on the ground of delay and laches and the letters patent appeal was dismissed at the admission stage and that the Board did not get an opportunity to file its counter-affidavit, we feel it would be appropriate to give an opportunity to the Board to file its counter-affidavit before the High Court so that the High Court would be in a better position to examine the various contentions urged by the parties."

**(II) (1986) 3 SCC 325 [Sushil Kumar Yadunath Jha -v-
Union of India and another]:**

"4. It is apparent that the appellant made detailed representations from one level to another hoping that on the strength of his record the authorities would accede to his request for condoning the break in his service. There is equally no doubt that he was supported throughout by his immediate superiors because of the high order of the work performed by him in his various postings. It was only when the government itself turned down his request that he considered it proper to turn to a court of law for redress. Upon the peculiar facts of this case we find it difficult to hold that the appellant was guilty of laches in resorting to the judicial process for relief. We think the High Court erred in rejecting the writ petition on that ground.

5. It is true that the terms on which he was appointed afresh expressly stated that he would not be entitled to continuity of service, but we must have regard to the circumstances in which he accepted those terms. He was in no position to bargain for a better deal and in the straightened circumstances in which he found himself he was compelled to accept whatever was dictated to him. We do not for a moment suggest that the sanctity of the contract between the parties should be given a go-by, but what we do find is that here is a case where the subsequent conduct and the quality of his

performance, of which high appreciation was recorded by his superiors, indicated that he should be relieved of the disadvantage suffered by him pursuant to that term in his contract of fresh appointment. Having regard to the interests of justice and in all the circumstances of this case we are of opinion that the appellant is entitled to an order condoning the break in his service and holding that he should be considered as continuing in service throughout from the date of his original appointment. We order accordingly."

(III).(1993) 4 SCC 269 [Union of India and others -v- R. Reddappa and another]:

"5. More than a decade has gone by since these employees were dismissed for participating in strike called by the Union recognised by the Railways. But end has not reached. Barring appellate and revisional authority whose discretion too was attempted to be curtailed by issuing circular no court or tribunal has found the orders to be well founded on merits. True the jurisdiction exercised by the High Court under Article 226 or the tribunal is not as wide as it is in appeal or revision but once the court is satisfied of injustice or arbitrariness then the restriction, self-imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of rendering justice. We are not impressed by the vehement submission of the learned

Additional Solicitor General that the CAT, Hyderabad exceeded its jurisdiction in recording the finding that there was no material in support of the finding that it was not reasonably practicable to hold an enquiry. The jurisdiction to exercise the power under Rule 14(ii) was dependent on existence of this primary fact. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule then the action was vitiated due to erroneous assumption of jurisdictional fact therefore the Tribunal was well within its jurisdiction to set aside the orders on this ground. An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable as even the higher authority constituted under the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation."

(IV) (1986) 3 SCC 156 (Central Inland Water Transport Corporation Limited and another -v- Brojo Nath Ganguly and another):

"72. The submissions of the contesting respondents, on the other hand, were that the parties did not stand on an equal footing and did not enjoy the same bargaining power, that the

contract contained in the service rules was one imposed upon these respondents, that the power conferred by Rule 9(i) was arbitrary and uncanalized as it did not set out any guidelines for the exercise of that power and that even assuming it may not be void as a contract, in any event it offended Article 14 as it conferred an absolute and arbitrary power upon the Corporation.

96. The said Rules as also the earlier rules of 1970 were accepted by the contesting respondents without demur. Here again they had no real choice before them. They had risen higher in the hierarchy of the Corporation. If they had refused to accept the said Rules, it would have resulted in termination of their service and the consequent anxiety, harassment and uncertainty of finding alternative employment."

**(V) Order dated 05.09.2011 made in W.A. No. 1581 of 2010
[The Secretary to Government, Home (Police-3) Department Vs.
The Director General of Police]:**

"2. This order is questioned in this writ appeal by the State mainly on the ground that in terms of Rule 25(a) of the Special Rules for Tamil Nadu Police Subordinate Service, 1953, the seniority of a candidate shall be fixed on the basis of marks obtained in the final examination in the Police Training College. As the respondent had completed the training only in the year

1999, he is not entitled for his seniority from 1994-95.

4. The fixation of seniority is governed by Rule 25(a) of the Special Rules for Tamil Nadu Police Subordinate Service, which reads as under:

"25(a). The seniority of a person in any class or category of the service shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the appointing authority, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority unless he has been appointed temporarily under sub rule (d) of rule 10 or sub rule (b) of rule 15 as the case may be.

Provided that in the case of Sub Inspectors (recruited direct) (category 2 of class I) the seniority shall be fixed on the basis of the marks obtained by them in the final examination in the Police Training College, Vellore.

Provided further that in respect of direct recruitment made in the years 1976 and 1979 to the posts of Sub Inspectors of Police, Reserve Inspectors of Police by the Tamil Nadu Public Service Commission, the seniority shall be fixed with reference to the rank assigned by the Tamil Nadu Public Service Commission in the list of selected

candidates communicated by it.

Provided further that all directly recruited Assistant Sub Inspectors selected for direct recruitment as Sub Inspectors shall be placed as a block above the fresh direct recruits but interse again they shall retain their original seniority in the list of Assistant Sub Inspectors.

Provided further that in the case of Reserve Sub Inspectors (category 4 of class I) the seniority shall be fixed on the completion of training with the Special Armed Police instead of at the time of selection but such seniority shall be liable to revision by the Deputy Inspector General of Police concerned, if he considered it necessary, before the completion of probation.

Provided also that the required number of Head Constables fit for promotion to the post of Sub Inspector shall be included in the order of merit on the basis of the result of the examination specified in clause (ii) of sub rule (e) of rule 18 and re-arranged in the order of seniority in the post of Head Constable. This sub rule shall apply to any member of the service other than Sub Inspectors appointed on or after 1st January 1962. It shall also apply to Sub Inspectors appointed on or 25.8.1965."

5. As per the above rule, the seniority, in the

case of direct recruit, shall be determined on the basis of marks obtained by candidates in the final examination held at the end of the training. The Government issued the order impugned in the writ petition based upon the above rule. Nevertheless, in view of the order in the writ petition, two questions arise for our consideration, namely, (1) whether on the basis of the above rule, the respondent would be entitled for fixation of seniority from the year 1994-95 or from the date of his selection or from the date of completion of training and based upon the marks obtained by him on completion of training; and (2) whether the case of C.Senthil Kumar would be still applicable to the case of the respondent herein.

7. So far as the first point is concerned as to from what date the respondent would be entitled for refixation of seniority, though Rule 25(a) of the Special Rules prescribes the date of seniority to be reckoned from the date of completion of training and depending upon the marks obtained by the candidate, in view of the judgment of the Supreme Court in *State of Haryana and others v. Dinesh Kumar*, 2008 (1) Supreme 296, the date of appointment shall be reckoned from the date of selection. To quote, we may refer to paragraph-31 of the said judgment and the same reads as under:

"31. In the result, the Civil Appeal arising out of SLP(C) No.1840 of 2007 is dismissed, while the Civil Appeal arising out of SLP © No.14939 of 2007 is

allowed. The Judgment of the High Court dated 22nd September, 2005, impugned in the said appeal, is set aside and the concerned respondents are directed to take steps to issue appointment letters to the appellants in the said appeals subject to fulfillment of other conditions by them. It is also made clear that the appellants will be deemed to have been appointed as Constable-Drivers with effect from the date, persons lower in merit to them were appointed. However, while they will be entitled to the notional benefits of such continuous appointment, they will be entitled to salary only from the date of this judgment on the basis of such notional benefits."

8. In view of the above, for the purpose of fixation of seniority of the respondent, the relevant date must be the date on which he was selected and not otherwise. For the purpose of refixing the seniority on the date of selection, the marks obtained by the respondent shall also be taken into consideration."

(VI) (2000) 3 SCC 588 [Nar Singh Pal -v- Union of India and others]:

"13. The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant,

the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. This, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the "temporary" status after having put in ten years of service. Like any other employee, he had to sustain himself, or, maybe, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs 6350, was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained.

14.The order dated 20-5-1992, by which the services of the appellant were terminated, is quashed with the direction that the appellant shall be put back on duty on the post which he held on 20-5-1992 and shall be paid all the

arrears up to date and other consequential benefits admissible under the rule.”

(VII) AIR 1999 SCC 1529 [Dalilah Sojah -v- State of Kerala and others]:

“6. It appears to us that the appellant has been made to suffer for no fault of hers. From the facts enumerated hereinabove, it is quite clear that when two vacancies arose on 6-10-1972, the appellant had a right to be appointed against one of the said vacancies. At that point of time none of the respondents had even been selected for appointment to the said post, their selection having been notified only on the second list which was prepared on 22-3-1974. The right which had, therefore, accrued to the appellant for appointment against a vacancy after she had been duly selected could not have been taken away merely because of the delay or inaction on the part of the Government in notifying her appointment.....”

(VIII) 2015 (3) SCC 419 [A. Raghu -v- Government of Andhra Pradesh & Others]:

“16.....In “Consideration One” and “Consideration Two” above, we have concluded, that even though the appointees in question were deputed for training on 14-6-1992, their seniority had to be determined along with the

candidates who had been deputed for training on 15-7-1991. We shall now endeavour to consider the manner of fixing inter se seniority of the candidates, who were selected in the process of selection conducted in furtherance of the Notification dated 22-1-1991, by the Recruitment Board, but had not been appointed on account of the fact, that they did not fall within the number of vacancies advertised. It is however relevant to notice, that after the issuance of the letter dated 11-4-1991/7-5-1991, whereby provisionally selected candidates were deputed for training to fill up the advertised vacancies for the posts of Sub-Inspector of Police in all the seven zones, it came to be realised, that all the provisionally selected candidates did not join the police training college(s) for the said training. So far as Zone V (Warangal range) is concerned, only 58 candidates joined training. At that very moment, it was open to the appointing authority to depute further candidates for training, out of those whose names fell immediately below the names of candidates deputed for training vide letter dated 11-4-1991/7-5-1991, against the balance vacancies. The competent authority, however, delayed in deputing the names of these candidates. It eventually deputed these candidates for training on 14-6-1992. From the factual position depicted hereinabove, it is not possible for us to accept, that the candidates, who were deputed for training on 15-7-1991, and those deputed for training on 14-6-1992 to fulfil the deficiency,

can be described as two different batches. The selection process having been joint, and in furtherance of the same Notification dated 22-1-1991 (issued by the Recruitment Board), it is inevitable for us to conclude, that the candidates deputed to the two different courses of training (on 15-7-1991 and 14-6-1992) were essentially candidates belonging to a singular batch, who were selected through a common process of selection. In fact, the instant inference, insofar as the issue of inter se seniority is concerned, is inevitable, as the dates on which the candidates were deputed for training, are inconsequential, so far as Rule 15 is concerned. Rule 15 leaves no room for any doubt, that even the merit position in the selection process is not to be taken into consideration, while determining the inter se seniority of candidates selected from a common process of selection....."

**(IX) (2008) 7 SCC 728 [Balwant Singh Narwal and others
-v- State of Haryana and others]:**

"9. There is no dispute about these general principles. But the question here is in regard to seniority of Respondents 4 to 16 selected on 1-10-1993 against certain vacancies of 1992-1993 who were not appointed due to litigation, and those who were selected against subsequent vacancies. All others from the same merit list declared on 1-10-1993 were appointed on 2-6-1994. Considering a similar situation, this Court, in Surendra

Narain Singh v. State of Bihar [(1998) 5 SCC 246 : 1998 SCC (L&S) 1317] held that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.

10. This Court while allowing the appeals by Respondents 4 to 16 by order dated 6-12-1999 made it clear that all the 30 persons recommended by the Commission as per merit list dated 1-10-1993, including Respondents 4 to 16 are entitled to be appointed. The State Government submitted that but for the order dated 4-4-1994 of the High Court, Respondents 4 to 16 would have been appointed on 2-6-1994 itself. The order dated 4-4-1994 was ultimately set aside by this Court and Respondents 4 to 16 who were consequently appointed should not be denied the benefit of seniority. Therefore, the State Government was justified in giving them only notional seniority and placing them immediately below the other 16 candidates selected in the common merit list (published on 01-10-1993) and appointed on 2-6-1994. Respondents 4 to 16 have been given retrospective seniority not from the date of their selection as wrongly assumed by the appellants, but from 2-6-1994 when other selected candidates in their merit list were appointed.”

(X) (1998) 5 SCC 246 [Surendrda Narain Singh and others

-v- State of Bihar and others]:

"24. For the foregoing conclusions, we are of the view that Respondents 3 to 34 who were appointed to the vacancies of 15th Examination under the 1955 Rules will have to be given seniority over the appellants in Civil Appeals Nos. 1381-84 of 1991, although they came to be appointed later than 23-5-1975 but against 33 vacancies which were then existing to which these appellants had no right."

(XI) (2002) 10 SCC 269 [Suvidya Yadav and others Vs.

State of Haryana and others]:

"7. On being asked, Mr Mahabir Singh, learned counsel appearing for the State of Haryana stated that in fact a subsequent requisition had been made on 1-6-1993. In this view of the matter, on the admitted position that on the date of the recommendation made by the Public Service Commission on 1-10-1993 the Government's requisition was for posts more than 18 (in fact 37), we see no bar on the power of the Commission in recommending 30 names, which was the subject-matter of challenge before the High Court. In fact the very judgment itself on which the learned Single Judge has relied upon in para 10 indicates the said position. Accordingly we set aside the impugned order passed by the learned Single Judge and affirmed by the Division Bench in appeal and hold

that the recommendations made by the Commission are in accordance with law and therefore all the 30 names recommended are entitled to be appointed."

4. The respondents filed Counter affidavits and denied all the averments made by the petitioners.

5. The learned Additional Advocate General appearing for the respondents contended that the Writ Petitions are not maintainable on the ground of delay and laches and dismissal of the Writ Petitions filed by the similarly placed persons. The learned Additional Advocate General on merits contended that when there were only 1100 vacancies, Uniformed Services Recruitment Board selected 1198 candidates and 98 candidates including the petitioners were in excess of vacancy and therefore, they were not appointed. The respondents granted concession and appointed them as Sub Inspectors of Police and sent them for training along with candidates selected in the year 1997-1998. In view of dismissal of three Writ Petitions filed by the similarly placed persons and dismissal of Original Application filed by the petitioners, the claim of petitioners were concluded during that time itself. The petitioners, pursuant to the appointment order, has given undertaking not to claim seniority along with 1994-1995 batch. The petitioners are

bound by terms of undertaking. The present claim of the petitioners is an after thought and it is not open to the petitioners now to contend that letter of undertaking was obtained under compulsion. The undertaking given by them has become final. The petitioners made representation in the year 2009 for fixing their seniority below the Sub Inspectors appointed in the year 1994-1995, when they were not appointed. The judgments relied on by the petitioners cannot advance their case as this Court as well as the Tribunal has decided the placing of petitioners. The petitioners have alleged ill motive or evil desire. The claim of the petitioners are belated. The petitioners have filed additional affidavit suppressing the facts. The Writ Petitions filed by the petitioners are of the year 2009. The petitioners have not stated about undertaking given by them. This amounts to stating incorrect facts and suppression of facts. Writ of Certiorari is a discretionary power. The petitioners are not entitled to such discretionary power when they have come before this Court by suppressing the vital facts. The Writ Petitions are liable to be dismissed for the above reasons. Further, their appointment is by way of concession and therefore they are not entitled for the relief sought in the Writ Petitions and prayed for dismissal of all the Writ Petitions.

6. Heard the learned counsel appearing for the petitioners as well

as the learned Additional Advocate General appearing for the respondents and perused the materials available on record.

7. From the materials and rival submissions of the learned counsel appearing for the petitioners and learned Additional Advocate General appearing for the respondents, the following are undisputed facts:

(i) Notification was issued for direct recruitment for appointment of 500 Sub Inspectors of Police for the year 1994-1995.

(ii) Subsequently, the number of posts were increased to 1100 by letter of the 2nd respondent.

(iii) The Uniformed Services Recruitment Board conducted selection process and selected 1198 candidates, including the petitioners for appointment as Sub Inspectors of Police.

(iv) The respondents appointed 500 candidates and sent first batch for training on 01.03.1996 and later 600 candidates were appointed and sent for training on 02.06.1997.

(v) 24 candidates in the first batch out of 500 and 50 candidates out of 600 candidates in second batch did not report for training. Hence, 74 post remained vacant.

(vi) The remaining 98 candidates out of 1198 candidates (the

petitioners herein and others) were not appointed and sent for training.

(vii) 98 candidates were not informed that they were selected in excess of available vacancy and they will not be appointed.

(viii) In September 1997, the respondents notified and selected 1000 candidates for direct recruitment as Sub Inspectors of Police.

(ix) 570 candidates were appointed and sent for training on 15.04.1999 and remaining 400 candidates were appointed and sent for training on 22.05.2000.

(x) 98 candidates including the petitioners who were selected in selection held during 1994-1995 were also appointed and sent for training on 22.05.2000 along with 400 candidates selected for 1997-1998 batch.

(xi) 98 candidates were appointed and sent for training on 22.05.2000 as per G.O. Ms. No. 1281 Home (Police III) Department dated 22.09.1999.

(xii) In the said Government Order, it has been mentioned that petitioners will be placed below the 1000 candidates who were appointed and sent for training selected in 1997-1998 batch in the seniority list.

(xiii) The petitioners gave an undertaking that they will not claim

seniority based on the selection in the year 1994-1995 and they will not seek for transfer from category III to any other category.

(xiv) The Original Application filed by the 98 candidates seeking appointment based on the selection held during 1994-1995 was dismissed.

(xv) Based on subsequent representation of petitioners and others, the 1st respondent issued G.O. Ms. No. 1281 Home (Police III) Department dated 22.09.1999, appointing the petitioners and others and sent for training along with 400 candidates selected for 1997-1998 batch.

(xvi) Three Writ Petitions filed by the persons from among 98 persons were dismissed by this Court at the admission stage itself.

(xvii) The 1st respondent by G.O. Ms. No. 1164 Home (Police III Department) dated 06.08.2007, permitted the 2nd respondent for conversion of 85 candidates out of 98 candidates selected in 1994-1995 batch from category III to category I Sub Inspectors of Police.

(xviii) Based on the said G.O., the 2nd respondent passed an order dated 24.03.2008, converting the petitioners and others from category III to category I.

(xix) After such conversion, the petitioners and others gave a

representation in 2008 for granting inter-se seniority on par with their batch mates.

(xx) The 1st respondent by impugned order rejected the said claim.

(xxi) The petitioners filed Writ Petitions.

(xxii) Subsequent to further representation, the 2nd respondent by his proceeding dated 17.06.2011, recommended fixation of seniority of 92 Sub Inspectors of Police who were selected in the year 1994-1995 and appointed during the year 2000, by invoking the power vested with the 1st respondent under Rule 39 of the Special Rules for Tamil Nadu Police Subordinate Services.

8. Based on the above undisputed facts, the following points are to be decided:

1. Whether the Writ Petitions are liable to be dismissed for the delay and laches?
2. Whether the Writ Petitions are liable to be dismissed on the ground of resjudicata?
3. Whether the petitioners can claim seniority based on their selection during 1994-1995, after having given an undertaking that they will not claim such a seniority?

4. Whether the petitioners are entitled for fixation of their seniority below their batch mates selected during 1994-1995 batch?

Point No. 1: Whether the Writ Petitions are liable to be dismissed for the delay and latches?

8(1). From the above materials it is seen that even though the petitioners and others were selected for direct recruitment as Sub Inspectors of Police for the year 1994-1995, they were appointed only on 22.05.2000. When one of the appointees made a representation for fixing his seniority along with the persons who were selected in 1994-1995 batch, he was issued with a warning memo. In view of the said warning memo, the petitioners did not raise the issue. Subsequently, after completion of probation, their seniority was not considered by 2nd respondent due to pendency of litigations. Again the petitioners did not raise the question of seniority as the process of conversion was under progress. Once all these proceedings were completed, the petitioners sent a common representation in the year 2008. Their representation was rejected by the 1st respondent by the impugned order dated 12.02.2009. Immediately, the petitioners have approached this Court. The cause of action arose for the petitioners when their request was rejected by the 1st respondent by impugned order dated 12.02.2009. As

held by the Hon'ble Apex Court in the judgments reported in **1986 (3) SCC 325 [Sushil Kumar Yadunath JHA -v- Union of India and another]**, (2010) 12 SCC 517 [Dr. Zakir Hussain Primary Teachers Training College and another -v- State of Bihar and others], the cause of action arises when the request is rejected and it was further held that when various contentions are raised, a detailed examination of facts is necessary and set aside the judgment of the High Court and directed to hear the matter on merits after giving opportunity to the parties. In the judgment reported in **1986 (3) SCC 325 (referred supra)**, the Hon'ble Apex Court held that a Writ could be filed only when Government rejects the claim of the party. The ratio in the judgments referred to above are squarely applicable to the present case. When legitimate rights of the parties are affected, the delay in filing has to be ignored and I hold that there is no delay in filing the Writ Petitions.

Point No.2 - Whether the Writ Petitions are liable to be dismissed on the ground of resjudicata?

8(2). The petitioners and others filed O.A. No. 4087 of 1997 for their appointment based on the selection in the 1994-1995 batch. The Tribunal dismissed O.A. After dismissal of O.A. only, the 1st respondent

issued G.O. Ms. No. 1281 Home (Police III) Department dated 22.09.1999, appointing the petitioners and others and sent them for training. Hence, the dismissal of O.A. will not be a bar for the petitioners to maintain these Writ Petitions. Further, three Writ Petitions in W.P. Nos. 3487 to 3489 of 2010 are filed for a direction to fix the seniority by issue of Writ of Mandamus, whereas the present Writ Petitions are for a Certiorarified Mandamus to quash the portion of G.O. Ms. No. 1281 Home (Police III) Department dated 22.09.1999, as well as the order dated 12.02.2009 rejecting the claim of the Petitioners and some are for mandamus. In view of different relief sought for in the Writ Petition Nos. 3487 to 3489 of 2010 filed by the three similarly placed persons like that of petitioners, it cannot be held that dismissal of the above three Writ Petitions will be a bar for the petitioners seeking to quash the portion of the Government Order and impugned order dated 12.02.2009. The validity of the impugned order was not considered in the above three Writ Petitions filed by the different persons. For these reasons the present Writ Petitions are not hit by the Principles of Resjudicata. This point is ordered accordingly.

Point No.3 - Whether the petitioners can claim seniority based on their selection during 1994-1995, after giving undertaking that they will not claim such a seniority?

8(3). The petitioners accepted the terms contained in G.O. Ms. No. 1281 Home (Police III) Department dated 22.09.1999, and gave an undertaking that they will not claim seniority based on their selection in the year 1994-1995. The circumstances under which the petitioners accepted the conditions imposed in the Government Order and given undertaking has to be considered. The petitioners, even though were selected in the selection held in the year 1994-1995 for direct appointment of Sub Inspectors of Police, they were not appointed and sent for training immediately. The Original Application filed by the petitioners and others was dismissed. After repeated representations only, the petitioners' request was considered favourably and they were appointed and sent for training on 22.05.2000 along with 2nd batch of candidates selected in the year 1997-1998. In such circumstances, the petitioners did not have any option, but to accept the condition and execute their undertaking. The petitioners did not have bargaining power and did not stand on equal footing with the respondents.

Considering the circumstances referred to above, the undertaking given by them is under compelling circumstances in order to get appointment and to be sent for training. The validity of undertaking given by the employees was considered by the Hon'ble Apex Court in the judgment reported in **(1986) 3 SCC 156 [Central Inland Water Transport Corporation Limited and another -v- Brojo Nath Ganguly and another], 1986 (3) SCC 325 (referred supra), (1993) 4 SCC 269 [Union of India and others -v- R. Reddappa and another]**. The Hon'ble Apex Court held that when there was no equal bargaining power with employees like petitioners, undertaking given by them cannot be relied on by the employer. Further, the Hon'ble Apex Court held that when the Court is satisfied of injustice or arbitrariness, the Courts can render justice and need not stand on technicality on exercise of power. In the present case, the respondents compelled the petitioners to accept the condition imposed for appointing them and sending them for training. The said restrictive condition and undertaking taken by the respondents are unconscionable and is arbitrary and void. It is pertinent to note that the 2nd respondent by proceedings dated 17.06.2011 recommended to the 1st respondent to exercise the power under Rule 39 of the Special Rules for Tamil Nadu Police Subordinate Services and revise the seniority of 92 Sub Inspectors of Police including the

petitioners who were selected in the year 1994-1995 and appointed during the year 2000 by relaxing Rule 25(a) Special Rules for Tamil Nadu Police Subordinate Services and issue orders. In view of the above recommendation and also circumstances under which the petitioners have executed the undertaking, the petitioners are not bound by the said undertaking and petitioners are entitled to agitate their right for revision of seniority along with their batch mates who were selected in the year 1994-1995.

Point No. 4 - Whether the petitioners are entitled for fixation of their seniority below their batchmates during 1994-1995 batch?

8(4). From the materials on record and contention of the learned counsel appearing for the petitioners, it is seen that the Uniformed Services Recruitment Board selected 1198 candidates when the existing vacancy was 1100. According to the learned counsel appearing for the petitioners, 98 candidates were selected in anticipation of vacancy that will arise for the year 1994-1995. The respondents have not stated as to why 98 candidates were selected in excess when there was only 1100 vacancies. Except stating that 98 candidates were selected in excess, the respondents have not given any explanation for their selection. The

contention of the learned counsel appearing for the petitioners that out of 1100 candidates selected and sent for training, 74 candidates did not report for training is not denied by the respondents. In such circumstances, the contention of the learned counsel appearing for the petitioners that atleast 74 candidates out of 98 selected candidates could have been appointed and sent for selection has considerable force. Further, number of excess candidates selected is very meagre compared to 1100 appointments made and candidates sent for training. The contention of the learned counsel appearing for the respondents that there were no vacancies more than 1100 and therefore, the petitioners could not be appointed and sent for training is contrary to the facts. The respondents in September 1997 itself, notified 1000 vacancies and conducted selection process. At the conclusion of selection process, the respondents appointed 1000 candidates selected and sent them for training in two batches. Again the respondents did not give any explanation for appointing and sending the petitioners and others for training before 1000 candidates were selected and sent for training in the year 1996-1997. The contention of the learned counsel appearing for the petitioners is that the respondents appointed and sent the selected candidates for training in batches due to administrative convenience is not denied by respondents. The petitioners were

expecting their turn to be appointed and sent for training, the respondents have not informed the petitioners and other candidates that there is no vacancy to appoint them as per the selection and they will not be appointed based on the said selection. The contention of the learned counsel appearing for the petitioners that in view of the failure on the part of the respondents to inform the petitioners that they will not be appointed based on the selection for the year 1994-1995, the petitioners did not participate in the subsequent selection process has considerable force. The failure on the part of the respondents in not appointing the petitioners and others and selection for vacancies of the year 1994-1995 is invalid and illegal. The condition imposed in G.O. Ms. No. 1281 Home (Police III) Department dated 22.09.1999, that petitioners will be placed below 1000 candidates who were selected in the year 1997-1998 is contrary to Rule 25(a) of the Special Rules for Tamil Nadu Police Subordinate Services. As per the said Rule, seniority of the candidates selected and appointed will be based on the marks obtained by them in final exam conducted by the Police Training College. In the present case, the respondents without considering the marks obtained by the candidates in the final exam conducted by the Training College, has placed the petitioners and others below the 1000 candidates who were selected and appointed in the selection held in the

year 1997-1998. It is not in dispute that the petitioners were selected in the selection held for appointment for the year 1994-1995. The petitioners were appointed and sent for training only on 22.05.2000. The question whether seniority has to be fixed as per the selection or as per the date of appointment is no longer res integra. When number of persons were selected in a single selection process but some were appointed later and sent for training subsequent next batch, the persons selected in earlier batch is entitled to seniority based on the earlier selection and has to be placed above the persons selected in a later selection process. The Hon'ble Apex Court and this Court has held in number of cases that date of selection is the criteria for fixing seniority and not the date of appointment. The same has been held so in the judgment dated 05.09.2011 of the Division Bench of this Court in ***W.A. No. 1581 of 2010 [The Secretary to Government, Home (Police-3) Department and another -v- J. Pratap Prem Kumar]*** in ***AIR 1999 SCC 1529 [Dalilah Sojah -v- State of Kerala and others]***.

8(4)(i). The learned counsel appearing for the petitioners also filed and referred to various orders passed by the respondents whereby the seniority is fixed retrospectively from the date of selection even though the candidates mentioned therein were appointed and sent for training

on a later date. From the judgments referred to above, it is clear that inter-se seniority has to be fixed based on the date of selection and not on the subsequent date of appointment and sending for training. All the selection of persons in a particular batch has to be considered as single selection and it cannot be split up based on the date of sending persons for training. In view of the above well settled principles, the petitioners are entitled to be placed below the persons selected and appointed in 1994-1995 selection as the petitioners were also selected only in the said selection process. The petitioners were not appointed and sent for training for no fault of theirs and therefore they cannot be denied fixation of seniority along with the persons selected during 1994-1995 selection process.

9. For the above reasons, the conditions imposed in G.O.Ms.No. 1281 Home (Police III) Department dated 22.09.1999 and impugned order dated 12.02.2009 are set aside and all the Writ Petitions are allowed as prayed for. No costs. Consequently, connected Miscellaneous Petition is closed.

16.10.2019

gsa/krk

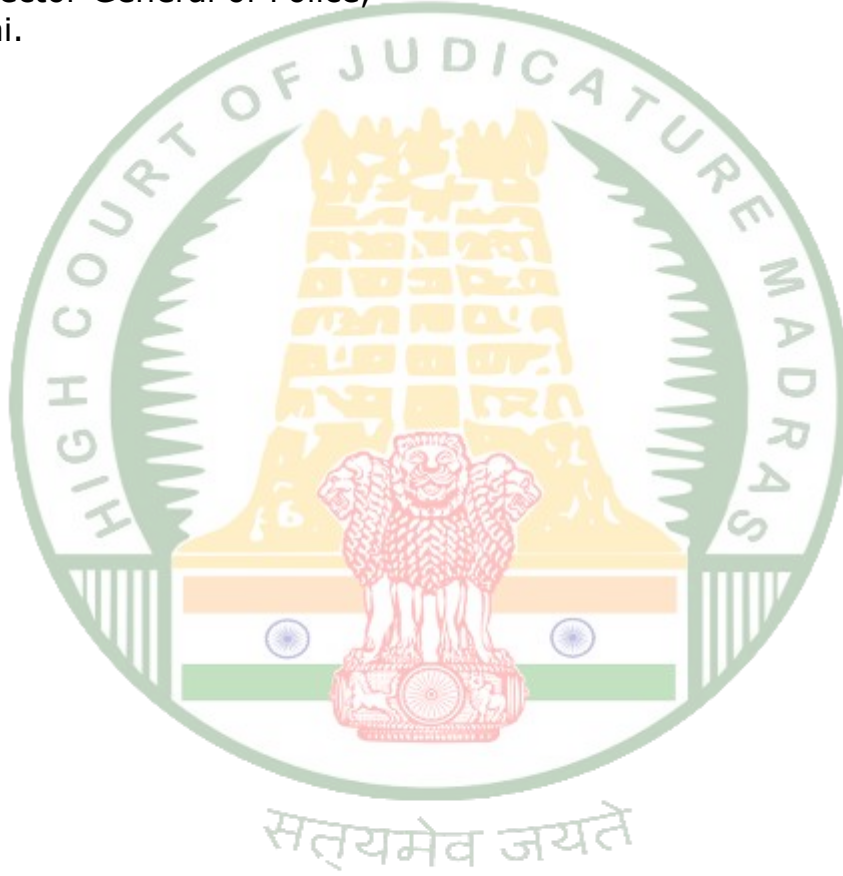
Index : Yes

Speaking Order : Yes

Note : Issue order copy by 23.10.2019

To

1. The Principal Secretary to Government,
Home Department, Secretariat,
Fort St. George,
Chennai 9.
2. The Director General of Police,
Chennai.

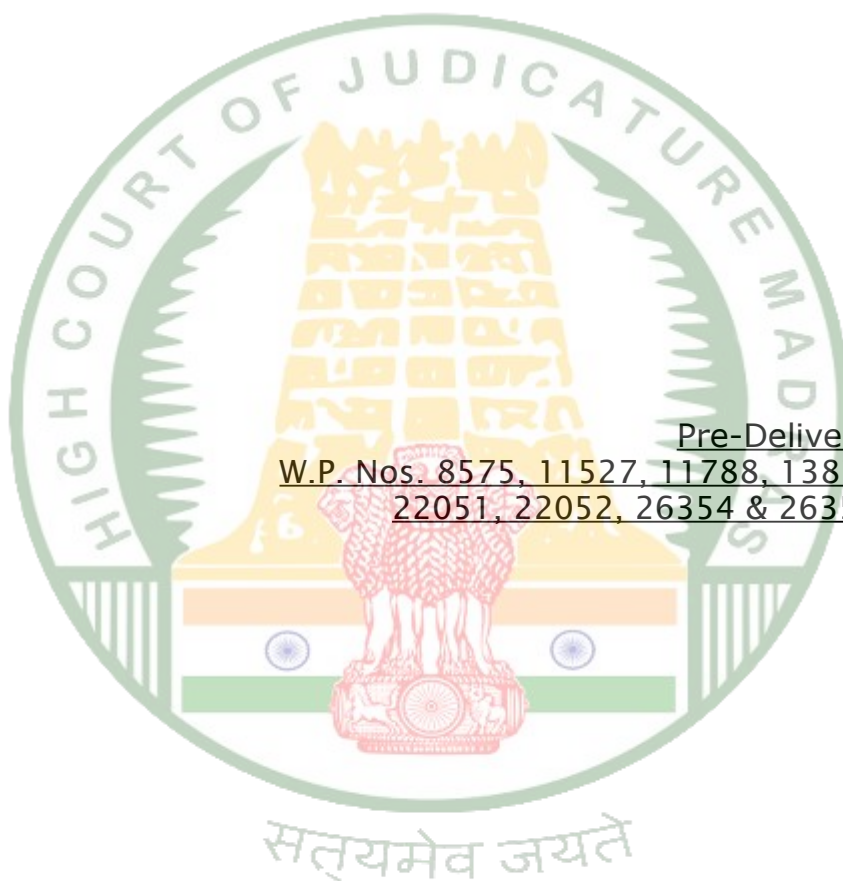


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W.P.Nos.8575, 11527, 11788, 13872, 13873,
22051, 22052, 26354 & 26355 of 2009

V.M.VELUMANI, J.

gsa/krk



Pre-Delivery order in
W.P. Nos. 8575, 11527, 11788, 13872, 13873,
22051, 22052, 26354 & 26355 of 2009

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