

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.7306 & 7329 of 2012
and M.P.Nos.1 and 1 of 2012

C.Ragupathy (HC No.9806)
Sub-Inspector (Armed Reserve)
E-Company, 26 Platoon,
Pudupet, Chennai 600 002.

.. Petitioner
in W.P.No.7306/2012

N.K.Kaladharan (SI No.583)
Sub-Inspector (Armed Reserve)
K-3. Aminjikarai Police Station (Traffic),
Chennai 600 029.

.. Petitioner in
W.P.No.7329/2012

Vs.

1. The State of Tamil Nadu represented by its Secretary to Government, Home Department, Fort ST. George, Chennai 600 009.
2. The Director General of Police, Chennai 600 004.
3. The Commissioner of Police, Egmore, Chennai 600 008.
4. The Chairman-cum-Deputy Commissioner of Police, Tiyyagaraya Nagar District, Greater Chennai Police, Head Constable Special Selection Committee, Egmore, Chennai 600 008.

.. Respondents
in all W.Ps.

Common Prayer:

Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 2nd respondent dated 02.03.2012 made in RC.No.153290/NGB V(2)/2010, quash the same and direct the

respondents 1 to 3 to fix the petitioners' seniority in the post of Sub Inspector of Police (AR) with effect from 12.08.2000 without conducting Range Promotion Board Tests for the year 2000 and with all attendant benefits.

(In both W.Ps.)

For Petitioners : Mr.K.Rajasekaran

For Respondents : Ms.R.Janaki,
Additional Government Pleader

COMMON ORDER

The present Writ Petitions are filed for issuance of writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 2nd respondent dated 02.03.2012 made in RC.No.153290/NGB V(2)/2010, quash the same and direct the respondents 1 to 3 to fix the petitioners' seniority in the post of Sub Inspector of Police (AR) with effect from 12.08.2000 without conducting Range Promotion Board Test for the year 2000 and with all attendant benefits.

2.The issues involved in both the Writ Petitions are one and the same and hence, they are disposed of by this common order.

3.The petitioner in W.P.No.7306 of 2012 was appointed as a Police Constable Grade-II on 20.02.1986 and promoted as Police Constable Grade-I on 06.07.1993 and as Head Constable on 22.01.1998, while his junior one Peter was promoted as Police Constable Grade-I on 10.01.1992 and as Head Constable on 22.02.1992 itself. The petitioner in W.P.No.7329 of 2012 was appointed as a Police Constable Grade-II on 27.02.1986 and promoted as Grade-I on 04.08.1995 and as Head Constable on 01.03.2002, while his junior one Sobi was promoted as Police Constable Grade-I on 10.01.1992 itself and thereafter, as Head Constable on 10.07.1992. Both the petitioners filed O.A.No.3203 of 1996 before the Tamil Nadu Administrative Tribunal for promotion to the post of Head Constable taking into account the date of appointment as the crucial date. The said O.A was dismissed.

3(i) Both the petitioners jointly filed W.P.No.25043 of 2002. This Court by the order dated 18.09.2007 allowed the said Writ Petition, setting aside the order of the Tribunal and directed the respondents 1 to 3 to consider the date of appointment as the basis for fixing seniority and to effect promotion and include names of the petitioners in "C" list and to give promotion before their juniors are promoted. Pursuant to the said order, the 1st respondent directed the 3rd respondent to

implement the order of this Court made in W.P.No.25043 of 2002. The 3rd respondent by the order dated 15.12.2008 fixed the seniority of the petitioner in W.P.No.7306 of 2012 in the post of Head Constable with effect from 04.03.1992 and petitioner in W.P.No.7329 of 2012 with effect from 27.06.1992. The 3rd respondent by the order dated 13.01.2009 temporarily promoted both the petitioners as Sub-Inspector of Police (Armed Reserve) with effect from 18.04.2005.

3(ii) According to the petitioners, the 3rd respondent ought to have promoted the petitioners as Sub-Inspectors with effect from 12.08.2000, the date on which their batch mates were promoted as Sub-Inspectors. The 3rd respondent fixed seniority of the petitioner in W.P.No.7306 of 2012 in the post of Head Constable with effect from 04.03.1992 and petitioner in W.P.No.7329 of 2012 in the post of Head Constable with effect from 27.06.1992 and therefore, they ought to have been promoted as Sub-Inspectors with effect from 12.08.2000 itself, instead of 18.04.2005. The petitioner in W.P.No.7306 of 2012 sent a representation dated 27.02.2009 and the petitioner in W.P.No.7329 of 2012 sent a representation on 04.03.2009. In spite of receipt of the representations, the respondents 1 to 3 did not pass any order.

3(iii) Both the petitioners filed Writ Petition Nos.14456 and 14510 of 2010 for a direction to the respondents 1 to 3 to consider their representations. This Court by the order dated 08.09.2011, in both the Writ Petitions directed the respondents 1 to 3 to consider and dispose of the petitioners' representation on merits and pass orders in accordance with law within a period of eight weeks from the date of receipt of copy of that order. The petitioners again submitted representations dated 21.10.2011 and 28.10.2011 respectively, enclosing the copy of the order of this Court dated 08.09.2011 passed in both the Writ Petitions, to consider their representations for fixing their seniority in the post of Sub-Inspector of Police with effect from 12.08.2000. The petitioners also sent reminders. Since the respondents failed to comply with the order of this Court dated 08.09.2011, the petitioners filed Contempt Petition Nos.289 and 290 of 2012 and the learned Government Advocate took notice. The 2nd respondent sent a proceeding dated 02.03.2012 in RC.No.153290/NGB-V(2)/2010 to the petitioners to attend the Range Promotion Board test for the year 2000, as their date of promotion to the post of Head Constable was advanced as per the orders issued by this Court.

3(iv) The 4th respondent informed the petitioners that they have to attend Written Test, Drill Test and Viva-voce Test to be held on 15.03.2012 at 11.00 a.m at Rajarathinam Stadium, Egmore, Chennai, for considering the promotion of the petitioners from

the post of Head Constable (Armed Reserve) to Sub-Inspector of Police (Armed Reserve). The petitioners requested the 4th respondent not to conduct the Range Promotion Board test, but promote them on the basis of seniority and service records. The conduct of the Written Test, Drill Test and Viva voce Test was dispensed with by the 1st respondent in G.O.Ms.No.1055 Home (Police III) Department dated 01.11.2006. In view of the same, conducting Range Promotion Board Test is not necessary for promoting the petitioners to the post of Sub-Inspector of Police (Armed Reserve). The petitioners also referred to G.O.Ms.No.82 Home (Police III) Department dated 03.02.2011, wherein promotions were given to the Sub-Inspectors (Armed Reserve) on par with their immediate juniors without conducting Range Promotion Test.

3(v) The Deputy Inspector of Police of Tirunelveli Range in his proceedings dated 15.12.2010 promoted number of Police personnel to the post of Sub-Inspector of Police (Armed Reserve) without conducting the Range Promotion Test. Petitioners are also similarly placed persons mentioned in G.O.Ms.No.82 Home (Police III) Department dated 03.02.2011 and proceedings of the Deputy Inspector of Police, Tirunelveli dated 15.12.2010. In view of the above proceedings, directing the petitioners to undertake the Range Promotion Test is illegal and discriminatory. Both the petitioners are aged 52 years and they would not be in a position to compete with their juniors and young Officers at that age and prayed for allowing the Writ Petitions.

4. The respondents filed counter affidavits and stated that as per the orders of this Court dated 18.09.2007 made in W.P.No.25043 of 2002, the seniority of the petitioners were re-fixed on the basis of their date of appointment and issued G.O.Ms.No.1623 Home (Police III) Department dated 12.12.2008. As per the re-fixed seniority, the petitioners were promoted as Temporary Sub-Inspector (Armed Reserve) with effect from 18.04.2005. After above judgment, many persons like the petitioners filed Writ Petitions and obtained similar orders. As per Rule 3 (b) (ii) of the Special Rules for the Tamil Nadu Police Sub-ordinate Service Rule 1953, promotion to the post of Sub-Inspector (Armed Reserve) can be given only to the persons who are successful in pre-promotion test conducted by the Range Promotion Board. The petitioners are seeking promotion as Sub-Inspector of Police with effect from 12.08.2000 on the ground that their batch mates were promoted during that time. The petitioners and others were called upon to attend the test conducted by the Range Promotion Board. The petitioners sought for promotion without participating in the test conducted by the Range Promotion Board. The claim of the petitioners that Rule 3 (b) (ii) of the Special Rules for the Tamil Nadu Police Sub-

ordinate Service Rule 1953 was deleted by G.O.Ms.No.1055, Home (Police III) dated 01.11.2006 is concerned, the said Government Order has only prospective effect and not retrospective effect for the petitioners who claim from the year 2000. During the year 2000, the said Rule was in force and hence, the petitioners without undergoing the test cannot be promoted as Sub-Inspector of Police from the year 2000. The G.O.Ms.No.82 Home (Police III) Department dated 03.02.2011 and G.O.Ms.No.349 Home (Police III) Department dated 14.03.2008 relied on by the petitioners are not applicable to the present case, as the issue in the said Government Orders are altogether different and distinct from the case of the petitioners. The petitioners cannot be regularized as the said G.O.Ms.Nos.349 Home (Police III) Department dated 14.03.2008 and 82 Home (Police III) Department dated 03.02.2011 are contrary to the rules and prayed for dismissal of the Writ Petitions.

5.The petitioners filed reply affidavit in both the Writ Petitions and contended that the respondents have not explained as to how G.O.Ms.Nos.82 and 349 Home (Police III) Department are distinct and not applicable to the petitioners. The petitioners were aged 40 years in the year 2000 and they would have done better 16 years ago in the test conducted by the Range Promotion Board. In the reply affidavits, the petitioners have further stated that in G.O.Ms.No.390 Home (Police III) Department dated 17.06.2013, one K.Srinivasan, Sub-Inspector who is similarly and identically placed like the petitioners filed a Writ Petition to consider his representation and pass final orders on the basis of G.O.Ms.No.82 Home (Police III) Department dated 03.02.2011. This Court directed the respondents to consider the case of the said K.Srinivasan in the light of G.O.Ms.No.82 Home (Police III) Department and as per the orders of this Court, the respondents issued orders relaxing Rule 3 of the Special Rules and promoted the said K.Srinivasan as Sub-Inspector.

6.The respondents filed rejoinder in W.P.No.7306 of 2012 and stated that some of the Police personnel have filed Writ Petition No.1694 of 2010 challenging G.O.Ms.No.349 Home (Police III) Department dated 14.03.2008 and Writ Petition No.18686 of 2011 challenging G.O.Ms.No.82 Home (Police III) Department dated 03.02.2011 and also not to relax Rule 3 (d)(iii) of the Tamil Nadu Police Subordinate Service Rules. The respondents by G.O.Ms.No.847 Home (Police III) Department dated 17.10.2013, G.O.(D).No.970 Home (Police III) Department dated 26.11.2013 and G.O.(D).Ms.No.874 Home (Police III) Department dated 17.12.2014 rejected the claims of K.R.Dilli, M.Mohan, N.Rajendran, K.Jaffer Ali and S.Manickam like the petitioners and prayed for dismissal of the Writ Petitions.

7.Heard the learned counsel appearing for the petitioners as

well as the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

8. From the materials on record, it is seen that originally the respondents maintained separate seniority list for three units viz., Armed Reserve, Motor Transport and Armory. The promotions were given based on seniority in each unit. Subsequently, as per the orders of this Court dated 18.09.2007 made in W.P.No.25043 of 2002, the promotions are given based on the date of joining. As per the orders of this Court, promotion of the petitioners from Police Constable Grade-II to Police Constable Grade-I and Head Constable were re-fixed. On such re-fixation, the petitioners were promoted as Temporary Sub-Inspector of Police (Armed Reserve) with effect from 18.04.2005. The petitioners sought for promotion as permanent Sub-Inspectors with effect from 12.08.2000, the date on which their batch mates were promoted as Sub-Inspector of Police (Armed Reserve) and promote them based on the seniority and prayed to promote them based on the seniority without subjecting them to pre-promotional test to be conducted by the Range Promotion Board. They claim such promotion on the following two grounds:

(a). Rule 3 (b)(iii) of Special Rules for the Tamil Nadu Police Sub-ordinate Service Rule 1953 which contemplates pass in pre-promotional test to be conducted by the 1st respondent, Range Promotion Board was deleted in G.O.Ms.No.1055 Home (Police III) Department dated 01.11.2006. When there is no rule which contemplates pre-promotional test, the respondents cannot call upon the petitioners to undergo such a test.

The said contention is without merits. The said G.O.Ms.No.1055 is dated 01.11.2006 and it does not have retrospective effect. The petitioners who are claiming promotion to the post of Sub-Inspector of Police (Armed Reserve) from the year 2000 cannot rely on G.O.Ms.No.1055 Home (Police III) Department dated 01.11.2006.

(b). Next ground on which the petitioners seek promotion without pre-promotional test is that in cases of similarly placed persons, the respondents relaxed the Rule and promoted them as Sub-Inspector of Police (Armed Reserve) without subjecting them to pre-promotional test.

9. The petitioners referred to G.O.Ms.Nos.349 Home (Police III) Department dated 14.03.2008 and 82 Home (Police III) Department dated 03.02.2011 and the proceedings of the Deputy Inspector of Police, Tirunelveli dated 15.12.2010. The

respondents in the counter affidavits have stated that the issue in the above proceedings is different and distinct and is not applicable to the petitioners. The said averments in the counter affidavits are contrary to G.O.Ms.Nos.349 Home (Police III) Department dated 14.03.2008 and 82 Home (Police III) Department dated 03.02.2011. In the said Government Orders, the Rule was relaxed in respect of those persons on the ground that for 9 years the Range Promotion Test was not conducted and those persons were 42 years and cannot be called upon to compete with young Officers. The said reason is squarely applicable to the case of the petitioners. The juniors of the petitioners who were working in Armed Reserve were promoted earlier than the petitioners who were working in Motor Transport only based on the order of this Court dated 18.09.2007 made in W.P.No.25043 of 2002. The respondents considered the promotion of petitioners and re-fixed the dates of their promotion to Police Constable Grade-II and Head Constable. Based on such re-fixation, the petitioners were promoted as Temporary Sub-Inspector with effect from 18.04.2005. When the petitioners sought for promotion with effect from 12.08.2000 as Sub-Inspectors, they were called upon to participate in the pre-promotional test to be conducted by the Range Promotion Board. The petitioners were not called upon to participate in the pre-promotional test conducted by the Range Promotion Board in the year 2000, when their batch mates were called upon to participate and successful candidates were promoted as Sub-Inspector (Armed Reserve) in the year 2000 itself. The respondents after 12 years have called upon the petitioners to participate in the said test to be held on 15.03.2012. The said action of the respondents is not valid and the petitioners cannot be called upon to participate in such a test after 12 years.

10.The respondents in the counter affidavits and in the rejoinder have stated that G.O.Ms.Nos.349 Home (Police III) Department dated 14.03.2008 and 82 Home (Police III) Department dated 03.02.2011 are not applicable to the petitioners. The petitioners in the reply affidavits also pointed that another person by name K.Srinivasan was promoted as Sub-Inspector without conducting Range Promotion Test based on the order of this Court. The respondents have not explained as to how G.O.Ms.Nos.349 Home (Police III) Department dated 14.03.2008, 82 Home (Police III) Department dated 03.02.2011 and 390 Home (Police III) Department dated 17.06.2013 are not applicable to the case of the petitioners. It is not the fault of the petitioners that they did not participate in the test conducted by the Range Promotion Board in the year 2000. A reading of G.O.Ms.Nos.349 Home (Police III) Department dated 14.03.2008 and 82 Home (Police III) Department dated 03.02.2011 clearly shows that participation in the Range Promotion Test conducted by the Range Promotion Board was dispensed with by the 1st respondent on

the ground that there was no Range Promotion Test for 9 years and those persons were aged when they sought for promotion as Sub-Inspector (Armed Reserve) and they could not compete with young persons. The said reasons are squarely applicable to the petitioners. The petitioners are entitled to be promoted as Sub-Inspector with effect from 12.08.2000, when their batch mates were promoted as Sub-Inspector (Armed Reserve).

11. For the above reason, the impugned order of the respondents is quashed and the respondents are directed to promote the petitioners as Sub-Inspector of Police (Armed Reserve) with effect from 12.08.2000 and fix the scale of pay as fixed for their juniors. The scale of pay so fixed shall be taken into account for pension and other retirement benefits. However, the petitioners are not entitled for any arrears of salary.

12. Accordingly, both the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Secretary to Government,
State of Tamil Nadu,
Home Department, Fort St. George, Chennai 600 009.
2. The Director General of Police, Chennai 600 004.
3. The Commissioner of Police, Egmore, Chennai 600 008.
4. The Chairman-cum-Deputy
Commissioner of Police, Tiyyagaraya Nagar District,
Greater Chennai Police,
Head Constable Special Selection Committee,
Egmore, Chennai 600 008.

+1cc to the Government Pleader, S.R.No.58052

+2cc to Mr.S.Senthilnathan,

Advocate in sr.no.57158 & 57159 (20.09.2019)

W.P.Nos.7306 & 7329 of 2012

AD(CO)
CS/13/09/2019