

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.01.2019

CORAM
THE HONOURABLE DR.JUSTICE S.VIMALA

W.P.No.1412 of 2018
and W.M.P.No.1790 of 2018

R.Thandapani

.. Petitioner

Vs

1.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007.

2.The Joint Commissioner of Police,
North Zone, Greater Chennai Police,
Egmore, Chennai - 600 008.

3.The Deputy Commissioner of Police,
Head Quarters, St. Thomas Mount,
Chennai - 16.

.. Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India seeking issuance of Writ of Certiorarified Mandamus, to call for the records to the order passed by the 3rd respondent in his RC.No.L1/11389/24482/2010 dated 04.06.2010 and the consequential order of the 2nd respondent in connection with the impugned order passed in Na.Ka.No.PAP2(1)/622/14750/NZ/2016 NZ DO No.614/2016 dated 21.09.2017 treating the period of out of employment from 04.07.1998 to 04.02.2010 as eligible leave including leave without pay and as well as postponing the upgradation of the petitioner as Gr-I PC from 04.07.1998 to 04.02.2010 and upgrading him as Gr-I PC from 01.01.2015 and quash the same and consequently direct the respondents to treat the period of out of employment form 04.07.1998 to 04.02.2010 (4324 days) as duty for all purposes, except back wages as per Fundamental Rule 54A(3) and consequently revise his seniority in the cadre of Gr-I PC and grant him further promotion as Head Constable etc. within a reasonable time and grant such other further relief as this Hon'ble Court may deem fit in the circumstances of the case.

For Petitioner : Mr.K.Venkatramani
Senior Counsel
for M/s.M.Muthuappan
For Respondents: Mr.A.N.Thambidurai,
Special Govt. Pleader

O R D E R

The petitioner entered into the service as Police constable on 01.05.1988 in the District AR, Chengai East District. While he was serving as Grade-II Police Constable in the Airport Security, the respondent initiated departmental proceedings under Section 3(b) of Tamil Nadu Police Sub-ordinate Service (Discipline and Appeal) Rules on the ground that the petitioner was guilty of suppression of earlier employment. After an enquiry on 19.08.1997, he was imposed with a punishment of dismissal from service.

1.1. According to the petitioner, appeal and review petition were dismissed. Thereafter, the petitioner filed an Application before the Tamil Nadu Administrative Tribunal, Chennai Bench, challenging the order of dismissal from service. On abolition of the Tribunal, the case was transferred to this Court and numbered as W.P.No.32820 of 2005. The High Court by an order dated 18.09.2009 set aside the order of dismissal from service and directed the disciplinary authority to consider the proportionality of the punishment which is held as highly shocking and disproportionate to the nature of the delinquency.

1.2. The Deputy Commissioner of Police, Chennai Sub-Urban Police, St.Thomas Mount District, Chennai-16, by an order dated 01.02.2010, modified the punishment into one of reduction in time scale of pay by two stages for two years with cumulative effect and he was reinstated into service.

1.3. The petitioner submitted that the punishment imposed upon him is almost completed and the period of out of employment was also settled on 04.06.2010. The Punishment dated 01.02.2010 will go back to the year 1997 and the punishment will have to be given effect from 19.08.1997 to 19.08.1999, i.e. for a period of two years. Therefore, his claim for promotion ought to have been considered.

1.4. The third respondent issued an impugned order dated 04.06.2010 treating the period as out of employment. But it is the claim of the petitioner that it should have been treated as a duty period,

1.5. It is the grievance of the petitioner that since the punishment of removal from service inflicted on him has been set aside by the order of the High Court, which was modified into one of reduction in time scale of pay for a period of 2 years with cumulative effect, the 2nd respondent ought to have considered the relevant rule, i.e. FR 54-A(3). If the relevant rule is applied, the non-duty period from 04.07.1998 to 04.02.2010 will have to be treated as duty period for all purposes without back wages.

2. The learned counsel appearing for the petitioner would submit that without actually insisting upon the payment of salary, i.e backwages and only for a limited purpose of calculating the same for continuity of service, if the period "not in employment" is treated as duty period, that we would be sufficient.

3. Earlier this petitioner filed a writ petition in W.P.No.38608 of 2016 seeking for a direction to consider his representation dated 18.07.2016 and this Court directed the respondents to consider the representation and thereafter, the second respondent in his proceedings dated 21.09.2017 denied the promotion of the petitioner not only as Head Constable but also revised his upgradation as Grade-I PC to "a later date" from 01.07.1998 to 01.01.2015, thereby postponing the date of upgradation as Gr.-I PC thereby his further upgradation as Head Constable as well as Special Sub-Inspector has also been affected. It is submitted that other claims are not pressed and this continuity of service for the purpose of calculation of qualifying service for pension alone is insisted.

4. Under such circumstances, the writ petition is ordered in the above terms. The non-duty period of * **Twelve** years shall be treated as duty period for the limited purpose of calculating the qualifying service for pension. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

* **Corrected as per order of this Court dated 25.04.2019 in WMP.No.9637 of 2019 in WP.No.1412 of 2018**

Sd/-

Assistant Registrar (CS V)

Dated:29.04.2019

//True Copy//

Sub Assistant Registrar

ogy/dua

To

1.The Commissioner of Police,
Greater Chennai Police,
Vepery,
Chennai 600 007.

**To be Substituted the order
already despatched on
25.03.2019**

WEB COPY

2.The Joint Commissioner of Police,
North Zone, Greater Chennai Police,
Egmore,
Chennai - 600 008.

3.The Deputy Commissioner of Police,
Head Quarters,
St. Thomas Mount,
Chennai - 16.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.1282
+1cc to the Government Pleader, S.R.No.996

W.P.No.1412 of 2018
and
W.M.P.No.1790 of 2018

SSV(CO)
rrs 15/02/2019
CS/29/04/2019



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