

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 18.08.2019

Delivered on : 20.08.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.Nos.18315 & 563 of 2018

and

W.M.P.No.21629 of 2018

T.P.Thiyagarajan

..... Petitioner
in W.P.No.18315 of 2018

- 1.Shiek Abdul Kadher Jailani
Grade-I,
- 2.M.Sakthi, Grade-I
- 3.D.Hari Krishnan, Grade-I
- 4.K.Thirumurugan, Grade-I
- 5.C.Raj Kumar, Grade-I
- 6.C.Kumar, Grade-I
- 7.S.Tamilselvan, Grade-I
- 8.K.Prakash, Grade-I
- 9.B.Tamilarasan, Grade-I
- 10.P.Suresh Kumar, Grade-I
- 11.C.Dinesh Kumar, Grade-I

.... Petitioners in
W.P.No.563 of 2018

1. State of Tamil Nadu,
rep.by Secretary to Government,
Home Department,
Chennai-600 009

.. 1st respondent
in W.P.No.18315 of 2018

2. Director General of Police,
Tamil Nadu,
Mylapore, Chennai-4

... 1st respondent in
W.P.No.563 of 2018
....2nd respondent in
W.P.No.18315 of 2018

- 3.The Commissioner of Police,
E.V.K.Sampath Salai,
Vepery, Chennai-600 007

... 3rd respondent in
W.P.No.18315 of 2018

4.The Superintendent of Police

Erode District at Erode ..2nd Respondent in W.P.No.563/2018

Prayer in W.P.No.18315 of 2018:Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the 2nd respondent to promote the petitioner in the light and directions of the Division Bench order in ***W.P.No.25043 of 2002** on par with similarly placed persons within a time frame to be fixed by this Court.

Prayer in W.P.No.563 of 2018:Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the order of the second respondent made in Na.Ka.No.A2/29269/2017, dated 20.09.2017, and to quash the same in so far as the petitioners are concerned and to consequently direct the respondents to forthwith promote the petitioners on par with their batch mates in general line and extend all service benefits and accrual thereto.

For Petitioners : Mr.T.K.S.Gandhi
in W.P.No.18315 of 2018
Mr.L.Chandrakumar,
in W.P.No.563 of 208

For Respondents : Mr.J.Pothiraj,Spl.G.P.
In W.P.No.18315 of 2018
Mr.K.K.Ramesh,G.A.
In W.P.No.563 of 2018

COMMON ORDER

The petitioners in both the writ petitions seek for grant of promotion on the basis of their seniority to be fixed from the date of entry into service in the Police Department as the criteria to be adopted uniformly for all the Police Personnel regardless of their posting in Motor Transport Wing, Armed Reserve and Local Police or in any other Wing.

2.When the writ petitions are taken up for hearing, the learned counsel appearing for the petitioners would submit that the issue has been settled in favour of the petitioners by a Division Bench of this Court, vide its order dated 18.09.2007. The Division Bench of this Court in W.P.No.25043 of 2002 has directed the Department to grant promotion to the petitioners therein on the basis of their date of recruitment. The operative portion of the legal finding by the Division Bench order dated 18.09.2007 is extracted hereunder:

"5. A perusal of the order passed by the Tribunal discloses that what has been stated in paragraphs 5, 6, 7, and 8 of the counter has been extracted in the order and the claim of the petitioners has been rejected without looking into the relevant Rules. We are not satisfied with the reasonings given by the Tribunal in dismissing the application filed by the petitioners. Therefore in the absence of Special Rules and information regarding how these three departments, namely, Motor Transport Wing of the City Police, Chennai, Armed Reserve Police and Local Police are being treated as distinct departments, for promotional avenues to the persons, who are appointed under one recruitment and posted in the above three departments, we are unable to understand why the petitioners' names have not been included in the 'C' list. To a specific question put forth by this Court as to how the personnel in the Armed Reserve are getting promotions prior to the persons working in Motor Transport Wing of the City Police, Chennai, the only explanation offered by the Department is that the persons working in the Motor Transport Wing of the City Police, are being paid Special pay of Rs.40/- initially and then Rs.60 and now Rs.120/-. The said ground cannot be a criteria for denying the promotion to the persons working in the Motor Transport Wing of the City Police, Chennai. The right to promotion should be only based on the principle of seniority. Except saying that these three departments are distinct, no materials whatsoever has been placed before this Court under what circumstances and what Special Rules these Departments are treated as distinct. Therefore, we are satisfied that to meet the ends of justice, it is appropriate to direct respondent 1 to 3 to consider the date of recruitment as the basis for fixing seniority and effect promotion and to include the names of the petitioners in the 'C' List and give promotions to them. Accordingly, the order passed by the Tribunal is set aside and writ petition is allowed. No costs."

3.The learned counsel for the petitioners would also submit that following the direction passed by the Division Bench, a single Judge of this Court, vide its order dated 25.06.2009, in a batch of writ petitions in W.P.No.3125 of 2009 etc., has directed the Department to dispose of the individual

representations of the petitioners therein, in the light of the decision rendered by the Division Bench in W.P.No.25043 of 2002, dated 18.09.2007. According to the learned counsel for the petitioners, in pursuance of the directions of both the Division Bench as well as the learned single Judge, series of orders were issued by the Government implementing the same by granting promotion to various Police Personnel to the next avenue of promotion, as per their entitlement on the basis of seniority fixed irrespective of their posting whether in the Motor Transport Wing Department, Armed Reserve Wing or in the General Wing etc.

4.The learned counsel for the petitioners would submit that even in 2012, yet another learned Judge of this Court in W.P.(M.D.) Nos.2688, 2689 and 2690 of 2012 passed a similar direction, vide its order dated 12.10.2012. The learned single Judge has extracted the observations of the Division Bench order, as extracted above and allowed the writ petition as under:

"17.In this case again, there is no material on record to show that seniority is not joint seniority for all the constables or that there are two separate cadre. As already noticed above, the averments made in the writ petition go un0rebutted. The writ petitions are squarely covered by decision of the Honourable Division Bench in N.K.Kaladaran and another vs. the State of Tamil Nadu, represented by its Seretary to Government, Home Department, Fort St.George, Chennai-9(supra)

18.Consequently, all these writ petitions are allowed and the respondents are directed to consider the case of the petitioners for promotion to the post of Sub-Inspector of Police, from the date of their juniors i.e. Respondents 4 to 7 were promoted. The compliance be done within one month of the receipt of certified copy of this order."

5.Therefore, the learned counsel would submit that the issue is no more res integra for fresh adjudication.

6.On behalf of the respondents, Mr.J.Pothiraj, learned Special Government Pleader appeared and a detailed counter affidavit has been filed.

7.According to the learned Special Government Pleader, the impugned order passed by the second respondent in W.P.No.563 of 2018, dated 20.09.2017 contains correct reasons while rejecting the claim of the petitioners. According to him, the

reasons set forth in the impugned order by the Department was on the basis of available existing provision of law and therefore, the impugned order is absolutely sustainable and maintainable in law.

8.As regards the direction passed by the Division Bench and the learned single Judge of this Court, the learned Special Government Pleader would submit that the direction is enforceable only to the individuals, who were covered under those cases and not to others. He would further submit that the proposal has been sent to the Government requesting orders to amend the existing rule regarding the maintenance of common seniority for the police Personnel of Armed Reserve and Motor Transport Wing, vide proceedings dated 17.04.2010 and the Government Orders are yet to be passed in the matter and therefore, the petitioners cannot stake any claim for parity in treatment on behalf of the Police Personnel from general line.

9.This Court is unable to appreciate as to how such stand by the Department could be accepted and relief to the petitioners denied. When identically placed Police Personnel have approached this Court and the Division Bench of this Court has directed to fix their seniority taking into consideration the date of recruitment, the same criteria have to be adopted in the present case as well and promotion to be effected.

10.Admittedly, all these petitioners along with others either in the General line or in the Armed Reserve were recruited through common exercise and posted in various wings like Motor Transport Wing, Armed Reserve and General line etc. When such is the admitted position, this Court is unable to countenance as to how their promotion could depend on the Wing in which they are posted and working. Therefore, giving promotion to the Juniors of the petitioners in other Wings and denying the same to the petitioners, is discriminatory, arbitrary, unreasonable, irrational and defy the equality clause enshrined in the Constitution of India.

11.In the said circumstances, this Court is of the considered view that the petitioners cannot be treated differently from the other petitioners, who were covered under the earlier orders passed by this Court, as aforementioned. The stand of the Department that the proposal was prepared as early as in 2010 and the Government was yet to respond cannot be a reason to deny the benefit to these petitioners, who are identically placed as that of the other Police Personnel, who were covered by the earlier decisions of this Court and those decisions have been implemented by the Government itself. In all fairness, the Government itself ought to have extended the benefits to similarly placed persons, instead of that, it cannot

oppose the relief being granted to the petitioners herein on specious ground that the orders passed in favour of certain Police Personnel were applicable only to those petitioners covered under the earlier litigations. Such a stand is opposed to fair play, equity, good conscience and justice.

12. For the aforesaid reasons, the writ petitions stand allowed. The impugned order passed by the second respondent in Na.Ka.No.A2/29269/2017, dated 20.09.2017 is hereby set aside. There shall be a consequential direction to the respondents to grant the benefit of promotion to the next higher posts to these writ petitioners on the basis of their date of recruitment as Grade-II Police Constable on par with the similarly placed Police Personnel, who were covered under the earlier direction issued by the Division Bench of this Court dated 18.09.2007 in W.P.No.25043 of 2002. The order complying with this direction is directed to be passed by the respondents/competent authority within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VI)

Dated: 26.08.2019

*** Corrected order to
be issued;**

sd/- Sub Assistant Registrar (CS II)

Dated: 10.12.2020

True Copy

Sub-Assistant Registrar

msk

To

1. The Secretary to Government,
Home Department,
Chennai-600 009

To be Substituted to the order
already despatched on
10.10.2019

2. Director General of Police,
Tamil Nadu,
Mylapore, Chennai-4

3. The Commissioner of Police,
E.V.K.Sampath Salai,
Vepery, Chennai-600 007

4. The Superintendent of Police
Erode District at Erode.

+1 CC to Mr.T.K.S.Gandhi, Advocate sr 71338.
+1 CC to Mr.S.K.Chandrakumar, Advocate sr 70485 (30/10/2019)

W.P.Nos.18315 of 2018
and 563 of 2018

SVI (CO)
SP (26/09/2019)
SP (10/12/2020)



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