

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.11.2019

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.20378/2019 & WMP.No.19712/2019

Chinta Kodanda Ram

.. Petitioner

Vs.

- 1.The Central Administrative Tribunal
Chennai Bench, represented by its
Registrar, High Court Building
Chennai.
- 2.Union of India rep.by
The Chief Secretary to the Government
Government of Puducherry
Puducherry.
- 3.The Under Secretary to the Government
Home Department, Government of
Puducherry, Puducherry.
- 4.The Inspector General of Police
Office of the Inspector General of
Police, Police Department,
Government of Puducherry,
Puducherry.
- 5.The Superintendent of Police [HQ]
Head Quarters, Police Department
Government of Puducherry,
Puducherry.
- 6.Thiru K.Murugavel
- 7.Thiru N.Selvam
- 8.Thiru.C.Maran
- 9.Thiru Nallam Krishnaraya Babu
- 10.Thiru.S.Bascarane
- 11.Thiru.V.Balakrishnan
- 12.Thiru B.Ranganathan
- 13.Thiur K.L.Veeravallabane

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent made in OA.NO.310/00758/2019 dated 28.06.2019 and quash the same and consequently stay the Final Seniority List of Sub-Inspectors issued by the 5th respondent in No.1234/Pol/Estt.I[A]/2009 dated 07.03.2019 pending disposal of OA.No.310/00758/2019 on the file of the 1st respondent.

For Petitioner : Mr.Mr.M.R.Thangavel
For RR 2 to 5 : Mr.R.Syed Mustafa, Spl.GP(P)
For RR 6, 9 & 10 : Mr.J.Srinivasa Mohan
For RR 7,8, 11 to 13 : Mrs.Y.Kavitha

O R D E R

M.SATHYANARAYANAN, J.

- (1)The writ petitioner / Original Applicant made a challenge to the revised Final Seniority Lists dated 07.03.2019 and 02.05.2019 on the file of the respondents 4 and 2 respectively which pertain to fixation of seniority.
- (2)The writ petitioner / Original Applicant, pending disposal of the said Original Application before the 1st respondent / Tribunal, prayed for an interim relief. The 1st respondent/Tribunal vide order dated 28.06.2019, has declined to grant the stay of the implementation of the Seniority List and however, made it clear that any order passed by the respondents on the basis of the final Seniority List of the Sub Inspector of Police dated 07.03.2019, will be subject to the outcome of the Original Application and accordingly, disposed of the petition/application filed for interim relief of stay. The writ petitioner / Original Applicant, aggrieved by the said impugned order dated 28.06.2019, has filed the present writ petition.
- (3)The facts leading to the filing of the present litigation, have been narrated in detail and in extenso by the 1st respondent / Tribunal in the impugned order dated 28.06.2019 and therefore, for the sake of brevity, the facts need not be restated and that apart, the writ petition is filed against the order, declining the grant of interim stay of the operation of the seniority list.
- (4)The learned counsel for the writ petitioner / Original Applicant would submit that the writ petitioner / Original Applicant was appointed as the Sub Inspector of Police, vide order of Appointment dated 26.02.1991 issued by the 4th respondent and he joined duty in the said post on 28.02.1991. Respondents 6 to 13 were selected to the post of Sub Inspector of Police by way of Direct Recruitment vide Selection Notification dated 14.03.1991 and out of them, respondents 6 to 11 were issued with the Offer of

Appointment on 15.03.1991 and they joined duty on 20.03.1991 ; 25.03.1991 ; 20.03.1991 ; and 22.03.1991 respectively and after the joining of the post by the writ petitioner / Original Applicant.

- (5) It is further pointed out by the learned counsel for the petitioner that with regard to the tentative Seniority List of the Sub Inspector of Police issued by the 5th respondent on 27.02.2002, objections were invited and the writ petitioner / Original Applicant was placed in Seniority No.149 and he topped the list. The 10th respondent who was placed at Seniority No.162, submitted his objections on 11.03.2002 to the tentative Seniority List, which does not pertain to the overlooking of the petitioner's seniority and a revised tentative Seniority List was published by the 5th respondent on 14.05.2002, wherein the writ petitioner / Original Applicant was placed in Seniority No.150 and once again, objections were invited and the final List of Seniority of 44 Sub Inspectors of Police was published by the 4th respondent on 22.08.2002, wherein, the petitioner was placed second and in the final Seniority List, at Seniority No.149 and one Munisamy, was placed first in the said Seniority List at Seniority No.148 and he had already retired and as such, the petitioner stood first in the Seniority List of the Sub Inspector of Police as on 22.08.2002.
- (6) The 10th respondent and some others, aggrieved by the Seniority List to the post of Sub Inspector of Police dated 22.08.2002, made a challenge to the same by filing OA.Nos.452 and 453/2003 before the 1st respondent / Tribunal and it was allowed on 09.12.2004 with a direction to recast the Seniority List. Challenge was also made to the said order by the private respondents in WP.Nos.24285 and 24286 of 2005 on the file of this Court and the Government of Puducherry also filed WP.Nos.15774 and 15775 of 2005. All the writ petitions were disposed of by a common order, remanding the matter to the 1st respondent / Tribunal for fresh consideration and after remand, the earlier order was affirmed in the absence of any fresh or new documents.
- (7) The learned counsel for the petitioner would further aver that the final List of Sub Inspectors of Police was issued on 22.08.2002 and the revised Seniority List was published on 05.03.2013 and admittedly, the writ petitioner / Original Applicant was placed at Seniority No.150 and respondents 6 to 13 were placed below him in the respective slots as per rota. The tentative list of Inspectors of Police, who were appointed upto 09.07.2009, on regular basis, was also drawn on 25.07.2016 and here again, the petitioner was placed at Seniority No.113 and the officers above him, were either retired or expired and as such, the writ petitioner / Original Applicant topped the list.
- (8) The 10th respondent, once again raised an objection to the tentative Seniority List and made a request to place the writ petitioner / Original Applicant below him and the 5th respondent, without any reason, vide Memorandum dated

22.11.2017, has discarded the final Seniority List dated 05.03.2013 and once again, reopened the settled issue and also invited objections and the writ petitioner herein / Original Applicant also submitted representations on 05.12.2017 and 01.02.2018, seeking affirmation of the tentative Seniority List and since it was not disposed of, filed OA.No.183/2018 before the 1st respondent / Tribunal, praying for appropriate direction to dispose of his representation dated 01.02.2018 in the light of the judgment of the Hon'ble Supreme Court of India dated 03.07.2013 in the case of Sudhakar Rao and Others V. U.Govinda Rao and Others and the said Original Application was disposed of on 12.02.2018, by issuing appropriate direction to give a disposal to the said representation.

- (9)The 5th respondent, in compliance of the order, had published the final Seniority List of the Sub Inspectors of Police on 05.04.2018 and the writ petitioner / Original Applicant was placed in Seniority No.150 and the officers above him, had retired and he stood first in the Seniority List as on 05.04.2018.
- (10)The respondents 6, 9 and 10, aggrieved by the publication of the final Seniority List dated 05.04.2018, filed an appeal before the competent Authority on 13.04.2018 followed by MA.No.238/2018 in OA.No.545/2018 before the 1st respondent / Tribunal to dispose of the appeal. The 1st respondent / Tribunal, vide order dated 26.04.2018, directed the concerned official respondents to dispose of the appeal within the stipulated time frame and till such time, the final Seniority List published on 05.04.2018, shall not be operated to the detriment of the applicants.
- (11)The writ petitioner / Original Applicant, to his shock and surprise, became aware of the fact that the 5th respondent has issued the final Seniority List vide order 07.03.2019, placing the writ petitioner / Original Applicant below the private respondents 6 to 13 and making a challenge to the same, filed OA.No.360/2019 before the 1st respondent / Tribunal, praying for quashment of the said order dated 07.03.2019 and also for consequential directions. The said Original Application was disposed of on 20.03.2019, directing the concerned respondent to pass orders on the petitioner's representation dated 25.07.2018. The 3rd respondent, vide order dated 02.05.2019, had informed the petitioner that his request for reconfirmation of the earlier Seniority List, cannot be considered.
- (12)The writ petitioner herein / Original Applicant, aggrieved by the above cited two communications dated 07.03.2019 and 02.05.2019, filed the present Original Application in OA.No.758/2019 before the 1st respondent / Tribunal and pending disposal of the same, prayed for the interim stay of the operation of the final Seniority List dated 07.03.2019.
- (13)The 1st respondent / Tribunal, vide impugned order dated 28.06.2019, declined the said relief and however, made it clear that the operation of the said List, will be subject

to the outcome of the main Original Application and challenging the legality of the said order, the present writ petition is filed.

(14) The learned counsel for the writ petitioner / Original Applicant has drawn the attention of this Court to the typed set of documents and would submit that all along the writ petitioner / Original Applicant was placed above the private respondents in the Seniority List and without taking into consideration that by placing the private respondents above the petitioner, his civil rights are affected and also by misinterpreting the judgment of the Hon'ble Supreme Court of India reported in 2012 [13] SCC 340 [Union of India and Others V. N.R.Parmar and Others], the 1st respondent / Tribunal, has failed to exercise its discretion in a fair and proper manner and declined the interim relief and hence, prays for interference.

(15) Per contra, Mr.R.Syed Mustafa, learned Special Government Pleader [Puducherry] appearing for respondents 2 to 5 and Mr.J.Srinivasa Mohan, learned counsel appearing for respondents 6 to 10 would submit that the writ petitioner / Original Applicant is canvassing the merits of the main Original Application pending before the 1st respondent / Original Application, in the present writ petition, and the same is impermissible. It is also pointed out that admittedly, the writ petitioner / Original Applicant was appointed on compassionate ground on 28.02.1991 upon the demise of his father on 14.02.1991 and the said appointment can be made only against the direct recruits vacancies and cannot relate back to an anterior date with reference to recruitment year as applicable to other direct recruits who apply and participate in the selection process and thereafter, selected and appointed based on merits. The Department of Personnel and Training [DoPT] Guidelines which deals with compassionate ground appointment, also contemplates to fix their seniority at the bottom of all direct recruits and the recruitment Notification for direct recruitment was published in the year 1989 and the private respondents had participated in the selection process and due to some reasons, it got delayed and were appointed between March 1991 and July 1991 and in the light of the above cited judgment of the Hon'ble Apex Court reported in 2012 [13] SCC 340, the private respondents were correctly placed. It is the further submission of the learned Special Government Pleader that in effect, the writ petitioner / Original Applicant seeks his place in the Seniority List even prior to his date of appointment and the same is impermissible in law and prays for dismissal of this writ petition and also drawn the attention of this Court to the counter affidavit of the 2nd respondent dated 12.08.2019 adopted by respondents 1, 3 to 5.

(16) Mr.J.Srinivasa Mohan, learned counsel appearing for respondents 6 to 10 has invited the attention of this Court to the counter affidavit filed on behalf of the 6th

respondent dated 18.08.2019 and would submit that the selection process for direct recruitment commenced in the year 1989 and the private respondents had participated in the written test and interview held on 07.01.1991 and 14.03.1991 and the process of appointment of the writ petitioner / Original Applicant by way of compassionate ground appointment commenced much after the above said selection process and as such, he is not entitled to get seniority/placed above the private respondents. It is the further submission of the learned counsel that as per the relevant DoPT instructions, the compassionate ground appointees has to take his place below the direct recruits who had undergone the selection process and even on that ground, he is not entitled to be placed above the private respondents.

- (17) The learned counsel appearing for the respondents 6 to 10, on legal position, would submit that the ratio laid down by the Hon'ble Supreme Court of India in the decision reported in 2012 [13] SCC 340 [cited supra] , will have full application to the case on hand and further pointed out that the writ petition is filed only against the interim order and the said interim order contains reasons as to the declining of the interim relief sought for by the writ petitioner and even now, the writ petitioner cannot be said to be an aggrieved person for the reason that the operation of the Seniority List is also subject to the result of the Original Application and hence, prays for dismissal of this writ petition.
- (18) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (19) After hearing the rival submissions, this Court had reserved the orders on 23.10.2019 and it was listed on 20.11.2019 for pronouncement of orders.
- (20) On 20.11.2019, before pronouncing the orders, Mr.M.R.Thangavel, learned counsel for the petitioner has submitted the judgment of the Hon'ble Supreme Court of India dated 19.11.2019 made in Civil Appeal Nos.8833 to 8835/2019 [K.MEGHACHANDRA SINGH AND OTHERS V. NINGAM SIRO AND OTHERS] and made a submission

that in paragraph No.40 of the said judgment, the decision in Union of India and Others V. N.R.Parmar and others reported in 2012 [13] SCC 340 [cited supra] has been overruled and accordingly, this Court did not pronounce the orders and directed the Registry to list the matter for final hearing on 21.11.2019.

- (21) Today, the respective learned counsel appearing for the parties once again made attempts to argue the merits of the main Original Application which is pending on the file of the 1st respondent / Tribunal.
- (22) It is to be pointed out at this juncture that the writ petition is filed only against the non grant of interim orders as sought for by the writ petitioner / Original

Applicant and as such, this Court cannot adjudicate the merits of the main Original Application.

- (23) Mr. R. Syed Mustafa, learned Special Government Pleader [Puducherry] appearing for respondents 2 to 5 would submit that the writ petitioner / Original Applicant as well as the private respondents are now working as Superintendents of Police on current duty and the only issue is the seniority and therefore, the impugned order passed by the 1st respondent Tribunal to the effect that the operation of the Seniority List subject to the outcome of the main Original Application, need not be disturbed / set aside and this Court may issue

appropriate direction to the 1st respondent / Tribunal to dispose of the main Original Application itself as expeditiously as possible for the reason that the said issue is lingering right from the year 2012 and it is high time, a quietus is to be given to the said matter.

- (24) The learned counsel for the petitioner / Original Applicant would submit that the interim order dated 15.07.2019 passed by this Court pending writ petition, staying the Seniority list, may be continued till the disposal of the main Original Application..

- (25) However, the said plea is strongly opposed by the Mr. R. Syed Mustafa, learned Special Government Pleader [Puducherry] appearing for respondents 2 to 5 ; Mr. J. Srinivasa Mohan, learned counsel appearing for respondents 6, 9 and 10 and Mrs. Y. Kavitha, learned counsel appearing for respondents 7, 8, 11 to 13 and they would submit that since the writ petitioner / Original Applicant and the private respondents are working as Superintendents of Police, stay of Seniority List will not serve any purpose and once again reiterated that the final disposal of the main Original Application may be accorded priority.

- (26) The decision of the Hon'ble Apex Court of India reported in 2012 [13] SCC 340 [cited supra] has been expressly overruled in paragraph No.40 of the Judgment of the Hon'ble Apex Court in

K. Meghachandra Singh and Others V. Ningam Siro and Others [cited supra] dated 19.11.2019 made in CA.Nos.8833 to 8835/2019.

- (27) However, in paragraph No.40, the Apex Court had also made it clear that ''the decision will not affect the inter se seniority already based on N.R.PARMAR and the same is protected and the decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy / the date of advertisement.''

- (28) Therefore, this Court deem it proper to maintain the impugned interim order passed by the 1st respondent / Tribunal and to require the 1st respondent / Tribunal to take into consideration the factual aspect as well as the latest decision of the Hon'ble Apex Court in CA.Nos.8833 to 8835/2019 dated 19.11.2019 and give a disposal at an early

date.

(29) In the result, the writ petition stands disposed of and the impugned interim order granted by the 1st respondent / Tribunal dated 28.06.2019 shall continue till the disposal of the main Original Application. The 1st respondent / Tribunal is required to accord priority and give a disposal to the main OA.NO.310/00758/2019 on or before February 2020. It is made clear that the observations made herein are only for the purpose of disposal of this writ petition and this Court has not ventured into the merits of the case projected by the rival parties. No costs. Consequently, the connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Registrar
Central Administrative Tribunal
Chennai Bench, High Court Building
Chennai.
- 2.The Chief Secretary to the Government
Union of India, Government of Puducherry
Puducherry.
- 3.The Under Secretary to the Government
Home Department, Government of
Puducherry, Puducherry.
- 4.The Inspector General of Police
Office of the Inspector General of
Police, Police Department,
Government of Puducherry, Puducherry.
- 5.The Superintendent of Police [HQ]
Head Quarters, Police Department
Government of Puducherry,
Puducherry.

+1cc to Mr.C.Anbu , Advocate SR.No. 97342

+1cc to Mr.J.Srinivasa , Advocate SR.No. 96942

+1 cc to Public Prosecutor, Pondicherry Sr.No. 97245

WP.No.20378/2019

A.SK(26/11/2019)