



WEB COPY

W.P.(MD)No.13489 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.13489 of 2009

and

M.P. (MD)No.1 of 2009

A.Basheer Ahamed

... Petitioner

vs.

The Superintendent of Police,
Dilndigul District, Dindigul.

... Respondent

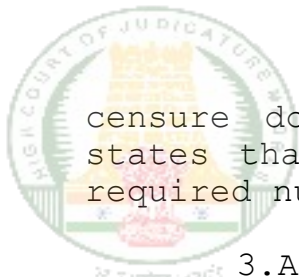
Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondent herein to modify the upgradation of the petitioner as Head Constable with effect from 25.07.2000 instead of 25.07.2001 in the proceedings of the respondent in Ref.D.O.353/2006/C.No.A1/32275/1164/2005, dated 25.04.2006 and grant all other service benefits accordingly.

For Petitioner	: Mr.S.S.Siva Subramanian for Ms.C.Jeya Indra Patel
For Respondent	: Mr.D.Muruganandam Additional Government Pleader

ORDER

This Writ Petition is filed for issuing a Writ of Mandamus, to direct the respondent to modify the upgradation of the petitioner as Head Constable with effect from 25.07.2000 instead of 25.07.2001 in the proceedings, dated 25.04.2006 and to grant consequential service benefits.

2.The petitioner was appointed as Grade-II Police on 19.12.1982. After successive promotion, the petitioner is now working as Head Constable. The petitioner states that he was recipient of several rewards and there was no charge or adverse remarks against him all these years, except a minor charge for a delinquency of negligence in the year 1995. It is admitted that during Escort duty on 07.04.1995, bayonet of petitioner's Rifle was found missing and the cost of bayonet was recovered from the petitioner's salary on 18.08.1999. Thereafter, disciplinary proceedings was initiated and punishment of postponement of next increment by one year without cumulative effect was imposed. Later, the minor punishment was modified as one of "black mark", in a revision petition filed by the petitioner before the Director General of Police, Chennai. Since the punishment of black mark or



censure does not continue further (no currency), the petitioner states that he is entitled to for upgradation upon completion of required number of service without any gap.

3. According to the petitioner, he is entitled to upgradation with effect from 25.07.2000. However, the respondent issued the proceeding, dated 25.04.2006, in respect of batch of personnels, who had suffered minor punishment which was modified or dropped later. In the said proceedings, the name of the petitioner was found in Sl.No.13 and upgradation was given with effect from 25.07.2001, instead of 25.07.2000. It is in the above background, the petitioner has approached the respondent with the request to give upgradation with effect from 25.07.2000, that is from the date on which, the petitioner is originally entitled to.

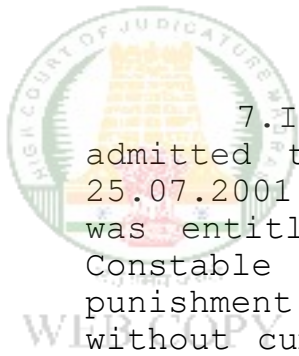
4. It is not in dispute that the petitioner was not given upgradation with effect from 25.07.2000, only because, the petitioner suffered with the punishment of censure by stating the punishment of censure will disable the petitioner to be considered for promotion, in view of the check period of one year. It is in the said circumstances, the petitioner has approached this Court, stating that the petitioner should be given upgradation with effect from 25.07.2000, instead of 25.07.2001, as the minor punishment of black mark has no currency.

5. The learned Counsel for the petitioner relied upon the judgment of Honourable Full Bench of this Court in the case of **Deputy Inspector General of Police, Thanjavur Range, Thanjavur, and another vs V.Rani**, reported in **2011-3-L.W.673**, wherein, it has been held as follows:

"28.....

5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules."

6. The learned Counsel for the petitioner submitted that the minor punishment itself was modified by the Director General of Police, Chennai, into one of "Black Mark" and that the punishment of black mark cannot be a reason to postpone the promotion or upgradation for one year as a measure of punishment. The learned Counsel further submitted that the punishment of black mark is not contemplated under the Service Rules and therefore, the petitioner is entitled to for upgradation with effect from 25.07.2000 ignoring the minor punishment of black mark, which cannot have any legal application affecting the timely promotion of the petitioner.



7. In the counter affidavit filed by the respondent, it is admitted that the petitioner was elevated to the rank only on 25.07.2001 on upgradation. It is also admitted that the petitioner was entitled to upgradation along with his batch mates as Head Constable with effect from 25.07.2000 and that due to currency of punishment of postponement of next annual increment for one year without cumulative effect awarded by the Superintendent of Police, dated 24.11.1999, it is stated that the petitioner was not upgraded as Head Constable with effect from 25.07.2000. Though it is admitted that the punishment was modified into one of "black mark" by the Director General of Police, Chennai, it is contended that the minor punishment also should be taken into account, while considering a Government servant for promotion.

8. In this case, it is admitted that the petitioner was given upgradation along with his batch mates. Only later, the upgradation with effect from 25.07.2000 was modified to be one with effect from 25.07.2001 taking into account the punishment of postponement of his annual increment for a period of one year. It is on account of the punishment, it is stated by the respondent that the petitioner is not entitled to the relief.

9. With regard to the judgment of Honourable Full Bench of this Court referred to above, the learned Additional Government Pleader submitted that the judgment of Honourable Full Bench of this Court was on the basis of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1995. He submitted that the Honourable Full Bench of this Court also has considered the question whether the currency of punishment has to be treated as a bar for promotion and answered that the Government servant cannot be considered for promotion during the currency of punishment.

10. The learned Additional Government Pleader relied upon Rule 21 of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1995, and demonstrated that censure or black mark in the case of Head Constable and Constable are shown as minor punishment. The learned Additional Government Pleader further brought to the notice of this Court, the provisions of new enactment called "Tamil Nadu Government Servant (Condition of Service) Rules, 2016". This Act, except Section 1 sub Section 30, all the remaining provisions of the Act, came into effect from the date of notification.

11. As per the new enactment, the procedure for preparation of approval list for promotion should be as per para-A, schedule-XI of the Act. Sub clause (11) of clause-II of Para-A of Schedule-XI of the Act reads as follows:

"II. Consideration of members for inclusion in the approved lists:

(11) Any punishment (other than "Censure") imposed



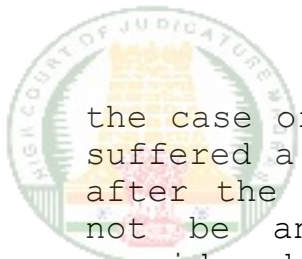
on a member of service within a period of five years prior to the crucial date and a punishment of "Censure" imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including "Censure" imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment."

12. Referring to the said provision, the learned Additional Government Pleader submitted that as per the provisions, any punishment imposed on a member of service within five years prior to the crucial date or a punishment of "Censure" imposed within a period of one year prior to the crucial date, shall be held against the member of service to stop promotion. Relying upon the new enactment, the learned Additional Government Pleader submitted that the petitioner is not entitled to be considered for promotion for a period of one year, even though the punishment imposed on the petitioner was black mark. The learned Additional Government Pleader further submitted that the punishment of black mark is a specific punishment for a Head Constable or Constable and others, who are holding corresponding rank. It is only by virtue of the new enactment, the learned Additional Government Pleader submitted that the petitioner cannot be considered for promotion, as he has suffered a minor punishment of black mark, which will disable the petitioner to be considered for promotion for a period of one year.

13. This Court has considered the rival submissions and perused the materials available on records.

14. The contention of the petitioner that the punishment of black mark is not contemplated, has no subsistence, in view of the specific provisions. The contention of the respondent that the punishment of black mark in the case of Head Constable and Constables is equivalent to the punishment of censure as in the case of Superior Officers is accepted. Earlier, the Government issued G.O.Ms.No.368, Personnel and Administrative Reforms (Personal-S) Department, dated 18.10.1993, giving instructions regarding panel for appointment by promotion by direct recruitment / by transfer. This Government Order was questioned before this Court and the Honourable Full Bench of this Court had an occasion to deal with the same and held that no embargo can be put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period, viz., one year, in the case of censure.

15. The position, as held by the Honourable Full Bench of this Court in the judgment above referred to, squarely applicable to



the case of the petitioner. It is admitted that the petitioner has suffered a minor punishment of black mark and there is no currency, after the punishment of black mark was imposed. Hence, there can not be any postponement of upgradation. The petitioner was considered for upgradation and granted upgradation. It was only later, the upgradation was modified by giving effect to the upgradation with effect from 25.07.2001, instead of 25.07.2000. As per the judgment of Honourable Full Bench of this Court, the postponement of upgradation for one year, in view of the punishment of black mark, is illegal. Though the learned Additional Government Pleader refers to the new enactment, namely, Tamil Nadu Government Servant (Condition of Service) Rules, 2016, the same came into force ten years after 14.09.2005, and hence cannot have any application to the petitioner's case. Any provision, which is penal in nature, cannot be given retrospective effect unless there is express provision.

16. In view of the issues answered by this Court, the writ petitioner is entitled to the relief and hence, this writ petition is allowed. The petitioner is entitled to get upgradation as Head Constable with effect from 25.07.2000 and the consequential service benefits. The respondent is directed to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

The Superintendent of Police,
Dindigul District, Dindigul.

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W.P. (MD) No. 13489 of 2009
16.10.2019

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