



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.[MD]No.2536 of 2012

and

M.P.[MD]No.1 of 2012

A.Selva Raj

... Petitioner

Vs.

1.The Secretary (Home), representing
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai - 600 006.

2.The Director General of Police,
Tamil Nadu,
Kamarajar Salai,
Chennai - 600 004.

3.The Deputy Inspector General of Police,
Tirunelveli Range,
High Grounds,
Palayamkottai,
Tirunelveli - 627 002.

4.The District Superintendent of Police,
District Police Office,
Tirunelveli District, Palayamkottai,
Tirunelveli - 627 002.

5.The Accountant General (AE),
Office of the Accountant General,
Chennai - 600 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order C.No.A1/5466/2009 dated 14.04.2010 passed by the third respondent as not valid and quash the same as illegal and against law, and thereby directing the respondents 1 and 2 to give this petitioner Sub Inspector of Police promotion in 1988 and Inspector of Police promotion in 1999 and fix salary with entitled perks, etc., and thereby fix pension and other monetary benefits accordingly.



For Petitioner : Mr.F.X.Eugene
For Respondents 1 to 4 : Mr.S.Dhayalan
Government Advocate
For Respondent No.5 : Mr.P.Gunasekaran
Standing Counsel

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ORDER

The order dated 14.04.2010, rejecting the claim of the writ petitioner for promotion to the post of Sub-Inspector of Police with retrospective effect without condition promotion test such as written test, drill test, viva-voice, past performance as per the Rules prescribed in Rule 3(d)(iii) of Special Rules for Tamil Nadu Police Subordinate Service, is under challenge in the present writ petition.

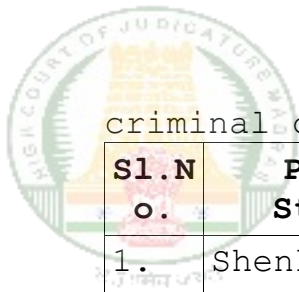
2.As per the provisions of Tamil Nadu Police Subordinate Service Rules, promotions to the post of Sub-Inspector of Police must be provided by conducting a promotion test such as written test, drill test, viva-voice and the past performance as per the Rules prescribed in Rule 3(d)(iii) of Special Rules. Thus, a Policeman working in the feeder category for promotion to the post of Sub-Inspector of Police is eligible to be considered only after undergoing all these tests and not otherwise.

3.The writ petitioner who was working in Tamil Nadu Police and retired from service on 31.10.2008 on attaining the age of superannuation filed the present writ petition during the year 2012, after a lapse of four years from the date of retirement for the purpose of granting retrospective promotion to the post of Sub-Inspector of Police. At the first instance, the writ petition is to be rejected on the ground of laches and the earlier writ petition filed by the writ petitioner ended with an order of consider the representation. Thus, there was no delay on the part of the writ petitioner.

4.May that it be, this Court is of the opinion that the present writ petition is filed challenging the impugned order in the year 2012. The writ petitioner who was working as Head Constable had involved in many criminal cases.

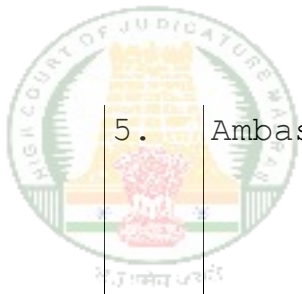
5.Learned counsel for the writ petitioner states that the writ petitioner was acquitted in all the criminal cases and the departmental disciplinary proceedings initiated were also dropped. Thus, his case is to be considered for the purpose of grant of monetary benefits.

6.The counter affidavit filed by the respondents is pertaining to the cases filed against the writ petitioner. It is relevant to extract paragraph No.3 of the counter and the nature of the



criminal cases filed against the writ petitioner reads as follows:

Sl.No.	Police Station	Crime No.	Section	Disposal of trial Court	Disposal of the appellate Court
1.	Shenkottai	46/1984	457, 380 IPC	Convicted on 27.02.1998	The accused preferred an appeal in C.A.No.47/98 and acquitted on 26.06.98.
2.	Shenkottai	471/1983	457, 380 IPC	Acquitted on 27.02.1998	A criminal appeal No.544/98 had been filed before the Hon'ble High Court, Madurai against the acquittal and the same was dismissed on 01.08.2008.
3.	Ambasamudram	341/1981	457, 380 of IPC	Convicted on 27.02.1998	The accused preferred an criminal appeal against his conviction in C.A.No.49/98 and the same was allowed on 26.06.1998.
4.	Ambasamudram	95/1983	457 & 380 of IPC	Acquitted on 27.02.1998	A criminal appeal had been filed against his acquittal before the Hon'ble High Court, Madurai in C.A.No.738/98 and the same was dismissed on 01.08.2008.

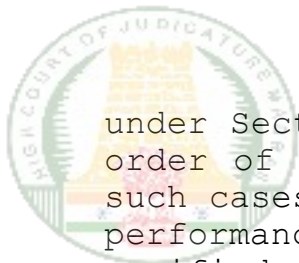


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5.	Ambasamudram	115/1983	457 380 IPC	& of	Acquitted on 27.02.1998	A criminal appeal had been filed against his acquittal before the Hon'ble High Court, Madurai in C.A.No.1040/98 and the same was dismissed on 19.08.2004.
6.	Ambasamudram	139/1983	457 380 IPC	& of	Acquitted on 27.02.1998	A criminal appeal had been before the Hon'ble High Court against his acquittal in C.A.No.1001/1998 and the same was dismissed on 19.08.2004.
7.	Ambasamudram	114/1984	65 Act	MCP	Convicted on 27.02.1998	The accused preferred an appeal against his conviction in C.A.No.28/1998 and the same was allowed on 26.06.1998.
8.	Kalakadu	214/1982	457 380 IPC	& of	Acquitted on 20.11.1991	The Public Prosecutor has opined that it is not a fit case for appeal on 13.10.2008.
9.	Kallidaikuri chi	48/1989	302 IPC		Acquitted on 18.02.1992	The Public Prosecutor has opined that it is not a fit case for appeal on 22.09.2008.

7.It is most unfortunate that a Head Constable working in the Police Department was facing more than four cases registered under Section 457 and 380 of Indian Penal Code and one case of murder

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under Section 302 IPC. Though the writ petitioner was acquitted the order of acquittal was on the ground of benefit of doubt. Even in such cases, this Court is of the considered opinion that the entire performance record, antecedents and character are also to be verified for promotion to the post of Sub-Inspector of Police. Even as per the Tamil Nadu Police Subordinate Service Rules, verification of past records is also contemplated. Past performance, written test, drill test, viva-voice are the prescribed procedures and therefore, the writ petitioner necessarily has to undergo all these examinations for the purpose of grant of promotion to the post of Sub-Inspector of Police.

8. In view of the fact that the writ petitioner attained the age of superannuation in the year 2008 itself, now after a lapse of about 11 years, the writ petitioner cannot be directed to undergo these tests and without satisfying the Rules and service records regarding the past performance, promotion to the post of Sub-Inspector of Police cannot be granted. The fact remains that many number of criminal cases registered against the writ petitioner ended with an order of acquittal.

9. Under these circumstances, this Court is not inclined to consider the relief as such sought for in the present writ petition. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS)

MR

To

1. The Secretary (Home), representing
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai - 600 006.

2. The Director General of Police,
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Kamarajar Salai,
Chennai - 600 004.



3.The Deputy Inspector General of Police,
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Palayamkottai,
Tirunelveli - 627 002.

4.The District Superintendent of Police,
District Police Office,
Tirunelveli District, Palayamkottai,
Tirunelveli - 627 002.

5.The Accountant General (AE),
Office of the Accountant General,
Chennai - 600 018.

+1CC TO MR.F.X.EUGENE, Advocate Sr. No.79327
+1CC TO MR.P.GUNASEKARAN, Advocate Sr. No.79103
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.79221

W.P[MD]No.2536 of 2012
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SSS(CO)
TR (29.08.2019) 6P 9C