

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.29566 of 2008

Mr.M.Mani

... Petitioner

Vs.

1. The Director General of Police,  
Chennai - 600 004.

2. The Commissioner of Police,  
Salem City Police, Salem.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus, to call for the records of the first respondent relating to Rc.No.40668/NBIII (2) /2008 dated 06.06.2008, quash the same and to issue consequential direction to regularise the period from 09.06.1993 till 01.06.1997 as duty period and to grant him all service benefits including retrospective promotion to higher posts with retrospective effect from the date of respective promotion of his immediate junior with all consequential monetary benefits.

For Petitioners: Mr.M.Ravi

For Respondents: Mr.A.Kumar, AAG - VII

Assisted by Mr.Chinnadurai, AGP

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O R D E R

The petitioner was appointed as a Police Constable Grade - II by the respondent on 09.06.1993. He was deputed for police training and he went on leave on 14.06.1993 due to serious illness. Consequently, communications were sent to the Police Training College for rejoining of the petitioner and since the petitioner has not rejoined, the petitioner was considered as a deserter and removed from service. Thereafter, the petitioner made a representation for reinstatement in service on 21.01.1996. The first respondent vide his proceedings in Rc.No.A4/5323/95, dated 02.09.1996, had reinstated the petitioner in service and deputed the

petitioner for training, without prejudice to the disciplinary action for the said desertion. Thereafter, on completion of disciplinary proceedings, the petitioner was imposed with a punishment of 'black mark' by an Order dated 08.05.1997. The petitioner filed mercy petition before the first respondent and the first respondent passed an Order in R.c.No.182495/Rect.1(2)/2006 dated 23.10.2006. The first respondent had set aside the 'black mark' issued against the petitioner and imposed a punishment that the period of absence should be treated as leave without pay and the punishment reads as follows :

"8. Applying the above reason, the petitioner is deemed to have continued in service from 06.06.1993. This is confirmed by the Order passed by the Commandant, that the period of absence will be treated as leave without pay.

9. Hence, it is Ordered that the name of petitioner Tr.M.Mani, Grade II PC 1551 is ordered to be included in the year 1992-93 i.e., 09.06.1993, in which he was initially appointed to the post of Gr.II PC reckoning the marks obtained by him in the training institute only for the purpose of his seniority. Accordingly, the representation dt.05.06.2006 of Tr.M.Mani, Grade II PC 1551 is disposed of."

2. Pursuant to the above Order passed by the first respondent, the seniority of the petitioner was restored and he was arrayed above one Venkatachalam in the seniority list. The further submission of the learned counsel for the petitioner is that after refixation of seniority, the petitioner is entitled to all benefits which is applicable to the said Venkatachalam, junior to the petitioner. The said Venkatachalam was promoted as Head Constable Grade - I, thereafter, Sub Inspector. Therefore, the petitioner, who is having all qualifications, on the date on which his junior was promoted should also be promoted on par with his junior. Hence, the Writ petition.

3. The learned Additional Government Pleader appearing for the respondent would vehemently contend that the petitioner was out of employment from 1993 to 1997 and that period cannot be taken into account for all purposes. Even though the petitioner was given continuity of service from 1993 and his seniority was restored, the petitioner is however, given upgradation for Grade I constable as well as Head Constable. Once, the petitioner is not qualified to get the promotion, he cannot compare himself with an eligible junior getting promotion. As the petitioner had not put in required number of service, he was not eligible and he was not promoted. Therefore, the Order of the first respondent cannot be found fault with. Further, lack of service of the petitioner can be substantiated by the Orders of the Director

General Police in the matter of rejection of the upgradation of the petitioner with effect from 28.10.2004 by Memorandum No.93685/ NGB.V(2)/2016 dated 20.06.2017. The first respondent has returned the proposal sent by the second respondent and the matter of upgradation from Grade-II to Grade I Constable. He would further submit that the period of absence between 1993 to 1997 cannot be counted. Therefore, the petitioner had not completed 10 years of service and his upgradation could not be given. If that being so, if the petitioner is not entitled for upgradation, he is not entitled to regular promotion. Therefore, he would submit that the writ petition is liable to be dismissed.

4. I have considered the submissions.

5. A perusal of the Order of the first respondent in the disciplinary proceedings against the petitioner for desertion from training by Order dated 23.10.2006, shows that the petitioner was given continuity of service with effect from 09.06.1993 and his period of absence was treated as leave without pay. It is further, Ordered that the petitioner was directed to be included in 1992-93 and by considering the marks obtained by the petitioner in the training institute for the purpose of fixing his seniority, the petitioner's seniority was restored and he was placed above one Venkatachalam.

6. The only issue now left for consideration is that whether the petitioner is entitled for further promotions on par with his junior or not? As contended by the learned counsel for the petitioner, if the petitioner is fully qualified to be promoted to the next higher level, he should have been considered when his immediate junior was considered. According to the petitioner, he did not suffer any punishment or disqualification even one impose for the year 2006. Therefore, he is fully qualified. If that is so, the petitioner is entitled to be considered for promotion on par with his junior. In such circumstances, I am of the considered view that the impugned Order passed by the respondent dated 06.06.2008, in so far as clause A and B is concerned, is correct. But, in so far as clause 3 is concerned, it is contended that the said junior Venkatachalam was promoted only in the year 2010. By that time, the petitioner would have completed probation. In that event, the petitioner is entitled to be considered for promotion on par with his junior. Therefore, the Order in respect of clause 3 alone is set aside and the matter is remitted back to the first respondent for reconsideration in the light of the promotion given to the junior of the petitioner. Now, the materials placed before this Court reveal that the Junior of the petitioner was promoted as a Head Constable with effect from 18.11.2003 and Sub Inspector with effect from 12.09.2004. In that event the petitioner has a right to be considered on par with his junior.

7. Hence, the first respondent shall consider, if the petitioner is otherwise, eligible for promotion and issue appropriate Orders. Such exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this Order.

8. . This Writ Petition is Ordered accordingly. No costs.

Sd/-  
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

vrc

To

1. The Director General of Police,  
Chennai - 600 004.

2. The Commissioner of Police,  
Salem City Police, Salem.

+1cc to Mr.M.Ravi, Advocate SR.No.15982

+1cc to Government Pleader SR.No.16736

W.P.No.29566 of 2008

CP(CO)  
GMY(11/11/2020)

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