

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

C O R A M

THE HONOURABLE Mr.JUSTICE M.GOVINDARAJ

W.P.No.7707 of 2011

Kindsly Benson

.. Petitioner

-Vs.-

1. The Director General of Police,
Tamil Nadu Police,
Chennai - 4

2. The Commissioner of Police,
Chennai Police,
Chennai - 8

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus directing the second respondent to promote the petitioner as Head Constable from the year 1992 vide selection in C.P.No.1815 of 1992 dated 22.06.1992.

For petitioner Mr.B.Nedunchezhiyan

For respondents Mr.P.Chinnadurai AGP

O R D E R

The petitioner was appointed as Grade-II Constable in Chennai Police and posted to Armed Reserve with effect from 27.02.1986 and completed his probation on 28.02.1988. Subsequently, he was given promotion as Lance Naik with effect from 16.10.1989 and in fact, as Naik with effect from 02.11.1989. Thereafter, he was deputed to undergo Armoury training and on completion of the training, he was posted back at Armed Reserve and served till 11.03.1991. Thereafter, the second respondent posted him to Armoury under the Head quarters wing control. While the matter stood thus, the second respondent, in his proceedings No.C.P.No.1815 of 1992 dated 22.06.1992, accorded promotion to him in the rank of Head Constable. His immediate juniors were promoted from the post of Naik to that of the Head

Constable. But, his name was not included in the promotion list. He made representations seeking promotion. However, he was posted in the Special Security group in the year 1995 and continued to serve upto the year 2005. He was given promotion as Head Constable in the Chennai Police Armoury in the year 2002, even though he was eligible to be promoted from the year 1992. Again in the year 2005, he was repatriated to his Parent unit, namely, Chennai Police. He made a representation dated 03.04.2003 seeking promotion as Head Constable from the year 1992, but it was not considered. Aggrieved over the same, the petitioner is before this Court.

2. The respondents filed the counter affidavit stating that the Chennai City Police has three different wings, viz., Motor Transport, Armed Reserve and Armoury. Those who are posted to Armoury Branch, will be paid a special pay and it is a separate wing in the matter of promotions. In fact, the Government, vide G.O.Ms.No.701, Home Department, dated 09.08.2002, framed Ad-hoc Rules on the constitution and mode of appointment of Sub-Inspector of Police and put them under the control of the Joint Commissioner of Police, Chennai with effect from 24.05.1983. Once the petitioner was posted to Armoury wing, his lien with the Armed Reserve was snapped as per the Fundamental Rules 14(b). Therefore, he cannot claim promotion in the regular wing of Chennai City Police. However, he was given promotion to the post of Sub Inspector of Armoury in the year 2015. Hence, the claim of the petitioner is not sustainable and accordingly, the respondents seek dismissal of the Writ Petition.

4. I have considered the rival submissions made by both the parties and perused the materials available on record.

5. A reading of G.O.(Ms).No.701, Home (Police-III) Department, dated 09.08.2002 shows that the general and Special Rules applicable to the holders of permanent posts in the Tamil Nadu Police Sub-ordinate Service, shall apply to the holders of the post of Sub Inspector of Police (Armourer), subject to the modifications specified in the Rules. For the post of the Sub Inspector, the qualification is that the Head Constable (Armourer) having 7 years of service and not having completed 53 years of age, is eligible to be promoted. Other than this, there are no separate Rules prohibiting the persons working in the Armoury to get promotion in the regular line.

6. The next Government Order relied on by the learned Additional Government Pleader is G.O.(Ms).No.308, Home (Pol-8) Department, dated 24.03.2010, by which, the cadre strength was increased with 2 Sub Inspectors of Police, 4 Head Constables and 9 Police Constables and tri-furcated as Central, North and South of Chennai Police. Other than this, there are no other service Rules prohibiting inter-change in the post between the regular units. From the above, it is seen that both G.Os relied on by the learned Additional Government Pleader specify only the cadre strength and also the method of promotion to the post of Sub Inspector (Armourer) and they do not prohibit any promotion in regular line or sub-line in the parent department. In similar circumstances, a Division Bench of this Court in W.P.No.25043 of 2002 dealt with the same issue, and by its Order dated 18.09.2007, held as under:

"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."

7. In the instant case also, I do not find any separate Rules with regard to the three departments, namely, Motor Transports of Chennai City Police, Armed Reserve Police and local Police, who are all being treated as distinct department, having separate promotional avenues. In fact, Armoury have 2 Sub Inspector posts and there won't be any promotional opportunity at all to the Police to that of the Armourer. In that view of the matter, the petitioner's grievance is justified and he is entitled to get promotion on par with his juniors as long as the orders of the Division Bench of this Court dated 18.09.2007 and also yet another Writ Petition in W.P.No.18790 of 2014 dated 10.01.2019 have been followed.

8. In view of the above position, I direct the first respondent to consider the promotion of the petitioner from the year 1992 and pass appropriate orders in the light of the said orders of the Division Bench of this Court in W.P.No.25043 of 2002 and also in W.P.No.18790 of 2014, stated supra, within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is allowed as prayed for. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

srn

To

1. The Director General of Police,
Tamil Nadu Police, Chennai - 4

2. The Commissioner of Police,
Chennai Police, Chennai - 8

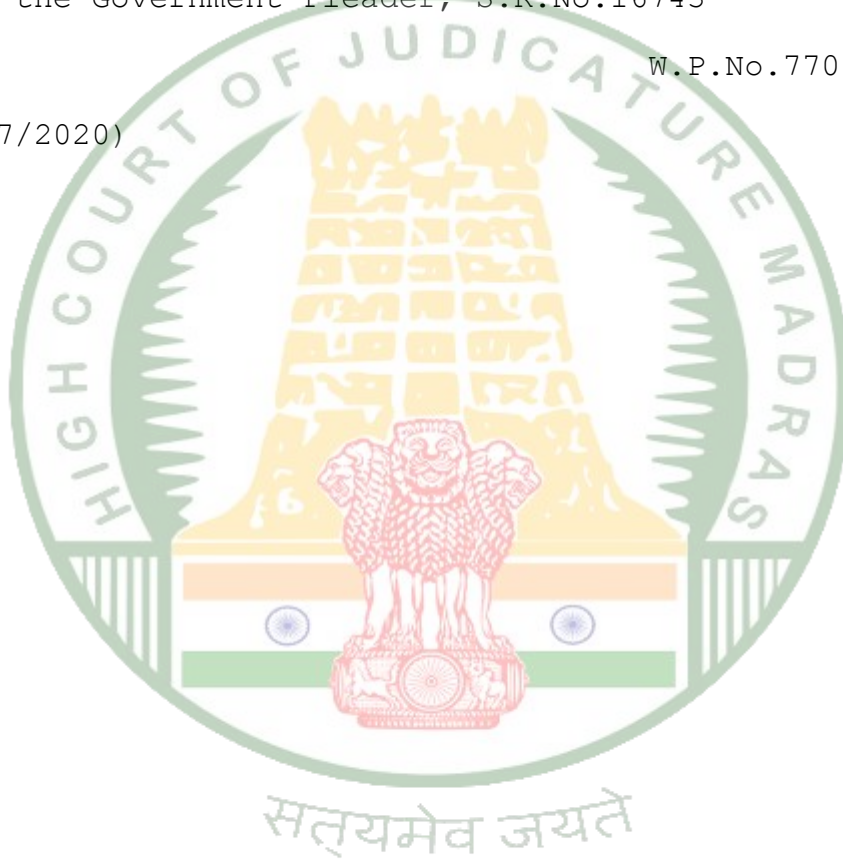
+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.16260

+1cc to the Government Pleader, S.R.No.16743

W.P.No.7707 of 2011

PVS (CO)

CB(31/07/2020)



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