

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 33706 OF 2013

M.Ravichandran

.. Petitioner

- Vs -

1. The Director General of Police
Chennai 600 004.

2. The Superintendent of Police
Tirupur, Tirupur District.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in his impugned proceeding Rc. No.12475/Rect 1(2)/2013 dated 28.09.2013 and quash the same and consequently direct the respondents herein to treat the petitioner herein as Police Constable Grade-II along with his batch mates for the recruitment year 2001-2003 with retrospective effect from 2003 instead of 2007 with all monetary and other attendant benefits including due seniority from 2003.

For Petitioner : Mr. K.Raja

For Respondents: Mr. S.Thangavel, Spl. GP

ORDER

It is the case of the petitioner that he had applied for appoint to the post of Police Constable Grade-II for the recruitment year 2001-2003 and though he got fully qualified in the Physical Test and Written Test and selected, however he was not given appointment as Police Constable Grade-II in the year 2003 on the ground that the petitioner was involved in Crime No.91/2003 vide order of the 1st respondent dated 2.1.04. Persons, who got selected with the petitioner were appointed and joined service. It is the case of the petitioner that at the time of making the declaration in the application on 21.8.03, no criminal case was pending against him and it came to his knowledge only after receipt of summons on 20.9.03. It is the further case of the petitioner that the said case, petty in nature, ended in acquittal on 17.10.03. As against the order of the 1st respondent dated 2.1.04, the petitioner filed W.P. No.27759/04 before this Court and this Court, vide order dated 29.3.07, revoked the order passed by the 1st respondent and based

on the said order, the petitioner was appointed as Police Constable Grade-II on 7.5.07.

2. It is the case of the petitioner that he joined duty on 1.3.08. It is the further grievance of the petitioner that had his name been considered in the 2001-2003 list, by now, the petitioner would also be within the zone of consideration for the post of Police Constable Grade-I along with his batch mates of the year 2001-2003. Therefore, the petitioner submitted a representation on which no action was taken by the respondents. Aggrieved, the petitioner filed W.P. No.34552/12 seeking the relief of considering his name for promotion along with his batch mates of the year 2001-2003 and this Court, vide order dated 21.12.12 directed the respondent to consider the representation submitted by the petitioner on merits and in accordance with law within the stipulated time. It is the further grievance of the petitioner that the 1st respondent, without properly appreciating the case, has passed the impugned order on 28.9.13, negating the grievance of the petitioner on the ground that seniority will be reckoned only on the basis of the marks obtained in the final examinations conducted at the recruits school. It is averred by the petitioner that for no fault of his, he has been denied appointment along with his batch mates of the year 2001-2003, who have gone for training followed by final examination and, to ventilate the said grievance, the present petition has been filed.

3. Learned counsel appearing for the petitioner, while reiterated the ground raised in support of the petition, further submitted that the fault wholly lies with the respondent in firstly denying appointment to the petitioner and, thereafter, not appreciating the order of this Court in proper perspective in the two rounds of litigation, wherein the petitioner sought to have his appointment and seniority restored. Therefore, it is the submission of the learned counsel for the petitioner that the petitioner is fully entitled to the relief sought for. In support of his contention, learned counsel for the petitioner placed reliance on the decision of this Court in P.Natarajan - Vs - The Secretary to Govt. (W.P. Nos.7242 & 7243 of 2009 - Dated 12.02.2014).

4. Per contra, learned Special Government Pleader appearing for the respondents submitted that the pendency of the criminal case against the petitioner prevented the respondents from appointing the petitioner and on exoneration, the petitioner was appointed and, therefore, the fault is not on the part of the respondents. The respondents have complied with the orders passed by this Court in letter and spirit and, therefore, the present relief sought for by the petitioner deserves to be rejected.

5. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing for the

parties and perused the materials available on record as also the decision of this Court to which attention was drawn.

6. In Natarajan's case (supra), in similar and identical circumstances, learned single Judge of this Court, after appreciating the entire issue placed before the Court, referring to an order of the Division Bench, granted the prayer sought for therein, the relevant portion of which is extracted hereunder :-

"6. In my considered opinion, the issue raised in these writ petitions is no longer res integra. The reason being that when a similar objection was raised before this Court for placing of the seniority of one Mr.J.Pratap Prem Kumar with that of Mr.C.Senthilkumar, Code No.14/0195, who was also a batch mate like the petitioners of the year 1994-95, this Court, while considering the objection to Rule 25(a) of the Special Rules for Tamil Nadu Police Subordinate Service in W.P.No.13662 of 2008 (J.Pratap Prem Kumar v. Government of Tamil Nadu and another), by order dated 6.8.2008, by quashing the order impugned therein, rightly issued a direction to the respondents to re-fix the seniority of the petitioner therein in the appropriate place in the selected list of Sub Inspectors of Police of the year 1994-95 along with his batch mates who were sent for training on 2.6.97 with consequential benefits. In fact, the said order was also complied with by the respondents in G.O. (Ms) No.729, Home (Police III) Department dated 23.9.2013. Moreover, the second respondent, who had passed the proceedings dated 15.4.99 bearing Rc.No.192438/Rect.1/98, cannot discriminate the petitioners amongst the six persons, since the second respondent, after noting that the criminal cases came to an end against all these persons, had considered the case of Mr.C.Senthilkumar, resultantly, he was placed in the original seniority No.217-A between No.217-Mr.S.S.Mani and No.218-Mr.S.Senthil along with the Sub Inspectors of Police who were recruited for the year 1994-95. In view of the same, the petitioners, namely, Mr.P.Rajendran and Mr.E.Thirunavukkarasu also should be extended the same benefit by placing them in the appropriate position in the selection list of Sub Inspectors of Police recruited for the year 1994-95, as they also stand on the same footing as that of Mr.C.Senthilkumar. For all these reasons, the order dated 28.2.2009 passed by the second respondent impugned in W.P.No.7242 of 2009 is quashed, resultantly, both the writ petitions are allowed with a direction to the respondents to re-fix the seniority of the

petitioners in the appropriate place in the selection list of Sub Inspectors of Police for the year 1994-95 along with their batch mates, within a period of ten weeks from the date of receipt of a copy of this order. No costs."

7. It is not disputed by the learned Special Government Pleader that the case on hand is identical to the case as was the subject matter in Natarajan's case (supra). In such a backdrop, this Court is of the considered opinion that the prayer sought for by the petitioner deserves to be granted on the basis of the ratio laid down in Natarajan's case (supra), as the said decision is squarely applicable to the facts of the present case.

8. For the reasons aforesaid, this writ petition is allowed by setting aside the impugned order with a further direction to the respondents to refix the seniority of the petitioner along with his batch mates in the appropriate place in the selection list of Police Constable Grade-II of the year 2001-2003 within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

GLN

To

1. The Director General of Police
Chennai 600 004.

2. The Superintendent of Police
Tirupur, Tirupur District.

+1cc to Mr.K.Raja, Advocate SR.No.25489

+1cc to Government Pleader, High Court, Madras SR.No.25387

W.P. NO. 33706 OF 2013

MR(CO)
GMY(17/08/2020)