



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:

19.11.2019

Delivered on:

06.01.2020

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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) Nos. 1554, 3094, 3206 to 3211 & 3528 of 2019
and

W.M.P.Nos. 1326 to 1328, 2293, 2294, 2499,
2500 to 2510, 2774 to 2776 of 2019

WP (MD) .No.1554 of 2019 :

1. S.Parthiban
 2. T.Kannan
 3. N.Balasubramanian
 4. A.Ilangovan
- ...Petitioners

- Vs. -

1. The Secretary to Government,
Home Police Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.
 2. The Director General of Police, Chennai-4.
 3. The Deputy Inspector General of Police,
Ramanathapuram Range, Ramanathapuram.
- ...Respondents

Prayer in WP(MD).No.1554 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in R.C.No. 167320/NGB/V(2)/2018 dated 21.12.2018, quash the same and consequently direct the respondents herein to promote the petitioners as Sub-Inspector of Police (Armed Reserve) considering the date of their enlistment seniority.

WP (MD) .No.3094 of 2019 and 3206 to 3211 of 2019 :

- | | |
|---------------|--|
| M.James | ... Petitioner in WP(MD).No.3094 of 2019 |
| K.Thulasidass | ... Petitioner in WP(MD).No.3206 of 2019 |
| S.Ramasamy | ... Petitioner in WP(MD).No.3207 of 2019 |
| C.Chinnasamy | ... Petitioner in WP(MD).No.3208 of 2019 |
| M.Sivakumar | ... Petitioner in WP(MD).No.3209 of 2019 |



D.Ravi Chandran
A.Kannan

... Petitioner in WP(MD).No.3210 of 2019
... Petitioner in WP(MD).No.3211 of 2019

- Vs. -

1. The Secretary to Government,
Home Police Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.
2. The Director General of Police, Chennai-4.
3. The Deputy Inspector General of Police,
Madurai Range, Madurai.
4. The Chairman, Range Promotion Board,
Madurai Range & Superintendent of Police,
Madurai District ...Respondents No.1 to 4 in
WP(MD).Nos. 3094 and 3206 to 3211 of 2019
5. P.Devadoss ...Respondent No.5 in WP(MD).Nos.3094,
3206, 3607, 3609 and 3210 of 2019
5. P.Lingiah ...Respondent No.5 in WP(MD).Nos.3208
and 3211 of 2019

Common Prayer in WP(MD).Nos.3094 and 3206 to 3211 of 2019 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Memorandum issued by the 2nd respondent in RC No.163720 / NGB V(2)/ 2018 dated 21.12.18 and the consequential proceedings ("C" List of HC's) of the 3rd respondent in C.No.A1/ 245 / 1339 / 2018 R.O.No.07/2019 dated 04.01.19 quash the same as illegal insofar as petitioner non-inclusion is concerned and consequently direct the respondents to include petitioner name in the "C" list of HC's-Madurai Range for the year 2018 immediately above petitioner junior i.e. The 5th respondent herein and consider petitioner for regular promotion as Sub Inspector of Police.

WP(MD).No.3528 of 2019 :

1. S.Mohanraj
2. R.Baskar
3. G.Sivasubramanian
4. K.Murugesan ...Petitioners

- Vs -

1. The State of Tamilnadu Rep.By its Secretary,
Department of Home, Fort.St.George, Chennai-600 009



2. The Director General of Police,
No.1, Dr. Radhakrishnan Road,
Mylapore, Chennai.
3. The Deputy Inspector General of Police,
Trichy Range, Trichy-20
4. K. Venkatesh Babu
5. S. Arngaraj
6. D. Viswanathan
7. S. Chinnadurai
8. S. Muthukrishnan
9. R. Stephen
10. M. Alagar
11. M. Sakthivel
12. P. Rathinam
13. P. Velmurugan
14. S. Senthilkumar
15. M. Kumaran
16. R. Sundarapandian
17. T. Ramesh
18. S. P. Singaram

... Respondents

Prayer in WP (MD) .No.3528 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned Memorandum issued by the 2nd respondent Director General of Police in RC No.163720/NGB V (2) / 2018 dated 21.12.2018, Quash the same, and further Direct the respondents to consider the petitioners for promotion to the post of Sub-Inspector (Armed Reserve) on the basis of their seniority in Cadre of Grade-II Police Constable, with in a reasonable time as may be certified by this Hon'ble Court.

(In W.P. (MD) No. 1554 of 2019)

For Petitioners : Mr. G. Thiruvarutselvan

For Respondents : Mr. K. Chellapandian, (For R1 to R3)
Additional Advocate General
Assisted by Mr. V.R. Shanmuganathan,
Special Government Pleader

(In W.P. (MD) Nos. 3094, 3206 to 3211 of 2019)

For Petitioner : Mr. M.E. Ilango

For Respondents : Mr. K. Chellapandian, (For R1 to R3)
Additional Advocate General
Assisted by Mr. V.R. Shanmuganathan,
Special Government Pleader



Mr. K. Veerakathiravan, Senior Counsel
for Mr. C. Jeganathan
(For R5 in W.P.(MD).Nos.3094, 3206,
3207, 3208, 3209, 3210 & 3211 of 2019)

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(In W.P.(MD) No. 3528 of 2019)

For Petitioners : Mr. Isaac Mohanlal, Senior Counsel
for M/s. Isaac Chambers

For Respondents : Mr. K. Chellapandian, (For R1 to R3)
Additional Advocate General
Assisted by Mr. V.R. Shanmuganathan,
Special Government Pleader

C O M M O N O R D E R

All the Writ Petitions are filed challenging the Memorandum issued by the 2nd respondent, Director General of Police in RC. No. 163720/NGB V (2)/2018 dated 21.12.2018, quash the same and further direct the respondents to promote the petitioners as Sub-Inspectors of Police (Armed Reserve), considering the date of their enlistment seniority. The petitioners are also seeking to quash the promotion list prepared by the 3rd respondent in so far as it relates to non-inclusion of petitioners or to direct the respondents to include their name in 'C' List for promotion to the post of Sub-Inspectors of Police (AR) for the year 2018.

2.The facts involved in all the Writ Petitions are similar and relief sought for by the petitioners are one and the same and therefore, all the Writ Petitions are disposed of by this common order.

3.All the petitioners are now working as Head Constables in Ramanathapuram Range, Madurai Range and Trichy Range. All the petitioners were initially appointed as Police Constable Grade -II on various dates through the Tamil Nadu Uniform Service Recruitment Board (TNUSRB) and joined services on the same day itself.

The contention of the learned counsel for the petitioners in W.P. (MD). No. 3528 of 2019

4.Learned Senior Counsel for the petitioners contended that as per the prevailing rules, Grade - II Police Constable, on completion of 10 years of service will be upgraded as Grade - I Police Constable and on completion of 5 years of service of Grade - I Police Constable, will be upgraded as Head Constable. The next level of promotion from Head Constable is Sub-Inspector of Police, subject to availability of vacancy in Armed Reserve. There are 11 ranges (regions) in the State of Tamil Nadu. The petitioners are



working in Trichy range. Even if a junior Police got upgraded to the next level for want of vacancy before his senior, he will continue in the same seniority as in case of Grade - II Police Constable. The petitioners were upgraded as Police Constable Grade - I and Head Constable on following dates:

No.	Name	Date of Birth	Date of Appointment as Grade - II Police Constable	Grade- I	Head Constable
1.	S. Mohan Raj	09.05.1971	16.04.1997	16.04.2007	01.05.2012
2.	R. Baskar	10.04.1974	16.04.1997	01.08.2005	23.02.2011
3.	S. Sivasubramanian	30.04.1976	16.04.1997	16.04.2007	01.05.2012
4.	K. Murugesan	25.07.1970	16.04.1997	16.04.2007	01.05.2012

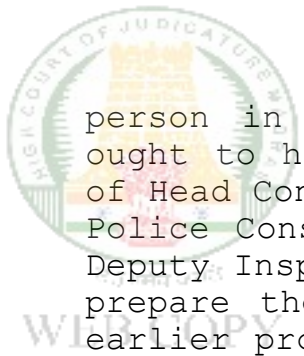
4(i). For promotion to Sub-Inspector of Police (Armed Reserve), a combined seniority list drawn at the time of recruitment as Grade - II Police Constable will be followed. Only one panel for Police Constable Grade - II shall be drawn and promotions will be made from the said panel to the ranks of Grade - I/Naiks and Head Constables. The crucial date for drawal of panel for Armed Reserve Police is 1st July, every year. Earlier, promotion to the post of Sub-Inspector was made by conducting Range Promotion Board Test, namely written, viva-voice, including drill test. The Range Promotion Board Test was abolished vide G.O. Ms. No. 1055, Home (Police III) Department dated 01.11.2006 and was directed to fill the post of Sub-Inspector based on seniority. As per the Tamil Nadu Police Subordinate Service Rules, entry level seniority is being followed for giving promotion to the post of Sub-Inspector of Police (Armed Reserve).

4(ii). The petitioners are all eligible to be promoted as Sub-Inspector of Police (Armed Reserve) and are awaiting promotion based on availability of vacancy. While so, the 2nd respondent by official memorandum in RC.No. 163720/NGBV (2)/ 2018 dated 27.03.2018, issued general instructions for preparing 'C' List i.e., List of Head Constables (Armed Reserve) fit for promotion as Sub-Inspectors of Police (Armed Reserve). The 2nd respondent directed the Deputy Inspector General of all ranges to draw the 'C' List based on entry level seniority. The said procedure is in existence for all these years. It is learnt that the Deputy Inspector General of Police notified 15 vacancies to the post of Sub-Inspector of Police (AR). One P. Lingiah and four others filed W.P. (MD). Nos. 9115 and 9116 of 2018 challenging the proceedings of the 2nd respondent dated 27.03.2018 and sought for a direction to promote them as Sub-Inspectors of Police (Armed Reserve) considering their date of



promotion as Head Constable, which is Feeder Category to the promotional post of Sub-Inspector of Police (Armed Reserve) with effect from 19.07.2017 on par with their juniors. This Court by recording the averments in the counter affidavit filed by the official respondents therein, by order dated 29.11.2018 disposed the said Writ Petitions, holding that panel for the post of Sub-Inspector of Police (Armed Reserve) will be drawn as per the pre-existing seniority of Grade - II Police Constable and not based on their date of promotions as Head Constable. This Court declined to quash the proceedings of the 2nd respondent dated 27.03.2018, as the same is as per rules. The petitioners, serving in Trichy region, being senior most candidates, were under bonafide impression that they will be considered for promotion to the post of Sub-Inspectors of Police in any one of the 15 vacancies. While so, the 2nd respondent by impugned Memorandum in RC. No. 163720/NGBV (2)/ 2018, dated 21.12.2018, referring to the order of this Court dated 29.11.2018 in W.P. (MD). Nos. 9115 & 9116 of 2018, cancelled the seniority panel drawn on the basis of the seniority in Grade - II Police Constable by the Deputy Inspector General of Police of all ranges including the 3rd respondent and directed them to prepare a fresh panel based strictly in accordance with the seniority of Police Personnel in the rank of Head Constable and not as per their enlistment seniority. Challenging the Memorandum of the 2nd respondent in RC. No. 163720/NGBV (2)/ 2018, dated 21.12.2018, the petitioners have come out with the present Writ Petitions.

4(iii). Learned Senior Counsel appearing for the petitioners contended that the 2nd respondent issued the impugned proceeding referring to the orders of this Court made in W.P.(MD) Nos. 9115 & 9116 of 2018, wherein this Court declined to accept the prayer of petitioners therein to draw panel based on seniority in the post of Head Constable. However, without cancelling his earlier proceedings dated 27.03.2018 and without assigning any reasons, the 2nd respondent has directed the officials to draw the panel based on the seniority in the post of Head Constable. The 3rd respondent has prepared the seniority panel as per the instructions of the 2nd respondent in the impugned order. In the list, names of the respondents 4 to 18 are found in 15 vacancies. The respondents 4 and 5 are seniors to petitioners. The respondents 6 to 11 are from the same batch as that of petitioners and respondents 12 to 18 are juniors to the petitioners. The respondents 4 to 18 are included in the promotion list based on the date of upgradation in the post of Head Constable and not based on seniority in Grade - II Police Constable. The date of entry of respondents 12 to 18 would show that they are juniors to petitioners. If respondents 12 to 18 are promoted as Sub-Inspector of Police as per the present promotion list, the petitioners must work under their juniors till their retirement as their promotional chances are affected. The impugned Memorandum of the 2nd respondent are arbitrary, illegal, unconstitutional, discriminatory and contrary to the Tamil Nadu Police Service Rules, which fixes the seniority of a



person in service by the date of appointment. The 2nd respondent ought to have considered that all the previous year, the seniority of Head Constables were fixed on the basis of entry level Grade - II Police Constable. The 2nd respondent ought not to have directed the Deputy Inspector General of Police, including the 3rd respondent, to prepare the panel based on impugned memorandum in as much as his earlier proceedings dated 27.03.2018 is in force and challenge made to the said proceedings before this Court was not successful.

4(iv). The respondents 1 to 3 having stated in the counter affidavit filed in W.P. (MD).Nos. 9115 & 9116 of 2018 that promotion panel for the post of Sub-Inspector of Police (Armed Reserve) will be drawn based on the inter-se-seniority of the Head Constable as per their pre-existing seniority in Grade-II Police Constable, ought not to have taken different stand, especially when this Court accepted the above stand. The 2nd respondent did not issue any notice to the petitioners and no opportunity was given to put forth their case. The respondents 1 to 3 have violated principles of natural justice.

4(v). The learned Senior Counsel appearing for the petitioners further contended that the 2nd respondent by Memorandum dated 19.01.2019 has held that seniority list of Head Constable (Armed Reserve) of Trichy range contains names of Head Constable who were promoted as Head Constables within short time of their promotion as Grade - I Police Constable and were regularized within a short time from the date of their regular promotion as Head Constable. The 2nd respondent directed the 3rd respondent to rectify the defects. The respondents 11 to 15, 17 and 18 were irregularly promoted as Head Constables, but instead of rectifying the irregularity as pointed out by the 2nd respondent, the 3rd respondent included the said persons in that list for promotion to the post of Sub-Inspector of Police (Armed Reserve).

4(vi). The learned Senior Counsel for the petitioners further submitted that one K. Shanmugamurthi, Head Constable, Erode District, filed W.P. (MD).No. 3140 of 2018, before Principal Bench of this Court for a direction to revise his promotion on par with his junior Smt.P. Amutha, Sub-Inspector of Police, by taking into account his date of appointment as basis for reckoning the seniority in the rank of Head Constable. This Court directed the respondents to consider the representation dated 15.12.2017 submitted by the said K. Shanmugamurthi, and pass orders. The 1st respondent by issuing G.O. (Ms). No. 304, Home (Police VI) Department, dated 17.06.2019, relaxed Rule 3 (a) of the Tamil Nadu Police Subordinate Service Rules and revised the seniority of K. Shanmugamurthi, taking into account the date of his initial appointment for reckoning the seniority. Based on the G.O. Ms. No. 304, the 2nd respondent issued proceedings dated 07.11.2019, revising the seniority of K. Shanmugamurthi, in the post of Head Constable (Armed Reserve) and the 'C' List for promotion to Sub-Inspector of



Police (Armed Reserve) for the year 2017.

4(vii). Learned Senior Counsel for the petitioners relied on the judgment reported in (2014) 12 SCC 507 and order of this Court dated 20.08.2019 made in W.P. Nos. 18315 & 563 of 2018 and contended that the date of entry is criteria for fixing seniority and effect promotion. He also relied on:

(i) the judgment reported in **(2014) 12 SCC 507 [State of Sikkim and others Vs. Adup Tshering Bhutia and others]**, the relevant paragraphs are extracted hereunder:

"9.The State Government also amended the integrated Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 as per Notification dated 20.01.2010 with retrospective effect from 11.09.2000. The amendment was mainly in Rule No. 9 on seniority wherein a new sub- clause (iv) was inserted. The amended Rule 9 (iv) reads as follows:

9(iv)(a) The inter-se-seniority of police personnel up to the rank of Assistant Sub-inspector in the Sikkim Police and Sikkim Vigilance Police on the date of amalgamation of the cadres for the purpose of their promotion to the next rank shall be determined on the basis of their date of appointment to the entry level post of Constable.

(b) The inter-se-seniority of Police Inspectors of Sikkim Police, Sikkim Vigilance Police, Sikkim Armed Police and Indian Reserve Battalion on the date of amalgamation of the cadres for the purpose of their promotion to the rank of Deputy Superintendent of Police shall be determined on the basis of their date of appointment to the entry level of Sub-Inspector."

"20.The feeder category for promotion to the post of Deputy Superintendent of Police is inspector. If the seniority is fixed in that cadre of inspector, it would virtually amount to denial of promotion to the post of Deputy Superintendent of Police for quite some time to the members of the Sikkim Police Force. It was this discrimination and resultant injustice that was sought to be remedied by referring the matter to the Committee which recommended that for the purpose of promotion to the post of Deputy Superintendent of Police and preparation of seniority list in that regard, the date of promotion to the post of sub-inspector should form the basis. That date was taken, as we have already noted above, since there was direct recruitment to the post of sub-inspector in Sikkim Armed Police. What has been done by the Government is to base the date of promotion/direct recruitment to the post of sub-



inspector as the determining factor for fixation of seniority for the purpose of promotion to the post of Deputy Superintendent of Police and grant deemed/notional promotion to the members of the Sikkim Police Force from the date their compeers in the other two services got promotion to the post of inspector. Appointment to the post of inspector is by promotion. Therefore, the entry level appointment to the cadre of sub-inspector becomes relevant.....”

“33.Be that as it may, the High Court has already protected the promotions granted to the private respondents but the High Court has struck down the Rule and has quashed the seniority list. As we have already noted above, the High Court has unfortunately missed the crucial consideration with regard to the principles set by the State with regard to fixation of seniority, the purpose sought to be achieved in the process, the relevant considerations which lead to the decision and the materials including the report of the expert committee which were relied on by the State in the process of making and taking of the decision. The State has only acted within its authority under Article 309 of the Constitution of India in bringing about the clarificatory amendment with regard to the fixation of seniority in the cadre of sub- inspectors. The retrospectivity given to the private respondents by giving the deemed date of promotion is neither arbitrary nor unreasonable. On the contrary, it is perfectly just, fair and equitable in the given circumstances without which the integration of services would have resulted in graver inequality and injustice to the members of the major service. In the result, the appeal is allowed. The impugned judgment is set aside. Writ Petition filed by the private respondent in High Court is dismissed.”

(ii) Order of this Court dated **20.08.2019 made in W.P. Nos. 18315 and 563 of 2018**, wherein the relevant paragraphs are extracted hereunder:

“10.Admittedly, all these petitioners along with others either in the General line or in the Armed Reserve were recruited through common exercise and posted in various wings like Motor Transport Wing, Armed Reserve and General line etc. When such is the admitted position, this Court is unable to countenance as to how their promotion could depend on the Wing in which they are posted and working. Therefore, giving promotion to the Juniors of the petitioners in other



Wings and denying the same to the petitioners, is discriminatory, arbitrary, unreasonable, irrational and defy the equality clause enshrined in the Constitution of India.

11. In the said circumstances, this Court is of the considered view that the petitioners cannot be treated differently from the other petitioners, who were covered under the earlier orders passed by this Court, as aforementioned. The stand of the Department that the proposal was prepared as early as in 2010 and the Government was yet to respond cannot be a reason to deny the benefit to these petitioners, who are identically placed as that of the other Police Personnel, who were covered by the earlier decisions of this Court and those decisions have been implemented by the Government itself. In all fairness, the Government itself ought to have extended the benefits to similarly placed persons, instead of that, it cannot oppose the relief being granted to the petitioners herein on specious ground that the orders passed in favour of certain Police Personnel were applicable only to those petitioners covered under the earlier litigations. Such a stand is opposed to fair play, equity, good conscience and justice.

12. For the aforesaid reasons, the writ petitions stand allowed. The impugned order passed by the second respondent in Na.Ka.No.A2/29269/2017, dated 20.09.2017 is hereby set aside. There shall be a consequential direction to the respondents to grant the benefit of promotion to the next higher posts to these writ petitioners on the basis of their date of recruitment as Grade-II Police Constable on par with the similarly placed Police Personnel, who were covered under the earlier direction issued by the Division Bench of this Court dated 18.09.2007 in W.P.No.25043 of 2002. The order complying with this direction is directed to be passed by the respondents/competent authority within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

(iii) Order of this Court dated **29.11.2018 made in W.P. (MD) Nos. 9115 and 9116 of 2018**, wherein the relevant paragraphs are extracted hereunder:

"5. This point has been made clear by the second respondent in Paragraph 7 of the counter, which reads as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



'7(i). With regard to the averments made in Para 2 of the Affidavit, it is humbly submitted that in order to enhance the promotional opportunities of Police Personnel, 'Upgradation Scheme' was introduced by the Government in the year 1993 according to which Gr.II PCs., who have completed 10 years of service, will be promoted as Gr.I PCs and further on completion of 5 years as Gr.I PC, they will be promoted as HC. In view of introduction of Upgradation Scheme right from the year 1993 with a common date of promotion, promotion to the post of Head Constable had not been effected in certain Ranges based on the norms prescribed in Tamil Nadu Police Subordinate Service Rules (TNPSS).

(ii) It is further submitted that prior to the year 2006, the HCs (AR) were considered for promotion to the post of SIs (AR) through the prescribed test. Later, the Govt. had scrapped the scheme of conducting test for promotion to the post of SI (AR) vide G.O.Ms.No.1055, Home (Pol.III) Dept., dated 01.11.2006 and directed that the HCs (AR) be granted promotion as SIs (AR) based on seniority and service records.

(iii) In view of the position stated above, all Range DIGs / COPs have been directed vide Chief Office Memo, issued in Rc.No.163720/NGB V(2)/2018, dated 27.03.2018 to draw the promotion panel for the post of SI (AR) based on the inter-se seniority of HCs arranged as per their pre-existing seniority as Gr.II PCs (i.e.) not to be arranged as per their date of promotion as HC. This procedure is to be followed only in respect of those promoted by way of Upgradation Scheme and not to be followed in the case of those promoted against regular vacancies. In the instant case, it is observed that the Writ Petitioner did not reach the zone of consideration for promotion as SI of Police in the year 2017 according to his due seniority in the rank of HC against the two vacancies existing during the relevant period.'

6. In view of the said submission made by the second respondent, this Court finds no reason to entertain the apprehension of the petitioners herein that they will be placed below the persons, who have blemished service records just because the date of entry is same or prior to the date of entry into the service of the petitioners herein. It is also across



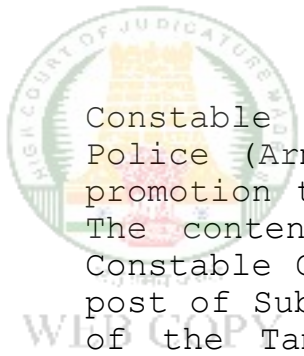
the bar, the learned Additional Advocate General has stated that the petitioners herein will be given priority due to their seniority and only thereafter, others under Upgradation Scheme will be considered below the petitioners herein. The petitioners will be considered for promotion under the existing vacancy and only after filling that post, others will be considered in the Upgradation Scheme."

The contention of the learned counsel for the petitioners in W.P. (MD). Nos. 1554, 3094, 3206 to 3211 of 2019:

5.Learned counsel appearing for the petitioners submitted that they are adopting the arguments made by the learned Senior Counsel for the petitioners in W.P. (MD). No. 3528 of 2019 and prayed for allowing their Writ Petitions.

6.The respondents 1 to 3 filed common counter affidavit and additional counter affidavit in all the writ petitions.

7.The learned Additional Advocate General appearing for the respondents 1 to 3 in all the Writ Petitions contended that promotion to the post of Sub-Inspector of Police (Armed Reserve) is being done range wise / city wise according to the vacancies that exist on the crucial date for preparation of list of Head Constable to be promoted as Sub-Inspector of Police. This procedure is laid down in Rule 3 (d) of the Tamil Nadu Police Subordinate Service Rules. The Feeder Category for the promotion to the post of Sub-Inspector of Police (Armed Reserve) is Head Constable (Armed Reserve). Promotion to the post of Head Constable is effected in Armed Reserve establishment both by the regular promotions in the existing vacancy and also as per the upgradation schemes. As per the said scheme, Police Constable Grade - II is upgraded as Police Constable Grade - I on completion of 10 years and as Head Constable on completion of 5 years as Police Constable Grade - I. The method of regular promotion as well as upgradation are different. There is disparity among the batchmates serving in different Ranges/Cities at the time of elevation to the post of Head Constable/ Sub-Inspector which result in seniors servicing under juniors in certain Ranges/Cities. To set right the same, the 2nd respondent issued Memorandum dated 27.03.2018. The said Memorandum was challenged in W.P. (MD).Nos. 9115 and 9116 of 2018 before this Court and as per the orders passed in the said Writ Petitions, W.P. (MD). Nos. 9115 and 9116 of 2018, the 2nd respondent issued a revised instructions by impugned memo dated 21.12.2018, directing all the Deputy Inspector General of Police to draw panel for eligible Head Constables fit for promotions based on their date of promotion. The 3rd respondent conducted Range Promotion Board and as per the recommendations of the said board, the 3rd respondent published 'C' List of Head



Constable (Armed Reserve), fit for promotion as Sub-Inspector of Police (Armed Reserve) for the year 2018. The Feeder Category for promotion to the post of Sub-Inspector of Police is Head Constable. The contention of the petitioners that date of entry in Police Constable Grade - II is the criteria for preparing 'C' List for the post of Sub-Inspector of Police is not correct. As per the Rule 3(d) of the Tamil Nadu Police Subordinate Service Rules, the Feeder Category for the post of Sub-Inspector of Police is only Head Constable. The learned Additional Advocate General appearing for the respondents 1 to 3 denied the contention of the learned Senior Counsel for the petitioners in W.P. (MD). No. 3528 of 2019 that seniority of Head Constable has to be considered from the date of appointment to the post of Police Constable Grade - II.

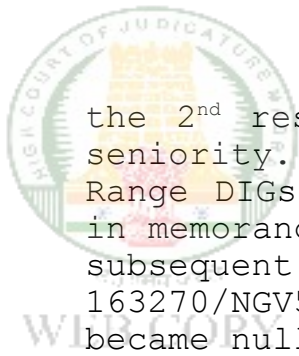
7(i). The 'C' List drawn by the 3rd respondent will come to the effect only on declaration of common date of 'B' List by the 2nd respondent. The 2nd respondent did not declare the common date of 'B' List on the earlier 'C' List drawn by the 3rd respondent and therefore, question of issuing notice before cancellation of the 'C' List by 3rd respondent does not arise.

7(ii). The Government have introduced upgradation scheme to avoid stagnation and to motivate the lower ranks to perform their duties in a better manner. The said rule do not supersede the Service Rules. The 'C' List can be prepared only as per Rule 3 (d) of the Tamil Nadu Police Subordinate Service Rules according to the Feeder Category seniority.

7(iii). Learned Additional Advocate General appearing for the respondents 1 to 3 denied that seniority of Head Constable promoted to the said post against regular vacancies is also to be fixed as per the enlistment seniority of Grade - II Police Constable (Armed Reserve).

7(iv). Learned Additional Advocate General contended that once regular promotion is given, the seniority to the next promotion post will be considered only from the Feeder Category and not from the initial appointment. The contention of the petitioners that their seniority as Head Constables to be considered from the date of appointment to the post of Grade - II Police Constable is not sustainable as per the provisions of the Tamil Nadu Police Subordinate Service Rules, while the category of Grade - I Police Constable is the Feeder Category to the rank of Head Constable.

7(v). He further contended that the entire issue regarding drawal of 'C' List for promotion to the post of Sub-Inspector of Police (Armed Reserve) would be considered by reckoning the Feeder Category seniority in accordance with rule and not as per enlistment seniority. After disposal of the Writ Petitions, all the concerned Unit officers have been directed vide memorandum dated 21.12.2018 of



the 2nd respondent to prepare the 'C' List as per Feeder Category seniority. In as much as the promotion panel already drawn by the Range DIGs/ COPs as per the directions of the 2nd respondent issued in memorandum dated 27.03.2018, has been ordered to be canceled vide subsequent memorandum dated 21.12.2018, issued under RC. No. 163270/NGV5(2)/2018. Hence, the said memorandum dated 27.03.2018 became null and void.

7(vi). The learned Additional Advocate General further submitted that as and when the eligible Police Personnel promoted to next category on regular basis, the seniors could not claim their seniority on the promoted posts for appointment. The Police Personnel included in the 'C' List are seniors in the Feeder Category i.e., Head Constable (Armed Reserve) and hence, the petitioners could not claim that they are seniors on the basis of enlistment seniority.

7(vii). Learned Additional Advocate General contended that the 3rd respondent herein have rightly drawn the 'C' List as per the provisions in the Tamil Nadu Police Subordinate Service Rules and not acted arbitrary as contended by the Petitioners. Since "Nil" 'C' List has been drawn by the 3rd respondent for the year 2019, the question of issuing notice to the writ petitioners for cancellation of the 'C' List does not arise.

8.Learned Additional Advocate General appearing for the respondents 1 to 3 further submitted that when W.P. (MD). No. 3528 of 2019 was taken up for hearing, the order of this Court dated 29.11.2018 made in W.P. (MD). Nos. 9115 & 9116 of 2018 was discussed and it was suggested to file review application to clarify para 6 of the said order. In view of the said suggestion, additional counter affidavit has been filed and learned Additional Advocate General submitted that rule is clear with regard to preparation of 'C' List for the post of Sub-Inspector of Police (Armed Reserve) from the cadre of Head Constable. The observation made in para 6 of the order dated 29.11.2018 in W.P. (MD). Nos. 9115 and 9116 of 2018 is only with regard to facts and circumstances of the above case and there is no inconsistency in the rule position and the observation made in para 6 of the said judgment dated 29.11.2018. In view of no inconsistency in rule position and para 6 of the judgment dated 29.11.2018, he prayed to dismiss the Writ Petitions without filing Review Petitions.

9(i). As per the order of this Court, the Inspector General of Police, Administration in the office of 2nd respondent filed counter affidavit dated 16.08.2019 reiterating the averments made in the counter affidavit filed by the 3rd respondent. The learned Additional Advocate General referred to paragraphs 11 and 12 of the counter affidavit filed in W.P.(MD). Nos. 9115 and 9116 of 2018 and contended that in those Writ Petitions also, the respondents have



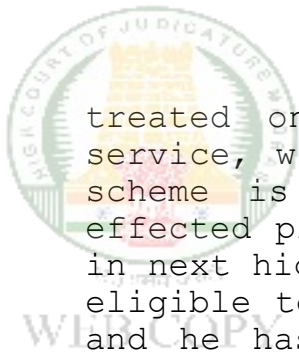
taken a stand that as far as the Head Constables who are promoted to the regular vacancies, their date of appointment as Head Constables was considered for promotion to the post of Sub-Inspector of Police (Armed Reserve). The learned Additional Advocate General further submitted that the respondents have made it clear that only in the case of Head Constable who were upgraded, their date of entry in Police Constable Grade - II will be taken into account for fixing inter-se-seniority among upgraded Head Constable.

10. The 4th respondent in W.P. (MD). No. 3206 of 2019 filed counter affidavit reiterating the same averments made by the respondents 2 and 3 in counter affidavit filed in W.P. (MD).No. 3528 of 2019.

11. The 5th respondent in W.P. (MD). Nos. 3094, 3206, 3207, 3209 & 3210 of 2019 filed counter affidavit.

12. The Learned Senior Counsel appearing for the 5th respondent in W.P. (MD). Nos. 3094, 3206, 3207, 3209 & 3210 of 2019 contended that the Feeder Category for promotion to the post of Sub-Inspector of Police (Armed Reserve) is Head Constable (Armed Reserve). The 5th respondent was promoted as Head Constable in the year 2007 in the existing regular vacancy. When a Police Constable Grade - I is promoted as Head Constable (Armed Reserve), the date of his promotion has to be taken for fixing the seniority.

13. Learned Senior Counsel appearing for the 5th respondent further contended that the 5th respondent is promoted as Head Constable. In case of entry level seniority/ranking is taken as criteria for next promotion to the post of Sub-Inspector, the 5th respondent's right as per Service Rule will be affected. The 2nd respondent passed an order dated 27.03.2018 stating that consideration for promotion to the post to Sub-Inspector of Police will be on the basis of seniority/ranking in the entry level to the post of Grade - II Police Constable, instead of considering the Feeder Category seniority of Head Constable (Armed Reserve). The 5th respondent filed W.P. (MD). No. 9115 of 2018 and this Court disposed the said Writ Petition by the order dated 29.11.2018. In para 6 of the said order, this Court recorded the submissions of the learned Additional Advocate General that petitioners therein, including the 5th respondent, will be given priority due to their seniority and thereafter, only the persons upgraded as per the scheme will be considered below the petitioners therein. Based on the said order, the 5th respondent was promoted as Sub-Inspector of Police. The impugned proceeding of 2nd respondent dated 21.12.2018 is as per Rule 3(d) of the Tamil Nadu Police Subordinate Service Rules, feeder category seniority i.e., the seniority of the Head Constable is to be reckoned for determining the persons to be included in the promotion panel to the post of Sub-Inspector of Police (Armed Reserve). The learned Senior Counsel appearing for the 5th respondent contended that if common seniority based on pre-existing seniority from the date of entry into service is prepared, the persons who all service courts and not promoted in the normal course will be

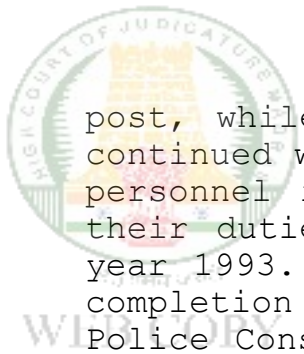


treated on par with persons who have been promoted and is in service, without any blemished record. The promotion by upgradation scheme is not permissible in Service Rules. The promotion was effected previously as per the Service Rules which must be followed in next higher post of Sub-Inspector of Police. The 5th respondent is eligible to be promoted as Sub-Inspector of Police as per the rules and he has been rightly promoted. There is no arbitrariness and legality. The judgment reported in **(2014) 12 SCC 507** (referred to above) relied on by the learned Senior Counsel appearing for the petitioners is not applicable to the facts of the present case. In the said judgment, rules were amended and the said rule was challenged by the High Court. In the present case, only if the rule is amended, the said judgment is applicable. The Rule 3 (d) of Tamil Nadu Police Subordinate Service Rule referred by the learned Additional Advocate General is applicable to the present case and seniority in the post of Head Constable only has to be taken into consideration for preparing 'C' List as eligible candidates to be promoted as Sub-Inspector of Police (Armed Reserve). The respondents 2 and 3 have followed the said rule and prayed for dismissal of the Writ Petitions.

14. Heard the learned Senior Counsel appearing for the petitioners, learned Additional Advocate General appearing for the respondents 1 to 3 in all the Writ Petitions and the learned Senior Counsel appearing for the 5th respondent in W.P.(MD).Nos.3094, 3206, 3207, 3209 & 3210 of 2019 and perused the materials available on record.

15. The issue involved in all these Writ Petitions are whether promotion to the post of Sub-Inspector of Police is to be reckoned as per seniority in entry level Police Constable Grade - II or their seniority in the post of Head Constable, which is the Feeder Category.

16. From the materials on record, it is seen that there are 16 Ranges in State of Tamil Nadu with regard to Police Personnel. Each range consist of number of Districts. For example, Madurai range consists of Madurai District and Virudhunagar District. Similarly, Trichy range consists of Karur, Ariyalur and Perambalur Districts. The Grade II Police Constable is eligible to be promoted to the next post of Grade I based on seniority as well as availability of vacancies. Similarly, Grade I will be promoted as Head Constable based on seniority and availability of vacancy. The post of Head Constable is Feeder Category for promotion to the post of Sub-Inspector of Police. Each District in range is considered as separate unit for promotion from the post of Police Constable Grade - II to Police Constable Grade - I and Police Constable Grade - I to Head Constable. Only when the promotion to the post of Sub-Inspector of Police is taken up, the entire range is taken as a single unit. Due to vacancy that arise in a particular District in a range, the junior working in a said District is promoted to the next higher



post, while a senior working in another District in same range is continued without promotion. In order to set right the stagnation of personnel in the same post and also to motivate them to discharge their duties efficiently, upgradation scheme was introduced in the year 1993. As per the said scheme, Police Constable Grade - II, on completion of 10 years is upgraded as Police Constable Grade - I and Police Constable Grade - I on completion of 5 years is upgraded as Head Constable. This upgradation is granted irrespective of existence of vacancies.

16(i). The issue has arisen when a junior is promoted when the vacancy arises in the District where he worked or the batchmate of a personnel promoted due to vacancy in the place where he was working and the senior or batchmate are upgraded later. In view of the same, when the promotion to the post of Sub-Inspector of Police arises and considered by the respondents, the respondents have taken into account the seniority in the entry level of Police Constable Grade - II. Based on the said pre-existing seniority, the interse seniority in the post of Head Constable is fixed and the Head Constables were included in the 'C' List for promotion to the post of Sub-Inspector of Police irrespective of seniority in the post of Head Constable. This procedure is followed by the respondents as per the Rules for number of years. In view of the said procedure, the 2nd respondent by his memorandum dated 27.03.2018, issued general instructions to the Inspector General of Police in all the ranges to prepare 'C' List of Head Constables (Armed Reserve) fit for promotion as Sub-Inspector of Police (Armed Reserve) based on the seniority in the entry level post of Grade - II Police Constable. While Deputy Inspector General of Police prepared 'C' List based on the said instructions, the two W.P. (MD). Nos. 9115 and 9116 of 2018 were filed by one P. Lingaiah, the 5th respondent in W.P. (MD).No. 3208 of 2019 and others who were promoted as Head Constables stating they are the seniors in the post of Head Constables even though they are juniors at the entry level.

16(ii). In the counter affidavit filed by the respondents, the official respondents have stated that inter-se-seniority of Head Constable is prepared as per their pre-existing seniority in Grade - II Police Constable and not based on seniority as per the promotion to the post of Head Constable. The said Writ Petitions were filed by the petitioners therein, challenging the memorandum of 2nd respondent dated 27.03.2018. This Court considering the stand taken by the respondents in the counter affidavit and recording the same, did not quash the memorandum of the 2nd respondent but disposed of the Writ Petitions based on the statement of the respondents. The 2nd respondent on misconception and misinterpretation of the order of this Court dated 29.11.2018 made in W.P. (MD). Nos. 9115 and 9116 of 2018, issued the impugned memorandum dated 21.12.2018, directing all the Deputy Inspector General of Police to prepare 'C' List containing names of eligible Head Constables to be promoted as Sub-Inspector of Police (Armed Reserve) based on their date of promotion as Head Constable. The said instructions given by the 2nd



respondent are invalid. This Court did not direct the 2nd respondent to prepare 'C' List based on the date of entry in the post of Head Constable.

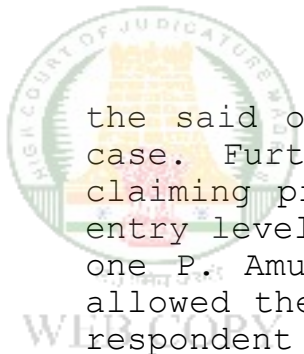
16(iii). The issue whether the 'C' list containing the names of Head Constables eligible to be promoted as Sub-Inspector of Police (Armed Reserve) is based on pre-existing entry seniority or Head Constable, was not decided by this Court in W.P. (MD).Nos. 9115 and 9116 of 2018. The petitioners therein contended that if the entry level seniority is considered for inclusion in the 'C' List, the persons with blemished service and whose promotion were withheld will be given promotion rather than persons who have put in unblemished service. This Court recording the statement of learned Additional Advocate General that persons with blemished record will not be put ahead of persons with unblemished record, declined to accept the apprehension of petitioners therein.

16(iv). From the materials on record, it is seen that in the Trichy range, the respondents 4 to 18 in W.P.(MD) No. 3528 of 2019 promoted as Head Constable within a short time of promotion as Police Constable Grade-I and their services were regularized within a short period. This irregularity was pointed out by the Chairman of Range Promotion Committee of Trichy range and 2nd respondent instructed the 3rd respondent in the said Writ Petition to send all details about the irregular promotion. The respondents 1 to 3 have not produced any materials to show that promotion of respondents 4 to 18 are regular promotion and that there is no irregularity in the said promotion. The 3rd respondent has not produced any documents to show whether he has sent reply to the queries raised by the 2nd respondent.

16(v). It is further to be noted that in Madurai range, which is the issue in W.P. (MD). No.3094 of 2019, the junior in Virudhunagar District was promoted earlier, than his seniors working in Madurai District who are the petitioners in W.P.(MD).Nos. 3206 to 3211 of 2019, even though both the Districts are in the Madurai range only.

16(vi). The materials referred to above clearly show that some of the juniors were promoted earlier as Head Constables in view of the vacancy that arose in the place where they were working and seniors were either promoted or upgraded later. Only in view of avoiding seniors working under their juniors due to this unforcing circumstances, the official respondents were considering the entry level seniority to fix inter-se-seniority to the post of Head Constable rather than fixing seniority based on the date of promotion to the post of Head Constable.

16(vii). This Court, in the order dated 20.08.2019 made in W.P. Nos. 18315 and 563 of 2018, held that entry level seniority has



the said order is squarely applicable to the facts of the present case. Further one K.Shanmugamurthi filed W.P. No. 3140 of 2018, claiming promotion to the post of Sub-Inspector of Police based on entry level seniority and sought promotion when his immediate junior one P. Amutha was promoted. This Court by order dated 13.02.2018, allowed the Writ Petition. Based on the order of this Court, the 2nd respondent by the proceedings dated 07.11.2019, the revised seniority of K.Shanmugamurthi in Grade-I Police Constable and Head Constable and included in 'C' list for promotion to the post of Sub-Inspector of Police.

16(viii). From the above materials on record, it is seen that the respondents 1 to 3 have so far given promotion to the post of Sub-Inspector of Police (Armed Reserve) based on the entry level seniority and this Court in two Writ Petitions referred to above, had held that entry level seniority is the criteria for fixing inter-se-seniority in the post of Head Constable and 'C' List must contain eligible candidates as per the entry level seniority. In view of the same, the judgments relied on by the learned Senior Counsel appearing for the petitioners are squarely applicable to the facts of the present case.

16(ix). For the above reasons, the petitioners are entitled to the relief sought for in the Writ Petitions. The impugned Memorandum issued by the 2nd respondent, Director General of Police in RC. No. 163720/NGB V (2)/2018 dated 21.12.2018 is hereby quashed. The respondents are directed to consider the petitioners for promotion to the post of Sub-Inspector of Police (Armed Reserve) on the basis of their seniority in cadre of Grade - II Police Constable, if they are otherwise eligible.

17. In the result, all the Writ Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gsa

To

1. The Secretary to Government of Tamil Nadu,
Home, Police Department, Fort St. George, Chennai-9.

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2. The Secretary to Government of Tamil Nadu,
Home Department, Fort St. George, Chennai-9.
3. The Director General of Police, Chennai-4.
4. The Deputy Inspector General of Police,
Ramanathapuram Range, Ramanathapuram.
5. The Deputy Inspector General of Police, Madurai Range,
Madurai
6. The Chairman, Range Promotion Board, Madurai Range
and Superintendent of Police, Madurai District
7. The Deputy Inspector General of Police, Trichy Range,
Trichy-20

+7cc to M/s.Veera Associates, SR Nos.332 to 338

+1cc to Special Government Pleader SR NoS.665 and 666

+1cc to Mr.M.E.Ilango, Advocate SR No.422

+1cc to Mr.G.Thiruvavutselvan, Advocate SR No.561

+2cc to M/s Issac Chambers, SR No.366

Order in
W.P. (MD) Nos. 1554, 3094,
3206 to 3211 & 3528 of 2019
06.01.2020

JMN(09.01.2020) 20P : 20C