



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2020
(Reserved on 12.12.2019)

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.16285 of 2014

G.Rajendrakumar

... Petitioner

vs.

1)The Director General of Police,
Kamarajar Salai,
Chennai-4.

2)The Deputy Inspector General of Police,
Madurai Range, Madurai.

3)The Superintendent of Police,
Madurai District.

4)The Commandant,
T.S.P. IX Battalion,
Manimuthar,
Tirunelveli District.

... Respondents

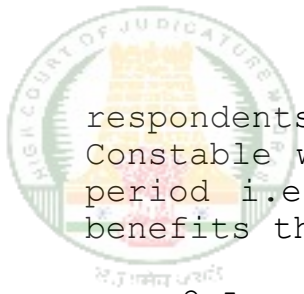
Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent proceedings in C.No.A3/39047/205/2013/D.O.200/2014 dated 21.01.2014 and quash the same as illegal and consequently directing the respondents to promote the petitioner for the post of Grade-I Police Constable with effect from the date of completion of his punishment period i.e., on 30.03.2012 and to pay all attendance and monetary benefits thereon.

For Petitioner : Mr.V.Thirumal

For Respondents : Mr.S.Dhayalan,
Government Advocate

ORDER

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent proceedings in C.No.A3/39047/205/2013/D.O.200/2014 dated 21.01.2014 and quash the same as illegal and consequently direct the

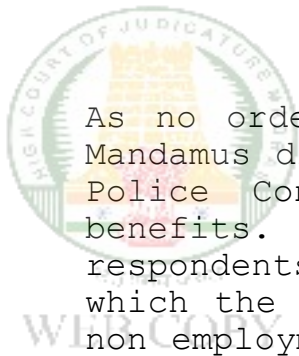


respondents to promote the petitioner for the post of Grade-I Police Constable with effect from the date of completion of his punishment period i.e., on 30.03.2012 and to pay all attendant and monetary benefits thereon.

2. Learned counsel for the petitioner would state that pursuant to the selection by the Tamil Nadu Uniformed Services Recruitment Board, the petitioner was appointed as Grade-II Police Constable and he joined duty before the 4th respondent on 28.02.2002. The 4th respondent issued a charge memo levelling two charges against the petitioner under rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, and placed him under suspension on 10.09.2003. Subsequently, an enquiry officer was appointed and based on the enquiry report, the petitioner was removed from service with effect from 15.12.2003, against which, he preferred departmental appeal which was rejected. Challenging the termination order, he preferred Original Application before the Tamil Nadu Administrative Tribunal in O.A.No.9 of 2004. After the abolition of the Tribunal, it was transferred to the High Court and renumbered as W.P(MD)(T)No.2234 of 2007. This Court by order dated 02.11.2007 set aside the termination order and directed reinstatement of the petitioner within one month with a further direction that for the period of non employment, the petitioner is not entitled for the salary, however, the said period shall be treated as duty period for all other purposes, against which, the 4th respondent filed appeal in W.A(MD)No.388 of 2008, in which, the Division Bench has modified the punishment of removal from service into stoppage of increment for two years without cumulative effect for the proved charges and in all other respects, order passed in the writ petition was sustained.

3. He would further submit that pursuant to the above order, the 4th respondent by order dated 30.03.2010 reinstated the petitioner and modified the punishment as ordered by the Division Bench. According to the petitioner, the above punishment commenced from 30.03.2010 and completed on 29.03.2012. Thereafter, the 3rd respondent issued an order dated 01.03.2012 promoting 72 Grade-II Police Constables into Grade-I Police Constable and thereafter by order dated 12.04.2012 nearly 23 Grade-II Police Constables who have completed 10 years of service were upgraded as Grade-I Police Constable. According to the petitioner, he was not considered in the above promotion even though this Court ordered to treat his termination period as duty period and the currency of punishment was over on 29.03.2012. For a proposition that after the currency of punishment period, the government servant is entitled to be considered for promotion, he would rely on the Full Bench judgment of this Court reported in (2011) 4 MLJ 1(FB), Deputy Inspector General of Police, Thanjavur vs. Rani.

4. It is further submitted that subsequently the petitioner made representations to the respondents seeking promotion.



As no orders were passed, he filed W.P(MD)No.14086 of 2013 for a Mandamus directing the respondents to give him promotion as Grade-I Police Constable with effect from 30.03.2012 and to pay all benefits. This Court by order dated 04.09.2013 directed the respondents to give promotion to the petitioner from the date on which the punishment was over and also directed that the period of non employment of the petitioner shall be regularised. Thereafter, the 3rd respondent passed an order dated 18.10.2013, stating that the petitioner is eligible to be upgraded as Grade-I Police Constable only on 01.02.2016 violating the above order of this Court and therefore, the petitioner filed contempt petition. Thereafter, the 1st respondent passed the present impugned order upgrading the petitioner to the post of Grade-I Police Constable from 01.12.2012, against which, the present writ petition has been filed.

5.Learned counsel for the petitioner would contend that when this Court has directed the respondents to give the petitioner promotion from the date of expiry of the punishment period namely, 30.03.2012, on which date, the petitioner was eligible for promotion, violating the said order, the 1st respondent ought not to have passed the impugned order upgrading him as Grade-I Police Constable from 01.12.2012 which is against the judgment reported in 2014 (1) CWC 177, Joseph vs. The Deputy Inspector General of Police, Trichirappalli. Thus, he would pray for setting aside the impugned order.

6.The respondents have filed counter affidavit. Learned Government Advocate appearing for the respondents would state that since the period of non employment of the petitioner from 16.12.2003 to 01.11.2007-1416 days has been settled as leave without pay (Private Affairs) based on the principle of 'No Work, No Pay' as ordered by this Court in W.P(MD)No.2234/2007 dated 02.11.2007, the above period was not taken for duty as per item 1-k to rule 4 of the General Rules for the Tamil Nadu State and Subordinate Service. He would further state that as per the rules, the punishment order of stoppage of increment was served on 30.03.2010 to the petitioner which expired on 18.11.2012 after excluding the period of leave taken by the petitioner from 01.12.2011 to 30.12.2011 and from 21.05.2012 to 09.06.2012 and after the completion of punishment period, the petitioner was eligible to be promoted only on 01.12.2012. According to the him, the currency of punishment will get over when the next increment falls due and therefore, the 1st respondent promoted the petitioner from 01.12.2012. Thus, he would pray that the interference of this Court is not necessary.

7.Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

8.The only issue to be decided in this case is whether the petitioner has to be promoted from 30.03.2012 or not.



9.Perusal of record shows that admittedly, currency of punishment over on 30.03.2012 and the petitioner became qualified for promotion to the post of Grade-I Police Constable on 30.03.2012 and there is also an order passed by this Court in W.P(MD)No.14086 of 2013 dated 04.09.2013 to give promotion to the petitioner from the date on which the punishment was over. The learned Government Advocate sought to sustain the impugned order by contending that though the punishment of stoppage of increment for 2 years commenced on 30.03.2010, it expired only on 18.11.2012 after excluding the period of leave taken by the petitioner from 01.12.2011 to 30.12.2011 and from 21.05.2012 to 09.06.2012 and therefore, the petitioner was eligible to be promoted only on 01.12.2012. In this regard, it is relevant to consider the judgment relied on by the petitioner reported in 2014 (1) CWC 177, Joseph vs. The Deputy Inspector General of Police, Trichirappalli, wherein, this Court by following various judgments, has held that currency of punishment starts from the date of punishment order and it cannot be extended based on the date of increment and therefore, the petitioner is qualified for promotion on the date of completion of the currency of punishment that is, 30.03.2012. Therefore, I am inclined to interfere with the impugned order.

10.Accordingly, the impugned proceedings of the 3rd respondent in C.No.A3/39047/205/2013/D.O.200/2014 dated 21.01.2014 is quashed to the extent of the date of promotion and the respondents are directed to pass fresh order by promoting the petitioner to the post of Grade-I Police Constable with effect from the date of completion of his punishment period i.e., on 30.03.2012 and to pay all attendant and monetary benefits and such an order shall be passed within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1)The Director General of Police,
Kamarajar Salai,
Chennai-4.



2) The Deputy Inspector General of Police,
Madurai Range, Madurai.

3) The Superintendent of Police,
Madurai District.

4) The Commandant,
T.S.P. IX Battalion,
Manimuthar,
Tirunelveli District.

+1 CC to M/s.V.THIRUMAL, Advocate (SR-3042[F] dated 27/01/2020)

+1 CC to M/s.SPL.GP (SR-3170[F] dated 27/01/2020)

ORDER MADE IN
W.P (MD) No.16285 of 2014
DATED : 24.01.2020

JMN(05.02.2020) 5P : 7C