



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.1398 of 2015

and

M.P(MD)Nos.1 and 2 of 2015

WEB COPY

C.Aruldas

.. Petitioner

Vs.

1.The Director General of Police,  
Mylapore, Chennai.

2.The Superintendent of Police,  
Kanyakumari District,  
Nagercoil.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the second respondent vide Na.Ka.No.A1/53638/2014 dated 18.11.2014, quash the same and consequently direct the respondents to promote the petitioner as Special Sub Inspector of Police with effect from 17.11.2013, the date of his eligibility and to pay all the monetary and service benefits to him with interest and pass such further or other orders.

For Petitioner

: Mr.C.Brijesh Kishore

For Respondents

: Mr.S.Dhayalan,

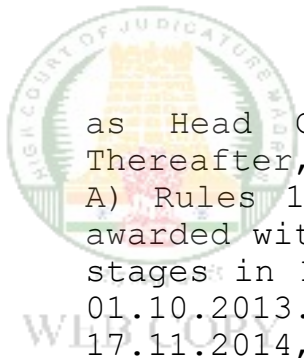
Government Advocate.

### ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the second respondent vide Na.Ka.No.A1/53638/ 2014 dated 18.11.2014 and quash the same and consequently direct the respondents to promote the petitioner as Special Sub Inspector of Police with effect from 17.11.2013, Iie., the date of his eligibility and to pay all the monetary and service benefits to him with interest.

2.The case of the petitioner is that the petitioner joined the service as Grade II Police Constable in Reserved Force, Nagercoil, on 17.11.1988. After completing 10 years of service, he was promoted as Grade I Police Constable and thereafter, promoted as Head Constable and he completed 25 years of service on 17.11.2013 and therefore, he is eligible for promotion to the post of Special Sub Inspector of Police from 01.12.2003.

3.According to the petitioner, he was awarded with a punishment under Rule 3(a) charge in the year 2000 by punishment List No.86/2000. Hence, as per rules, since he has undergone punishment during the check period, he could not be promoted. He was promoted



as Head Constable, only on 17.11.2004 instead of 17.11.2003. Thereafter, another charge was issued under Rule 3(b) of TNPSS (D & A) Rules 1955, for some delinquencies committed by him and he was awarded with the punishment of reduction in time scale of pay by two stages in P.R.No.81/2007 and the punishment period was completed on 01.10.2013. Now the petitioner completed 25 years of service and on 17.11.2014, i.e., the crucial date for promotion, there is no punishment pending against him. Therefore, he sent representation to the 2<sup>nd</sup> respondent to consider him for promotion. But, the 2<sup>nd</sup> respondent, vide impugned proceedings, dated 18.11.2014, sent reply stating that he is eligible for appointment to the post of Special Sub Inspector of Police, only on 01.12.2015. Against which, the present writ petition has been filed.

4.The learned counsel for the petitioner submitted that since the punishment period has been completed and there is no punishment during the check period, he is eligible for promotion to the post of Special Sub Inspector. But, the 2<sup>nd</sup> respondent has erroneously rejected his request. Thus, he prayed to set aside the impugned order passed by the 2<sup>nd</sup> respondent.

5.The learned Government Advocate appearing for the respondents drawing the attention of this Court to the counter affidavit filed by the 2<sup>nd</sup> respondent submitted that the petitioner was awarded with punishment for some delinquencies committed by him in P.R.Nos.86 of 2000 and 81 of 2007. Therefore, after considering the punishment imposed on him, the 2<sup>nd</sup> respondent has rightly rejected his request.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

7.Perusal of records shows that the petitioner joined as Grade II Police Constable on 17.11.1988 and promoted as Grade I Police Constable and subsequently as Head Constable and he completed 25 years of service on 17.11.2013. The punishments were awarded during 2000 and 2008. During the crucial date for promotion, i.e., one year from 17.11.2013, there is no punishment awarded against him. In **the Deputy Inspector General of Police, Thanjavur Range, Thanjavur and another v. V.Rani** reported in 2011(3) CTC 129, a Full Bench of this Court has held as follows:

"24.While it is true that the pendency of punishment can be certainly a ground for the Government to deny the promotion till the completion of the period of punishment, it can never be said that even after the period of punishment is over, in between the date of crucial date and the date of punishment there must be one year in case of censure and five years in other cases as disqualification period. The above said impediment in the



name of 'check period' can never be imposed on a Government servant. Even though it has not been issued as statutory rules under the proviso to Article 309 of the Constitution of India, the said letter stating the currency of punishment as an embargo for considering for further promotion during the period of punishment cannot be said to be antithesis to the principles of law. The embargo imposed in respect of further period as stated above can never be said to be authorized under the statutory rules. The said Government letter can be treated as a circular issued by the Secretary to Government to all departments. This letter, as correctly submitted by the learned senior counsel Mr.G.Rajagopal, cannot supersede the statutory rules."

8.In view of the above legal position, the respondents cannot say that there was a check period and therefore, the petitioner was not promoted. The petitioner is entitled for promotion from 17.10.2013, when he completed 25 years of service. On 17.10.2013, there is no punishment or charge pending against him and therefore, he is entitled for promotion from 17.10.2013 onwards and therefore, the impugned order, dated 18.11.2014 passed by the 2<sup>nd</sup> respondent is set aside and the respondents are directed to promote the petitioner to the post of Special Sub Inspector of Police with effect from 17.11.2013, i.e., the date on which, the petitioner is eligible for promotion. Such exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

smn

To

- 1.The Director General of Police, Mylapore, Chennai.
- 2.The Superintendent of Police, Kanyakumari District, Nagercoil.
- 3 The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.B.BRIJESH KISHORE, Advocate ( SR-6641[F]

+1 CC to M/s.SPL.GP ( SR-6769[F] dated 18/02/2020 )

**ORDER MADE IN**

**W.P (MD) No.1398 of 2015**

**17.02.2020**

**SMA/13/03/2020/3P/6C**