



WEB COPY

W.P.(MD)No. 5984 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2020

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) No.5984 of 2015

and

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

M.Innas

... Petitioner

Vs.

1.The Government of Tamil Nadu,  
Rep by its Secretary to Home Department,  
Fort.St.George,  
Chennai-600 009.

2.The Director General of Police,  
Kamarajar Salai,  
Mylapore,  
Chennai-600 004.

3.The Deputy Inspector General of Police,  
Tirunelveli Range,  
Tirunelveli District.

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

...Respondents

**Prayer:** Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent pertaining to its order in Na.Ka.No.183042/N.G.P.3(2)/2011, dated 21.09.2011 and to quash the same and consequently, direct the respondents to fix the seniority and extend the monetary benefits in accordance with G.O.Ms.No.844 Home (Police-V) Department, dated 03.06.1997.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.D.Muruganandham

Additional Government Pleader



**ORDER**

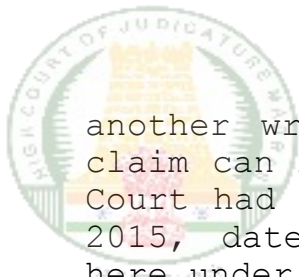
The impugned order dated 21.09.2011 rejecting the claim of the petitioner for collateral promotion is under challenge in the present writ petition.

2.The petitioner states that he joined in the Police Department on 15.12.1970 as Grade II Police Constable. He was upgraded as Grade I Police Constable on 20.02.1993 and promoted to the post of Head Constable on 07.01.1998. The petitioner attained the age of superannuation and retired from service as Head Constable with effect 30.09.2007.

3.The grievances of the writ petitioner is that he has completed 25 years of service as Grade I Police Constable and therefore, he is entitled for collateral promotion as per the Government Orders. The learned counsel for the petitioner contended that several other similarly placed persons got the benefit of collateral promotion with monetary benefits and the said benefit is rejected to the petitioner alone.

4.The learned Special Government Pleader appearing on behalf of the respondents raised an objection by stating that only upgradation pay were given based on the number of services rendered by the police officials to avoid stagnation of many personnel in the same cadre. The petitioners have filed representation only after four years from the date of his retirement. The petitioner retired from service in the year 2007 and he made a representation in the year 2011 and thereafter, he filed a writ petition to consider his representation in W.P.(MD)No.6980 of 2011 and based on the directions issued by this Court, the impugned order has been passed and thereafter, the present writ petition is filed. Thus, the claim itself is belated and is to be dismissed. This apart, the upgradation granted on earlier occasion were challenged before the High Court and the matter went upto the Hon'ble Supreme Court and thereafter, a review petition was filed before the Hon'ble Division Bench and the Hon'ble Division Bench revised the earlier decision. Accordingly, the grounds raised by the Government is accepted and thereafter, no such benefits are granted to the persons like the petitioner.

5.This Court is of the considered opinion that first of all, the entertainability of the writ petition itself is questioned. The petitioner retired from service in the year 2007 and he filed a representation after a lapse of four years from the date of retirement seeking upgradation and revised scale of pay with retrospective effect. Thus, the petitioner made an attempt to revive the lapsed claim. In order to revive the lapsed claim, he filed a writ petition to dispose of his representation. By getting an order of direction to consider the representation, he restored the cause of action and on receipt of the impugned order, he filed



another writ petition. Thus, the trend of restoration of lapsed claim can never be encouraged by the Courts. In this regard, this Court had elaborately delivered the Judgment in W.P.(MD)No.12783 of 2015, dated 08.09.2019 and the relevant paragraphs are extracted here under:-

“7. A trend has been created through some legal brains that the lapsed cause of actions are reopened by sending a representation to the authority concerned and thereafter, filing a writ petition with a prayer for a direction to the authority concerned to consider the representation and pass orders. Normally, the High Courts are granting such reliefs by issuing a direction to the authorities concerned to consider the representation and pass orders. However, the other part of the intention has not been taken into account by the Courts in normal circumstances. In fact, the intention of the litigants is to reopen the lapsed cause of action.

8. The constitutional Courts across the country reiterated that any grievances must be redressed within a reasonable period of time. Even in case there is no limitation period prescribed, then also, the litigants must approach the Court of law within a reasonable period of time. In the event of allowing the claim to get lapsed, thereafter, the same cannot be reopened one way or the other by citing the representation or otherwise. Thus, the aggrieved persons, slept over their rights, cannot wake up one fine morning and knock the doors of Court of law for the redressal of their grievances. The rights are to be established at the earliest possible time or at least within a reasonable period of time. More specifically, in service matters, the employees are very much aware of their service rules and conditions. Ignorance of law can never be pleaded by the employees of the State or Union or its Organizations. Thus, the limitation period though not prescribed, the reasonable period within which, the litigations have been filed, are to be taken into consideration before admitting the writ petitions.

9. However, large number of writ petitions are filed in the High Courts, merely on the ground that the writ petitioner sent several representations to the respondents and the respondents have not considered the same, taken a decision and passed orders. Under these pretexts, arguments are advanced by stating that the authorities competent are duty bound to pass orders on the representations. The Courts also in a routine manner issuing a direction to the authorities concerned to consider the representations.

10. Such an exercise of the power of judicial review, under Article 226 of the Constitution of India, cannot be done for the purpose of providing a scope to the litigant to reopen the lapsed cause of actions. Once an aggrieved person allowed the cause of action to get lapsed, then the Courts



would not entertain any writ petition thereafter under Article 226 of the Constitution of India. Mere submission of representation after number of years would not provide any cause of action for the aggrieved persons for filing a writ of mandamus.

11. There is no provision to submit repeated appeals, so also it is not necessary that repeated representations are to be sent to the authorities concerned. One appeal or one representation with all particulars and details to be acknowledged by the authorities competent is the requirement for moving a writ petition for issuing a writ of mandamus. However, the practice of sending representations on several occasions in order to fill up the gap or time limit cannot be entertained by the Courts under Article 226 of the Constitution of India.

12. Most of the times, even these representations are not supported with any acknowledgment. The litigants are typing representations and enclosing it in the typed set of papers and filing it in the Court. In a writ jurisdiction, the High Courts are also not questioning the genuinity of these representations enclosed in the typed set of papers by the litigants. Such a conduct of the litigants amounts to abuse of judicial process. Thus, any representation sent to the authorities competent must be sealed and acknowledged by the authorities competent enabling them to deal with the appeal / representation, take a decision and pass orders by following the procedures contemplated under law. Thus, to entertain a writ of mandamus, it is a precondition that the aggrieved person should have approached the authorities competent against whom such a direction is sought for and the said representation / appeal acknowledged by the authorities competent must be available in the file of the authority concerned. This being the mandatory requirement for the purpose of entertaining a writ petition to direct the authorities concerned to consider the representation, this Court is of the considered opinion that even the legal rights regarding the claim established should also be set out in the writ petition. Once again, it is a precondition that the person approaching the High Court, under Article 226 of the Constitution of India, must establish his legal right. In the absence of establishing any such legal rights, no writ petition can be entertained under Article 226 of the Constitution of India.

13. Thus, for entertaining a writ of mandamus to consider the appeal / representation, the following requirements are to be adhered to:

(i) The person filing a writ petition should have approached the authority concerned by preferring appeal / representation setting out all the facts and details along



with the cause of action arose for filing such appeal / representation.

(ii) Such an appeal / representation must be duly acknowledged by the authority concerned.

(iii) The person, who files a writ petition, should establish that he has established the legal rights for the purpose of redressing his grievances before the competent authority. In other words, it is a precondition that the person, who files a writ petition, should establish the legal rights for the purpose of approaching the competent authority as well as the High Court under Article 226 of the Constitution of India.

(iv) Such an appeal / representation must have been preferred within the time limit prescribed in the Service Rules or at least within a reasonable period.

(v) The normal period of limitation prescribed in the Service Rules of various Departments of the State and Union is that 60 days or 90 days from the date of arising of cause of action. If there is no order affecting the rights of a person, then such an appeal / representation must be filed at least within a period of six months from the date of arising of cause of action. Thus, any appeal or representation must be submitted to the competent authority within a period of six months from the date of arising of cause of action.

(vi) On receipt of such an appeal / representation from the aggrieved person, the competent authority is bound to consider the same and pass orders within a period of six months from the date of receipt of the representation / appeal.

(vii) In the event of not passing any orders within a period of six months, then alone, a writ of mandamus should be entertained for the purpose of issuing a direction to the authority concerned to consider the representation / appeal and pass orders.

(viii) Even such procedures are contemplated in certain Special Acts, namely, Administrative Tribunal Act etc., and several other Acts prescribe time limit for the purpose of preferring appeal and even the Service Rules of various Departments of the State or Union also prescribe time limit for preferring appeal / representation. All such appeals / representations are to be filed within a time limit prescribed and in the event of filing any such appeal / representation beyond the period of limitation, then, such an appeal / representation shall be entertained by the competent authority only on filing a petition by the aggrieved person to condone the delay and the delay condonation petition is to be decided by the competent authority by considering the reasons adduced and by taking a decision on merits and in accordance with law.



14. The remedy of a writ is an extraordinary one, wherein the affected person is expected to approach the High Court soon after the cause of action. Thus, the High Court should not entertain the petitions filed beyond the reasonable period of time and based on the created cause of actions. Creating a cause of action is the recent trend being developed nowadays amongst few persons, who all are attempting to achieve their goal in an indirect manner. Once again, it is the legal brain, which provides such advise to achieve their goals in an indirect manner knowing the fact that they cannot achieve the same directly. All such writ proceedings filed with an intention to achieve the goal in an indirect manner by illegal or irregular means can never be encouraged nor be entertained. All such litigations are to be rejected with heavy costs.

15. The precious judicial hours are to be utilized so as to provide justice to the needy people. High Court being the temple of justice must ensure that speedy justice is provided to all the needy and the persons, who are all approaching the Court with clean hands by establishing their legal rights. Therefore, by curtailing all these unnecessary litigations and by stopping these kind of litigations filed by creating cause of action in respect of lapsed claims, the High Court can utilize the judicial hours for the purpose of rendering complete justice to the poor needy and the litigants, who all are approaching the Court of law with genuine grievances.

16. Large number of litigants, more specifically, the employees of the State and Union are approaching the Court even for subsistence allowance, monthly pension, pensionary benefits and other genuine grievances. The High Court is unable to dispose of those genuine cases on account of the fact that large number of unnecessary litigations are coming in and kept pending for years together. Even the National Litigation Policy as well as the State Litigation Policy implemented by

the Union of India and the State are not effectively working out. Large number of litigations are filed vexatiously. Government appeals are filed for the sake of filing. Government appeals are filed based on some untenable opinions offered by the Government Pleaders. It is a financial loss to the State Exchequer. Even for filing an appeal, the State must ensure that adequate legal grounds are available for filing an appeal. Mechanical filing of appeal at the cost of the taxpayers' money can never be tolerated by the Courts. The State being the custodian and trustee of the taxpayers' money, is bound to spend the money diligently and based on the necessity. Mechanically appeals are filed by the Departments by spending huge money. All these expenditures



are to be properly evaluated and stopped. Even though the State Litigation Policy as well as the National Litigation Policy are in force, the State Government and its officials as well as the Government Pleaders are not conscious about the letter and spirit of such Litigation Policies.

17. The High Courts are overburdened on account of such litigations, wherein the cause of actions are created. This being the factum realized and experienced by many legal luminaires and jurists, this Court is of the considered opinion that effective measures are to be taken to control such litigations, which all are consuming the valuable judicial hours and preventing the genuine litigants, who all are longing to get justice. Therefore, in all such cases, wherein the writ petitions are filed to consider the representations, these principles are to be followed even at the time of admission itself so as to allow the High Court to render a complete justice to the needy poor and so as to uphold the noble concept of justice as adopted in the preamble of our Constitution of India.

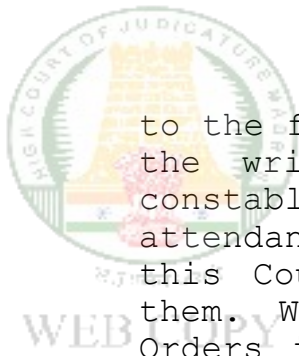
18. Identification of vexatious litigations are also to be done by the High Courts. All such litigations are to be rejected with heavy costs so as to prevent such vexatious litigants from approaching the Court again and again. Therefore, these measures are also to be taken while entertaining the writ petitions under Article 226 of the Constitution of India and all such basic principles are to be looked into even at the stage of admission itself to avoid overburdening and preventing the High Court from rendering justice to the needy and deserving citizen of this great Nation.

19. Even recently, the Honourable Supreme Court of India, in the case of **Government of India Vs. P.Venkatesh (Civil Appeal No.2425 of 2019)**, has held as follows:-

".....This dispose of the representation mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute...."

6. As far as the grounds raised in the writ petition are concerned regarding the grant of upgradation, the Hon'ble Division Bench settled the issue in Review Application Nos.70 to 79, 81, 82 and 90 to 92 of 2015, dated 22.03.2017 and the relevant paragraphs are extracted here under:-

"30. The above Division Bench judgment squarely applies



to the facts and circumstances of the present case. Here also, the writ petitioners claim that when a batch of police constables have already reaped the benefit of upgradation and attendant service and monetary benefits, through the orders of this Court, the Government cannot deny the same benefit to them. We have already held that since the Government Orders in question cannot have retrospective effect and that the writ petitioners cannot claim that the benefit of ?deemed promotion? by reckoning the date of their initial entry into Police Service to claim the promotion to the post of Special Sub Inspector of Police much earlier.

31. In the facts and circumstances of the present case in the light of the Government Orders operating the field and materials placed before us by the learned Special Government Pleader, we are of the categorical view that the writ petitioners cannot claim ?deemed promotion? to the post of Special Sub Inspector of Police and the attendant service and monetary benefits. We, therefore, left with no other option but to respectfully disagree with the decision rendered by the earlier Division Bench of this Court in similar batch of writ petitions.

32. We wish to point out that we passed the common order dated 23.04.2015 in W.A. (MD) No.348 to 357 of 2015 batch of cases on the submission made by the learned counsel that the issue involved is covered by the earlier Division Bench decision dated 17.06.2013 made in W.A. (MD) No.1506 of 2011. The niceties of the legal issues and the real import and purport of the Government Orders were omitted to be brought to our notice. We reiterate that it was only on the ground and in this manner that several Police Constables, most of them retired from service long back, reaped monetary benefits that was not legitimately due to them under the Government Orders concerned. In such circumstances, we cannot blindfold ourselves by the earlier Division Bench decision to allow the claim of the present writ petitioners. We are thoroughly convinced in the facts and circumstances of the case that the Government has made out sustainable grounds for reviewing our earlier common order dated 23.04.2015 in W.A. (MD) No.348 to 357 of 2015."

7. The Hon'ble Division Bench in clear terms reviewed the common orders passed earlier on 23.04.2015 in Writ Appeal No.348 to 357 of 2015 and the said order was not subsequently followed by the Courts also. In view of the fact that the rights of the petitioner have already been settled in view of the orders passed by the Hon'ble Division Bench, no relief can be granted as such sought for in the present writ petition. This apart, the writ petition itself is not entertainable as the petitioner initiated action after several years and the cause of action lapsed many years back. Thus, this



writ petition stands dismissed both on merits as well as the ground of laches. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmi

To

- 1.The Secretary to Home Department,  
Fort.St.George,  
Chennai-600 009.
  - 2.The Director General of Police,  
Kamarajar Salai,  
Mylapore,  
Chennai-600 004.
  - 3.The Deputy Inspector General of Police,  
Tirunelveli Range,  
Tirunelveli District.
  - 4.The Superintendent of Police,  
Nagercoil,  
Kanyakumari District.
- +1 CC to M/s.GP ( SR-22983[F] dated 26/11/2020 )

W.P. (MD) No. 5984 of 2015  
24.11.2020

—  
MR (CO)  
KK (07.12.2020) 9P 6C