



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 08.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.661 of 2019
and
W.M.P.No.717 of 2019

C.Rajan Babu

...Petitioner

Vs

1.The State of Tamil Nadu,
Rep by its Secretary-Home,
Prohibition and Excise Department,
Fort St. George, Chennai-600009.

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

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

4.The Commissioner of Police,
Coimbatore City,
Coimbatore 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 and quash the impugned order passed by the second respondent in Rc.No.168600/NGB-V(2)/2016 dated 12.06.2017 and consequently direct the respondent 2 to 4 to fix the seniority and give the promotion to the petitioner for the post of Inspector of Police.

For Petitioner : Mr.M.Velmurugan

For Respondents: Mr.K.V.Sajeev Kumar
Government Counsel

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.



2. The petitioner herein, who was promoted as a Sub-Inspector of Police on 01.06.2021, seeks for promotion as a Sub-Inspector in the 1999-2000 on the basis that 2 of his juniors, namely Thiru.P.Kuppusamy and Thiru.N.Sakthivel, were promoted as Sub-Inspectors of Police in the year 1999-2000, which promotion was granted to them on the basis of orders passed by this Court in W.P.Nos.8689 of 2006 and 9316 of 2007.

3. The petitioner's request has been rejected by the second respondent herein, through the impugned order dated 12.06.2017, by stating that the petitioner cannot claim promotion on par with his juniors, since their promotion was based on orders passed in writ petitions filed by them and their candidature cannot be equated with that of the petitioner's candidature.

4. The learned counsel for the petitioner submitted that the reasoning of the second respondent cannot be sustained, since the fact remains that the said P.Kuppusamy and N.Sakthivel are admittedly juniors to him and when they were included in the 'C' list of Head Constables fit for promotion as Sub-Inspectors for the year 1999-2000, the petitioner is also entitled to be promoted as a Sub-Inspector of Police on par with them.

5. The learned Government Counsel appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that as per G.O.Ms.No.844, Home (Pol.V) Department, dated 03.06.1997, the upgradation of police personnel is time bound to such persons, who could not get a regular promotion in time. Since the petitioner herein has already been promoted as Head Constable on regular basis on 22.11.1989 itself, the question of upgrading him as a Head Constable does not arise. By placing reliance on the justification given in the impugned order, the learned Government Counsel submitted that the case of the petitioner cannot be equated with his juniors, which proposition has been established by the Hon'ble Supreme Court in the case of Punjab State Electricity Board and others vs. Jagjiwan Ram and others (2009) in Civil Appeal No.890 of 2009.

6. I have given careful consideration to the submissions made by the respective counsels.

7. Admittedly, the Sub-Inspectors of Police, namely P.Kuppusamy and N.Sakthivel, whose names were found in the 'C' list of Head Constables, were juniors to that of the petitioner herein. In service jurisprudence, when a junior has been promoted by overlooking the candidature of his senior, there will be an entitlement for the senior to seek for promotion on par with his junior. The only reason assigned in the impugned



order is that the petitioner's juniors, namely P.Kuppusamy and N.Sakthivel, were promoted on the basis of orders passed by this Court in W.P.Nos.9316 of 2007 and 8689 of 2006 and such promotion was only in compliance of the High Court's order dated 23.11.2011. Apart from this, no other reason was assigned for rejecting the petitioner's request for promotion on par with his juniors.

8. The respondents have now tried to improve their case by bringing in new grounds in the counter affidavit for denying the promotion of the petitioner. The learned Government Counsel had also placed reliance on the other grounds made in the counter affidavit and put forth his objections.

9. It is a settled proposition of law that the reasons assigned in the impugned order cannot be improved through a counter affidavit. If at all the second respondent was of the view that the petitioner is not entitled for promotion on par with his juniors, in view of G.O.Ms.No.844, dated 03.06.1997 and G.O.Ms.No.15, dated 07.01.2010, there was a duty cast on them to assign such reasons in the impugned order to enable the petitioner to put forth valid grounds in the writ petition. Such an exercise has not been adopted by the second respondent while rejecting the petitioner's request. Since the elaborate counter affidavit filed by the respondents are not the grounds for rejection in the impugned order, no importance can be assigned to such averments. As a result, the petitioner would be entitled to succeed.

10. Accordingly, the impugned order dated 12.06.2017 passed by the second respondent herein is quashed. Consequently, the second respondent herein is called upon to fix the seniority of the petitioner immediately above his juniors, namely P.Kuppusamy (HC 740) and N.Sakthivel (HC 1864), and notionally grant all service benefits including promotion to which the petitioner may be entitled to, on par with his juniors, along with the monetary benefits. The second respondent shall endeavour to comply with the directions of this Court, atleast within a period of 12 weeks from the date of receipt of a copy of this order.

11. The writ petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



hvk

To

WEB COPY

- 1.The Secretary,
Home Prohibition and Excise Department,
Fort St. George,
Chennai-600009.
- 2.The Director General of Police,
Police Headquarters,
Mylapore,
Chennai-600 004.
- 3.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore District.
- 4.The Commissioner of Police,
Coimbatore City,
Coimbatore District.

+1cc to Mr.M.Velmurugan, Advocate, S.R.No.31949

W.P.No.661 of 2019

and

W.M.P.No.717 of 2019

AK-II(CO)
SB(27/07/2021)