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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.1167 of 2020
and
W.M.P.No.1425 of 2020

1.A.Karthik Ganesh
2.V.Rajendran
3.N.Srinivasan
4.K.T.Poongundran
5.D.Ganesan
6.S.Rajesh

...Petitioners

Vs

1.The State of Tamil Nadu,
Represented by its Additional Chief
Secretary to Government,
Home (Police-III) Department,
Fort St. George, Chennai - 600 009.

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

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in the impugned G.O.Ms.No.09, Home (Police-III) Department, dated 06.01.2020 on the file of the first respondent, quash the same and consequently direct the respondents to consider granting conversion/transfer by relaxing the age limit in terms of G.O.Ms.No.1598, Home (Police.III) Department, dated 05.11.1997 by transferring the petitioners from Sub-Inspector of Police, TSR/AR to the Inspector of Police, Taluk Police Establishment.

For Petitioners : Mr.R.Karthikeyan

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. All the petitioners herein were appointed as Grade-II Police Constables in Tamil Nadu Special Police Battalion and were subsequently promoted as Sub-Inspectors of Police. By placing reliance on G.O.Ms.No.1512, Home (Police-III) Department, dated 09.10.1996, the petitioners herein claim for transfer to Taluk Police. Under G.O.Ms.No.1598, Home (Police-III) Department, dated 05.11.1997, 10% of the vacancies were reserved for Sub-Inspectors of Police of Armed Reserve/Tamil Nadu Special Police to be transferred to the local Police. The conditions for such transfers from the Armed Reserve/Tamil Nadu Special Police to the local Police is that, the incumbents should be a graduate; should not have completed 40 years of age; and should have completed 5 years of service as Sub-Inspectors of Police in Armed Reserve/Tamil Nadu Police Battalions. Through a Government Order in G.O.Ms.No.09, Home (Police-III) Department, dated 06.01.2020, the Government had deleted the earlier Government Order providing reservation of 10% for the post of Sub-Inspectors of Police for the year 2015-2017, for the purpose of filling up Sub-Inspectors from the Armed Reserve/Tamil Nadu Special Police of the year 2010, through transfer.

3. The petitioners herein are aggrieved against such a decision and consequently seeks for transfers to the local Taluks, by relaxation of the condition, insofar as it stipulates the upper age limit as 40 years. It is stated that all these petitioners are in compliance of the other two conditions that they should be a graduate and must have completed 5 years of service as Sub-Inspectors of Police in the Armed Reserve/Tamil Nadu Police Battalions.

4. The learned counsel for the petitioners submitted that, earlier, when this Court had passed orders directing the respondents to consider the request of the petitioners for transfer to the Taluk Police, their request was not considered, on the ground that there were no vacancies available. However, the learned counsel would point out the decisions taken by the respondents in identically placed cases of the Sub-Inspectors of Police, whose upper age limit was relaxed and were transferred to the local Police, pursuant to the orders passed by this Court in various writ petitions.

5. Per contra, the learned Government Counsel appearing for the respondents placed reliance on the counter affidavit filed



by the respondents and submitted that the decision to delete 10% of the reservation for transfers from Armed Reserve to the local Police is a policy decision and that the petitioners cannot claim it by way of a right. It is also his submission that the petitioners herein, while joining the Police Battalions, had relinquished their right to seek for transfer to the Taluk Police. Insofar as the relaxation is concerned, the learned counsel submitted that such relaxations cannot be cited as a precedent for the petitioners to claim transfer as a matter of right.

6. It is no doubt true that the decision to relax the condition, for the purpose of granting transfers from the Armed Reserve to the local Police, is a policy decision of the Government and this Court will not direct the respondents to exercise such discretion. However, it is seen that such discretions were exercised in atleast three cases of the Sub-Inspectors of Police, pursuant to the orders passed by this Court.

7. In the case of A.Harihara Puthiran Vs. The Principal Secretary to Government, Home (Police-III) Department and another, this Court, in its order dated 14.02.2014 passed in W.P.No.4245 of 2014, had made a specific observation that the respondents had earlier transferred a Sub-Inspector of Police from the Tamil Nadu Special Police to the Criminal Investigation Department and had pointed out the discrimination in the case of the petitioner therein and accordingly, directed the respondents to consider that petitioner's case. Consequent to such a direction, the respondents had also considered the case of Thiru.A.Harihara Puthiran and by relaxing his upper age limit, had issued orders of transfer through G.O.(2D).No.398, Home (Police-III) Department, dated 03.11.2014.

8. A similar decision was taken in the case of M.Shankar, Sub-Inspector of Police, who had obtained orders from this Court on 04.04.2014 in W.P.No.8481 of 2014 and consequently, transfer orders were issued in his favour also.

9. In this background, it would be appropriate to point out another decision taken by a learned Single Judge of this Court in the case of D.Prem Ananth and 14 others Vs. State of Tamilnadu, Home (Pol.III) Department and another, wherein 15 Sub-Inspectors of Police, who had crossed the age of 40 years, had sought for conversion to the other departments and this Court had referred to earlier orders, wherein the Government had granted relaxation and converted the Sub-Inspectors to the Taluks and allowed the writ petitions. While passing such orders, the learned Single Judge had taken into consideration that when the upper age limit for direct recruitment has been



placed at the age of 45 years, there was no justification for restricting the age of the Sub-Inspectors at 40 years, for the purpose of conversion. The relevant portion of the order reads as follows:-

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"11. In the above said circumstances, considering the fact that these petitioners are similarly and identically placed as that of the several other police personnel who had been benefited in the past by Government decisions converting them from Categories II and III to I, these petitioners cannot be placed on a different footing in the matter of considering their legitimate claim for conversion.

12. Once the facts, as disclosed in the affidavit filed in support of the writ petition, are conclusively established in favour of the petitioners, it is imperative on the part of the Government to treat all the Sub Inspectors of Police in the same scale of consideration and the Government cannot adopt a different and varying consideration from time to time. Even otherwise, factually, this Court is convinced that when in-service candidates are permitted to participate in the selection by way of direct recruitment for appointment in the post of Sub Inspector of Police prescribing upper age limit as 45 years, this Court does not see any acceptable reason as to why conversion alone should be restricted upto the age of 40 years. Nonetheless, the Government itself has taken a decision on some occasions, in converting police personnel who were similarly placed like the petitioners herein and granted them conversion even in respect of persons who have crossed the age of 40 years. In such event, this Court is unable to see as to how these petitioners alone should be deprived of such benefits, only on the ground that they have crossed the age of 40 years. When admittedly sufficient vacancies are available, there cannot be any obstacle or road block to consider the prayer of the petitioners herein favourably.

13. Therefore, the writ petition is allowed and the respondents are directed to pass appropriate orders granting conversion to these petitioners as Sub Inspectors of Police (Taluk), in line with earlier Government Orders issued in respect of the same subject matter of the claim,



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within a period of eight weeks from the date of receipt of a copy of this order.

14. It is also made clear that if, any age relaxation is required as a pre requisite for grant of the conversion, the same shall be granted by the Government in fulfillment of the equality principle enshrined in Article 14 and 16 of the Constitution of India."

10. On a co-joint reading of the various orders passed by the respondents herein, by relaxing the upper age limit of 40 years and converting the Sub-Inspectors of Police attached to the Armed Reserve to the Taluks and in the light of the decision rendered in the case of D.Prem Ananth and others (supra), this Court is of the view that the ends of justice could be secured, if the respondents are directed to reconsider the petitioners' claim, in the light of the earlier orders of the respondents, as well as the orders passed by this Court cited in the aforesaid paragraphs, within a stipulated time.

11. In this background, the petitioners are granted liberty to make an appropriate representation to the first respondent herein seeking for transfers to the Taluks and on receipt of such a representation, the first respondent herein shall consider the same, in the light of the earlier orders passed by this Court in W.P.Nos.4245 of 2014, 8481 of 2014 and 1579 of 2020 and the observations made by this Court and take a final decision, with regard to their claim for transfer, atleast within a period of 3 months from the date of receipt the representation.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

hvk
To

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home (Police-III) Department,
Fort St. George,
Chennai - 600 009.



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

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+1cc to Mr.R.Karthikeyan, Advocate Sr.35415
+1cc to the Government pleader Sr.35560

W.P.No.1167 of 2020
and
W.M.P.No.1425 of 2020

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srg 29/07/2021