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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.34648 of 2012
and M.P.Nos.1,1 of 2012 and 2014

Abraham Amalanathan

...Petitioner

Vs.

1. The Director General of Police
Chennai - 600 004.

2. The Deputy Inspector General of Police
Kancheepuram Range
Kancheepuram District

3. The Superintendent of Police
Kancheepuram District

...Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned order passed by the 2nd respondent in C.No.B1/9426/2011 dated 25.04.2012 and quash the same and consequently direct the respondents herein to pay the arrears in the post of Special Sub - Inspector of Police for the period from 01.01.2011 to 30.09.2011 to the petitioner.

For Petitioner : Mr.K.Raja

For Respondents : Mr.C.Selvaraj
Government Advocate (Civil Side)

O R D E R

Petitioner was working as Head Constable Grade- I. He was eligible to be upgraded as Special Sub Inspector of Police. However, a charge memo came to be issued against him on 11.02.2005. The petitioner challenged the charge memo before this Court in W.P.No.12561 of 2005 and it was set aside by an order dated 07.04.2011. Thereafter, the 3rd respondent has issued an order of upgradation in proceedings C.No.A1/22270/2011 dated 20.09.2011. The petitioner has joined the post on 30.09.2011. It is pertinent to note that the upgradation order was given to 10



persons including the petitioner, wherein all have joined on a subsequent date. However, the monetary benefits were granted only from the date of assumption of duty relying on Tamilnadu Government Fundamental Rules, F.R.27. However, the other similarly placed persons have approached this Court and as per the direction of this Court they were granted monetary benefits from the date of upgradation. But it was denied to the petitioner on the ground that a charge memo was pending and he assumed charges only on 30.09.2011 and that he will be granted monetary benefit only from the date of assumption and arrears cannot be granted.

2. From the records placed before this Court, it is seen that the charge memo was set aside on 07.04.2011 by this Court. The order of upgradation was issued on 20.09.2011, which is subsequent to the quashing of the charge memo by this Court. Therefore, the issuance of charge memo will not stand in the way of upgradation or assumption of charge. Secondly the Tamilnadu Government Fundamental Rules 27 (17) will not apply to this case. Fundamental Rule 27(17) reads as under:

17) In case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

3. On a reading of the above, shows that in cases where he was overlooked for promotion and on appeal seniority has been restored, pay fixation will be done with effect from the date of



assumption of charge in the higher post, which means till the refixation of seniority the person would have continued in the lower category and therefore he is not entitled to draw the pay in the superior category. Whereas in this case, the person was upgraded with effect from 01.01.2011 and immediately after the issuance of the order on 20.09.2011 he assumed charge. Naturally, it is not restoration of seniority but it is an upgradation and therefore he will be entitled to all monetary benefits with effect from the date of upgradation. This Court in respect of similarly placed persons already granted monetary benefits with effect from the date of upgradation. In such circumstances, there is no reason for the respondents to single out the petitioner for not granting monetary benefits from the date of upgradation.

4. Learned counsel for the petitioner would also rely on the judgment of this Court in W.P.No.48365 of 2006, wherein this Court relied on the judgment of the Hon'ble Supreme Court in Union of India vs. K.V.Janakiraman & Others, AIR 1991 SC 2010 has held that delay in assuming charges or delay in reinstatement or upgradation which is not attributable to the Government servant and the arrears of monetary benefits shall not be denied to him.

5. In this case, I do not find much delay because the order was passed only on 20.09.2011 and the petitioner has joined the post on 30.09.2011 within 10 days. The order takes effect from 01.01.2011 as specified therein. Therefore, the impugned order passed by the 2nd respondent in C.No.B1/9426/2011 dated 25.04.2012 denying the monetary benefits is not sustainable and accordingly set aside.

In fine, the writ petition is allowed and the respondents are directed to settle the dues to the petitioner within period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpr



To

1. The Director General of Police,
Chennai - 600 004.
2. The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram District.
3. The Superintendent of Police,
Kancheepuram District .

+1cc to Mr.K.Raja,Advocate,Sr.28990.

+1cc to The Government Pleader,High Court, Sr.29182.

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GP[co]
NSK 26/07/2021