

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2021

PRONOUNCED ON : 27.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.36735 of 2016
& WMP.No.31571 of 2016

S.Venkatesan ... Petitioner

Vs.

1.The Secretary to Government,
Home (Police III) Department,
Fort St. George, Chennai-600 009.

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the impugned order passed by him in RC. No.203894/NGBV(2)/2015 dated 20.06.2016 and to quash the same and direct the respondents to promote the petitioner as Sub Inspector (AR), at par with his junior Subbaiah Pandian who as been promoted as Sub-Inspector with effect from 05.08.2004 and grant him all consequential service and monetary benefits including promotion.

For Petitioner : Mr.K.Venkataramani, Sr. Counsel
for Mr.M.Muthappan

For Respondents:Mr.S.Thangavel, SGP

O R D E R

The present Writ Petition is heard through Video Conferencing on 20.04.2021.

2. Heard Mr.K.Venkataramani, learned Senior counsel appearing for the petitioner and Mr.S.Thangavel, learned Special Government Pleader appearing on behalf of the respondents.

3. The case of the petitioner is that his junior, one Mr.Subbaiah Pandian, was promoted as Sub-Inspector of Police (AR) with effect from 05.08.2004 and therefore seeks for promotion on par with his junior.

4. The petitioner herein was appointed as Gr-II Police Constable on 25.05.1988 in the Armed Reserve and promoted as Head Constable on 04.08.1997. Thereafter, he was temporarily promoted as Sub-Inspector of Police (AR) on 31.12.2006. His name was included in the "C" list of Head Constables (AR) fit for promotion as Sub-Inspector of Police for the year 2015 and his date of 'B' list was fixed on 18.06.2015 in the category of Sub Inspector of Police (AR).

5. While that being so, Mr.Subbaiah Pandian, was appointed as Gr-II Police Constable on 01.04.1981 at TSP and thereafter was transferred to the Armed Reserve on 23.12.1993 as Gr-II Police Constable. He was promoted as Head Constable in AR on 25.07.2000. When the said Mr.Subbaiah Pandian had challenged the seniority before this Court in W.P.No.27036 of 2005, this Court had allowed the Writ Petition and his seniority was directed to be placed above his juniors. The appeal preferred by the Department before the Division Bench of this Court and the Hon'ble Supreme Court of India were dismissed. Accordingly, the seniority of Mr.Subbaiah Pandian in the post of Head Constable (AR) was fixed on 10.12.1997 and for the post of Sub Inspector of Police (AR) was fixed on 05.08.2004.

6. Through the present impugned order dated 20.06.2016, the petitioner's request to promote him as Sub Inspector of Police on par with that of Mr.Subbaiah Pandian, came to be rejected only on the ground that Mr.Subbaiah Pandian's promotion as Sub Inspector of Police was on the basis of Court's orders and therefore, the petitioner's request was rejected. I do not find any justification for such a reasoning. The second respondent had not disputed that Mr.Subbaiah Pandian is a junior to the petitioner herein. When this Court, had passed orders in favour of Mr.Subbaiah Pandian in W.P.No.27036 of 2005 which was appealed through orders passed in W.A.No.500 of 2008 dated 16.06.2008 and SLP (Civil) No.10319 of 2009 dated 20.04.2009, the second respondent had implemented the orders and had promoted Mr.Subbaiah Pandian to the post of Sub Inspector of Police (AR) with effect from 05.08.2004. Since the second respondent had not disputed the fact that Mr.Subbaiah Pandian is junior to the petitioner herein, it goes without saying that the petitioner's seniority is to be determined on par with his junior. Since the second respondent herein had not adduced any other reasons for denying the claim of the petitioner to be promoted to the post of Sub Inspector of Police (AR) with effect from 05.08.2004 on par with Mr.Subbaiah Pandian, the impugned order deserves to be quashed.

7. At this juncture, the learned Senior Counsel appearing for the petitioner submitted that similarly placed persons have filed Writ Petitions before the Madurai Bench of this Court, claiming promotion to the post of Sub Inspector of Police (AR) on par with their immediate juniors and the Madurai Bench had passed favourable orders in those Writ Petitions and the second respondent had also chosen to implement the orders of the Hon'ble Madurai Bench on 04.03.2014, the copy of which is produced before this Court.

8. The learned Special Government Pleader appearing on behalf of the respondents made an effort to convince this Court through the averments made in the counter affidavit, which are to the effect that the petitioner is junior to that of Mr.Subbaiah Pandian and the second respondent had also attempted to justify the same. It is a settled proposition of law that the counter affidavit cannot improve the original reasonings on an afterthought and that, when such reasonings are absent in the original impugned order, the same cannot be permitted to be enlarged during the pendency of the Writ Petition. Hence, no importance can be given to such new reasonings introduced in the counter affidavit.

9. For all the foregoing reasons, the impugned order passed by the second respondent in RC No.203894/NGBV(2)/2015 dated 20.06.2016 is hereby quashed. Consequently, there shall be a direction to the second respondent to promote the petitioner as Sub-Inspector of Police (AR) on par with his junior Mr.Subbaiah Pandian, with effect from 05.08.2004 and grant him all consequential service and monetary benefits, which exercise shall be completed, atleast within a period of three months from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

DP

To

1.The Secretary to Government,
Home (Police III) Department,

<https://hcservices.ecourts.gov.in/hcservices/>
Fort St. George, Chennai-600 009.

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

+2cc to Mr.M.Muthappan, Advocate SR.No.23956, 25545

+1cc to Government Pleader SR.No.26003

W.P.No.36735 of 2016
and
WMP.No.31571 of 2016

SSI (CO)
GMY (18/06/2021)



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