



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.44788 of 2016
and
W.M.P.No.38418 of 2016

Ganesa Manikandan

... 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 or any other appropriate writ or direction in the nature of writ calling for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(D). No.854 Home (Police-3) Department dated 20.09.2016 and quash the same and direct the respondents to promote the petitioner as Sub-Inspector (AR) at par with his junior Subbaiah Pandian who has been promoted as Sub-Inspector, w.e.f. 5.8.2004 and grant him all consequential service and monetary benefits including promotion.

For Petitioner : Mr.K.Venkatramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents: Mr. K.Tippu Sulthan
Government Advocate

O R D E R

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

2. The grievance of the petitioner is that his junior, namely Mr.Subbaiah Pandian, was promoted as Sub-Inspector of Police (AR) with effect from 05.08.2004 and since his candidature for promotion was denied, he seeks promotion on par with his junior namely Mr.Subbaiah Pandian.



3. When an identically placed Head Constable had filed W.P.No.36735 of 2016 in the case of S.Venkatesan Vs.The Secretary to Government and others, this Court had passed orders on 27.04.2021, directing the second respondent herein to promote S.Venkatesan as Sub-Inspector of Police, on par with Mr.Subbaiah Pandian, who was his junior. The relevant portion of the order reads thus:

"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 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 (Civil0 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 fro 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



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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."

4. A perusal of the aforesaid extract reveals that the petitioner herein also is identically placed as that of the petitioner in S.Venkatesan's case (supra), who had also claimed to be the junior of Mr.Subbaiah Pandian.

5. The reasons assigned by the respondent in the impugned order in the present case is also identical to that of the reasons assigned in Mr.S.Venkatesan's case (supra). As such, the present impugned order cannot be sustained, in view of the earlier decisions taken by this Court.



6. Accordingly, the impugned order passed by the first respondent in G.O.(D) No.854, dated 29.09.2016 is hereby quashed. Consequently, there shall be a direction to the second respondent herein 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, at least within a period of three (3) months from the date of receipt of a copy of this order.

7. The writ petition stands allowed accordingly. Consequently, connected miscellaneous petition is closed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrn

To

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.

+1cc to M/s.M.Muthappan, Advocate SR.No. 32968

W.P.No.44788 of 2016
and
W.M.P.No.38418 of 2016

NK(CO)
B.VC(11.08.2021)