

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.12030 of 2014

D.Pakirisamy

... Petitioner

Vs.

1. The Director General of Police,
Kamarajar Road, Mylapore,
Chennai - 600 004.
2. The Deputy Inspector General of Police,
Tiruchirapalli.
3. The Superintendent of Police,
Karur, Karur District. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to consider the written representation dated 18.03.2011, 02.05.2012 and 13.10.2013 of the petitioner for notional promotion as regular Sub Inspector of Police in Tamil Nadu Police Service from the year 1994 with consequential monetary benefits.

For Petitioner : Mr.P.Chandrasekaran

For Respondents : Mr.S.Thangavel
Special Government Pleader

ORDER

This writ petition has been filed seeking a direction to the respondents to consider the written representations dated 18.03.2011, 02.05.2012 and 13.10.2013 submitted by the petitioner for notional promotion as regular Sub Inspector of Police in Tamil Nadu Police Service from the year 1994, with consequential monetary benefits.

2.According to the petitioner, he was appointed in the Armed Reserve Police, Tiruchirapalli on 14.12.1966. Thereafter, he was promoted as Head Constable in Armed Reserve Police on 01.01.1980 and transferred to Law and Order and he worked in various places. Subsequently, he was promoted as Special Sub

Inspector of Police with effect from 01.06.1998. Since he had qualifying service for promotion as Regular Sub Inspector of Police, he submitted a representation dated 05.03.1999 to the first respondent requesting to consider his candidature for promotion. Finding no response on the same, he filed OA.No.3460 of 2000 which was disposed of by the Tribunal, on 01.06.2000 directing the respondents to consider the said representation within a period of five months. Even thereafter, the petitioner's request was not considered. In the mean while, he retired from service on 28.02.2004 on attaining the age of superannuation. Subsequently, based on G.O.Ms.No.937 Home (Police-3) Department, dated 21.07.2008, he made written representations dated 18.03.2011, 02.05.2012 and 13.10.2013 to the respondents for notional promotion and consequential benefits, which were kept pending without any action. Hence, this writ petition.

3.Upon notice, the respondents filed a detailed counter affidavit, wherein, it is inter alia stated that the petitioner was awarded with two punishments in the years 1981 and 1983 viz., reduction in pay by one stage for one year without cumulative effect in PR.No.142/81 u/r 3(b) and postponement of increment for one year in PR.No.197/83 u/r 3(a); and that, the petitioner was fully qualified for attending the promotion test conducted during the year 1994 for promotion as Sub Inspector of Police, but he fell short of aggregate marks in the promotion test conducted and hence, his name was not included in the 'C' list of HC/SSI fit for promotion as Sub Inspector of Police for the year 1994 drawn in 1996. It is also submitted that as per G.O.Ms.No.937 Home (Police-3) Department, dated 21.07.2008, the promotion panel should be prepared every year with 1st June as the crucial date; and the Special Sub Inspectors upgraded, could become regular Sub Inspectors only when they qualify in the prescribed tests as it was the norms for selection of Sub Inspector of Police before the year 2006. It is further submitted that pursuant to the order of the Tribunal, the petitioner was suitably informed the reason for his non-inclusion by the first respondent by giving endorsement to him in Rc.No.122317/NGB IV (1)/2000 dated 10.11.2000. With these averments, the respondents sought to dismiss this writ petition.

4.Today, when the matter came up for hearing, the learned Special Government Pleader appearing for the respondents submitted that the petitioner already filed writ petition bearing No.7027 of 2007 for the very same relief, which was dismissed for non prosecution by this Court on 01.04.2014 and hence, the second writ petition filed for the similar relief cannot be maintainable.

5.The learned counsel for the petitioner fairly conceded the submission so made by the learned Special Government Pleader appearing for the respondents. However, he submitted that the counsel on record Mr.Duraiveliappan, in the earlier writ petition viz., WP.No.7027/2007 died on 31.12.2010 and hence, the matter was dismissed for non-prosecution and not on merits. It is trite law that the party / petitioner need not suffer due to the fault on the part of his counsel on record at the time of hearing the case. Therefore, this Court may consider the relief sought in the present writ petition, which was filed on the second occasion and pass appropriate orders in favour of the petitioner.

6.Heard both sides and perused the materials placed before this Court.

7.Admittedly, the petitioner filed the present writ petition on second occasion for the very same relief as sought in the first writ petition viz., WP.No.7027 of 2007, which was dismissed for non-prosecution on 01.04.2014. It is settled law that when the petition filed under Article 226 is dismissed by the High Court, the decision pronounced is binding on both the parties, unless modified or reversed by appeal or other appropriate proceedings under the Constitution and so, if the said decision was not challenged by an appropriate remedy provided by the Constitution, a subsequent writ petition filed in respect of the same matter would be deemed to be barred by res judicata. Applying the said principle to the facts of the present case, the present writ petition, being second in nature, cannot be maintainable and is liable to be dismissed.

8.Accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

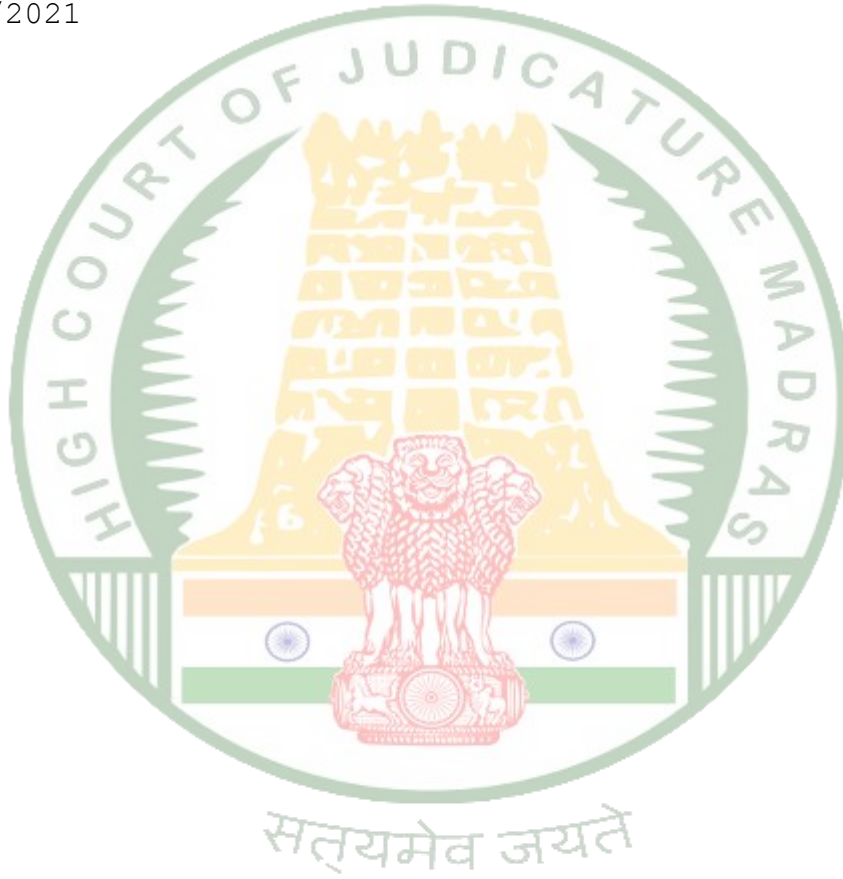
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+1cc to the Government Pleader Sr.2135

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