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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition No.19010 of 2017

(Through Video Conferencing)

V.Viswanathan

...Petitioner

vs.

1.The Director General of Police,  
Mylapore, Chennai - 2.

2. The Supreintendent of Police,  
Cuddalore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records pertaining to the impugned order in proceedings in C.No.A3/5848/2017 dated 13.03.2017 on the file of the second respondent and quash the same and direct the first respondednt to include the petitioner's name at the appropriate place in the select list for the year 1992-1993 along with his batch mates in the year 1992-1993 and award all consequential service benefits.

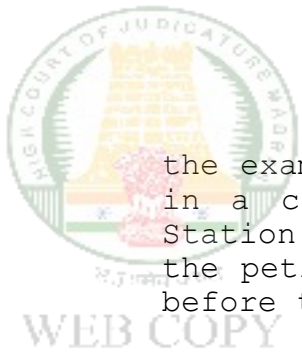
For Petitioner : M/s.M.S.Soundararajan

For Respondents : Mr.LSM.Hasan Fizal  
Government Advocate.

O R D E R

In this writ petition, the petitioner has challenged impugned communication dated 13.3.2017 in proceeding bearing reference C.No.A3/ 5848/2017 of the 2<sup>nd</sup> respondent. The petitioner has prayed for quashing the impugned communication of the 2<sup>nd</sup> respondent and for a consequential direction to the 1<sup>st</sup> respondent to include the name of the petitioner and the appropriate place along with his batch mates recruited for the year 1992-93 on 01.11.1995.

2. The petitioner had participated in the recruitment for the post of Police Constable in the year 1992-93 and had cleared



the exams. However, he was not appointed due to his involvement in a crime in Cr.No.597 of 1991 before the Minsuruti Police Station. The petitioner was not charge sheeted and the name of the petitioner was therefore deleted from Cr.No.597 of 1991 before the Minsuruti Police Station.

3. Under these circumstances, the petitioner appears to have sent a representation dated 21.06.2017 and later approached the Tamil Nadu Administrative Tribunal in O.A.No.7319 of 1999. By an order dated 18.12.1999, the Tribunal directed the respondents to consider the representation of the petitioner and pass appropriate orders on the merits.

4. The petitioner was thereafter issued with an appointment letter dated 6.2.2002 and absorbed in service. The petitioner sent representations to the respondents dated 21.06.2017 with a request to place him in seniority along with this batchmates who appeared in the exam during 1992-1993. Since the representation of the petitioner did not evoke any positive response from the respondents, the petitioner approached this Court in W.P.No.37670 of 2016. The said writ petition was disposed with a direction to consider and dispose the representation of the petitioner on merits.

5. By the impugned order dated 13.3.2017, the respondent has informed the petitioner that the petitioner was selected in the year 1992-93 over and above 10,000 vacancies. Since the case of the petitioner was considered as a special case along with others a condition that his seniority will be fixed at the bottom of 1997-98 batch Gr-II P.Cs, the petitioner cannot claim any seniority with effect from 1.11.1995.

6. Learned counsel for the petitioner submits that the reasons given in the impugned letter dated 13.03.1997 stating that the petitioner was one among them 329 candidates who were given appointment in terms of G.O.Ms.No.1339 Home (Pol.III) Department dated 01.10.1999 is incorrect. He submits that the above notification was issued to candidates belonging to other communities numbering in 329 as 376 posts reserved for SC/ST could not be filled up due to non availability of SC/ST candidates by relaxing the rules relating to age, communal rotation, sports quota and 30% reservation for women as a one time measure.

7. Learned counsel for the petitioner submits that under a similar circumstances, in the case of S.Sakthivel, HC 568, the respondent has fixed seniority along with the candidates were selected provisionally in the year 1992-1993 appointed on 01.11.1995 as per Rule 24(d) of TNPSS Rules vide Memorandum dated 17.04.2017 bearing reference C.No.153329/Rect, 1 (2) /



2017 and concluded that since S.Sakthivel, HC 568, was appointed as Gr.II PC pursuant to selection in the year 1992-93.

8. The learned counsel further submits that even as per the counter filed by the respondents it is admitted that the petitioner was not one among the 329 candidates who were accommodated as a one time measure. He relied on the decision of the Hon'ble Supreme Court in the State of Haryana vs. Dinesh Kumar, (2008) 3 SCC 222, wherein it was held as follows:-

"33.In the result, the civil appeal arising out of SLP (C) No. 1840 of 2007 is dismissed, while the civil appeal arising out of SLP (C) No. 14939 of 2007 is allowed. The judgment of the High Court dated 22-9-2005, impugned in the said appeal, is set aside and the respondents concerned are directed to take steps to issue appointment letters to the appellants in the said appeals subject to fulfilment of other conditions by them. It is also made clear that the appellants will be deemed to have been appointed as Constable-Drivers with effect from the date persons lower in merit to them were appointed. However, while they will be entitled to the notional benefits of such continuous appointment and they will be entitled to salary only from the date of this judgment on the basis of such notional benefits. "

9. Heard the learned counsel for the petitioners and the learned Government Advocate for the respondents.

10. Defending the impugned order of the 2<sup>nd</sup> respondent, the learned Government Advocate for the respondents submits that the appointment of the petitioner was in terms of G.O.Ms.No.1339 dated 01.10.1999 and that the petitioner's appointment was considered as a special case. He submits that in terms of the aforesaid Government order the petitioner cannot claim any seniority along with his batch mates. He further submits that in the appointment order itself, it was mentioned that the candidates who were appointed pursuant to G.O.Ms.No.1339 Home (Pol.III) Department dated 01.10.1999 was by relaxing the age, rule as a one time measure which has been concealed by the petitioner in the affidavit.

11. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the impugned communication dated 13.03.2017 of the 2<sup>nd</sup> respondent and the appointment order dated 06.02.2002 bearing Reg.m/1160/02 issued to the petitioner.



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12. The said appointment order of the Commandant, Tamil Nadu Special Police, XI Battalion, Rajapalayam does not state that the petitioner's appointment was in terms of G.O.Ms.No.1339 Home (Pol.III) Department dated 01.10.1999. Therefore, the restrictions placed in the said G.O.Ms.No.1339 cannot be imposed on the petitioner.

13. This is the case where the petitioner had successfully cleared all the exams in the recruitment for the year 1992-1993, but was not selected on account of his name in Cr.No.597 of 1991 before the Minsruti Police Station. However, later, petitioner's name was dropped from Cr.No.597 of 1991 and was not charge sheeted. Thereafter, the petitioner was appointed, pursuant to a direction dated 18.12.1999 of the Tamil Nadu Administrative Tribunal, Chennai in O.A.No.7319 of 1999. Thus, the reasons given in the impugned communication is not applicable to the petitioner.

14. That apart, in the case of S.Sakthivel, Head Constable No.568, Armed Reserve, Tiruvannamalai District, whose name was not included in the selection list to the post of Gr.III Police Constable in the year 1992-1993 due to his eyes are unfit due to defective vision, the seniority was fixed along with his seniority shall be fixed with the candidates who were provisionally selected in the year 1992-1993 and appointed on 01.11.1995 as per Rule 24(d) of TNPSS Rules.

15. The said Sakthivel had filed W.P.No.11324 of 1993 before this Court. By an order dated 24.02.2000, the Court directed the respondents for re-medical examination. The Medical Board in their letter dated 21.03.2001 later stated that the said Sakthivel was found to be medically fit for the post of Gr.II P.C. On such receipt of the same, the Director General of Police, Tamil Nadu, Chennai issued necessary appointment orders to the said Sakthivel. Thereafter, the said Sakthivel filed W.P.No.37880 of 2016 to direct the 1<sup>st</sup> respondent to consider the representation dated 26.09.2016 to include the said Sakthivel name at the appropriate place in the selection list of Police Constable of the year 1992-1993. The said writ petition was disposed on 01.11.2016 and directed the respondents to consider the representation of the said Sakthivel. The memorandum of the 1<sup>st</sup> respondent dated 17.04.2017 reads as follows:-

" As the petitioner was appointed as Gr.II PC pursuant to their selection for the year 1992-1993, he is entitled to count his seniority in the post of Gr.II PC from 1992-1993 from the date on which the candidates selected for the year 1992-1993 was appointed and sent for basic training (i.e.) w.e.f. 01.11.1995.



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Hence the request of Tr.S.Sakthivel, HC 568, Armed Reserve, Thiruvannamalai District seeking seniority on par with candidates selected for the year 1992-1993 is considered and his seniority shall be fixed with the candidates who were provisionally selected in the year 1992-1993 and appointed on 01.11.1995 as per rule 24(d) of TNPSS Rules."

16. In the State of Haryana vs. Dinesh Kumar, (2008) 3 SCC 222, wherein it was held that the appellants will be deemed to have been appointed as Constable-Drivers with effect from the date persons lower in merit to them were appointed. However, while they will be entitled to the notional benefits of such continuous appointment and they will be entitled to salary only from the date of this judgment on the basis of such notional benefits.

17. This view was followed by this Court, by an order of Division Bench of this Court in The Secretary to Government, Home (Police 3) Department, Secretariat, Chennai vs. R.Madhan, W.A.No.211 of 2009 vide order dated 21.04.2009 in para Nos.7 & 8 of the above said Judgment.

18. The similar view also taken by the Single Bench of this Court in S.Balakrishnan, V.Parivallal and V.Kumar vs. The Director General of Police, Mylapore, Chennai-4, W.P.No.41271 to 41273 of 2006.

19. Since the petitioner's appointment was not in terms of G.O.Ms.No.1339 Home (Pol.III) Department dated 01.10.1999, the petitioner is entitled to seniority on par with his batch mates as the criminal proceedings initiated against the petitioner were not proceeded. Therefore, the writ petition deserves to be allowed.

20. In the result, this writ petition is allowed with the consequential relief to the petitioner. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kkd



To

1. The Director General of Police,  
Mylapore, Chennai - 2.

2. The Supreintendent of Police,  
Cuddalore District.

+1cc to Government Pleader, Sr.38082

W.P.No.19010 of 2017

NK[co]  
NSK 25/08/2021