



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.10.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P(MD)No.14661 of 2019

and

W.M.P. (MD) .No.11112 of 2019

S.Pitchai

... Petitioner

Vs.

1.The Director General of Police,
O/o.Director General of Police,
Chennai.

2.The Deputy Inspector General of Police,
Madurai Range,
Madurai.

3.The Superintendent of Police,
Madurai Rural Police District,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records passed by the 3rd respondent vide impugned proceeding in C.No.A3/2563/09/2016 (D.O.No.302/2016) dated 04.03.2016 and consequent order passed by the third respondent vide C.No.A2/058725/544/2018 dated 28.05.2019 and quash the same as illegal as devoid of merits and consequently direct the respondents to award upgradation as Grade I Police Constable (Gr.IPC) w.e.f 01.12.2013 and further upgrade the petitioner to the post of Head Constable on par with petitioner's batchmates w.e.f 01.12.2018.

For Petitioner : Mr.Rajakarthikeyan
For Respondents : Mr.S.Shanmugavel,
Standing Counsel.

ORDER

This Writ Petition has been filed by the petitioner, praying to issue a Writ of Certiorarified Mandamus, to call for the records passed by the 3rd respondent vide impugned proceeding in C.No.A3/2563/09/2016 (D.O.No.302/2016) dated 04.03.2016 and consequent order passed by the third respondent vide C.No.A2/058725/544/2018 dated 28.05.2019 and quash the same as illegal as devoid of merits and consequently direct the respondents



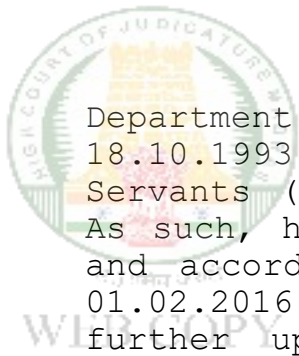
to award upgradation as Grade I Police Constable (Gr.IPC) w.e.f 01.12.2013 and further upgrade the petitioner to the post of Head Constable on par with petitioner's batchmates w.e.f 01.12.2018.

2. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. According to the petitioner, he was recruited as Grade II Police Constable on 01.12.2003 and he is entitled to be upgraded as Grade-I Police Constable on 01.12.2013, but due to disciplinary action which ended in imposing punishment of postponement of increment for a period of one year without cumulative effect, he was not upgraded. Later, he was upgraded as Grade I Police Constable with effect from 01.02.2016 by the 3rd respondent vide order dated 04.03.2016. The said punishment came to be modified as black mark by the 2nd respondent in the appeal preferred by the petitioner and as such, he is entitled to the upgradation with effect from 01.12.2013 on par with his batchmates and consequently, he is entitled to the promotion as Head Constable with effect from 01.12.2018. The grievance of the petitioner is that by impugned order dated 28.05.2019, the claim of the petitioner was rejected on the ground of check in period, which cannot be operated since the Government has withdrawn G.O.Ms.No.22 P & AR (S) Department, dated 24.02.2014 and enacted the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which came into force from 15th September, 2016 and the impugned order of upgradation was passed on 04.03.2016. Hence, the impugned orders are liable to be quashed.

5. A counter affidavit has been filed on behalf of the respondents, stating that the petitioner has not completed 10 years of service as Grade II Police Constable on 01.12.2013 as he availed 3 days leave on loss of pay from 21.05.2004 to 23.05.2004, which cannot be included as qualifying service as per G.O.Ms.No.15 dated 07.01.2010. Further at that time, he was dealt with a charge under Rule 3(b) in PR No.50/2013 and subsequently, awarded with punishment of postponement of increment for one year which shall not operate to postpone his future increments vide order of the 3rd respondent dated 08.01.2015. Later on appeal, the punishment was modified into that of Black mark by the 2nd respondent and it was taken effect from 01.01.2014 and not with effect from 11.08.2012 as claimed by the petitioner and the said punishment was completed only on 07.01.2016 and hence, his name was not recommended for upgradation as per G.O. (Ms.) No.15 dated 07.01.2010 and guidelines issued for promotion/upgradation vide G.O.Ms.No.368, dated 18.10.1993 which were in force at that time and subsequent amendment to Rule 4(a) of the General Rules for the Tamil Nadu State and Subordinate Services issued in G.O.Ms.No.22 Personnel and Administrative Reforms (s)



Department dated 24.02.2014 with retrospective effect from 18.10.1993 and the same has been reiterated in Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which is now in force. As such, he has become eligible for upgradation only on 01.02.2016 and accordingly, he was upgraded as Grade I Police Constable on 01.02.2016 and after completion of 5 years, he would be eligible for further upgradation as Head Constable on 01.02.2021 if he is otherwise found fit. Hence, the request of the petitioner for upgradation for Grade I Police Constable and Head Constable with effect from 04.12.2013 and 04.12.2018 or 01.01.2019 cannot be considered. With these averments, the respondents sought for dismissal of the Writ Petition.

6.The learned Counsel for the petitioner submitted that the minor punishment itself was modified by the 2nd respondent into one of "Black Mark" and that the punishment of black mark cannot be a reason to postpone the promotion or upgradation for one year as a measure of punishment, that too from the date of awarding punishment. The learned Counsel further submitted that the punishment of black mark is not contemplated under the Service Rules and therefore, the petitioner is entitled to for upgradation with effect from 01.12.2013 ignoring the minor punishment of black mark, which cannot have any legal application affecting the timely promotion of the petitioner.

7.It is not in dispute that the petitioner was not given upgradation with effect from 01.12.2013, only because, the petitioner suffered with the punishment of Black Mark and this punishment will disable the petitioner to be considered for promotion, in view of the check period of one year. According to the respondents, the petitioner was imposed with the punishment of Black Mark by order of the 2nd respondent dated 08.01.2015 and the punishment period was completed on 07.01.2016 and accordingly, he was upgraded as Grade I Police Constable on 01.02.2016.

8.The learned Standing Counsel for respondents has brought to the notice of this Court, the provisions of new enactment called "Tamil Nadu Government Servant (Condition of Service) Rules, 2016". This Act, except Section 1 Sub Section 30, all the remaining provisions of the Act, came into effect from the date of notification.

9.As per the new enactment, the procedure for preparation of approval list for promotion should be as per para-A, schedule-XI of the Act. Sub clause (11) of clause-II of Para-A of Schedule-XI of the Act reads as follows:

"II. Consideration of members for inclusion in the approved lists:



(11) Any punishment (other than "Censure") imposed on a member of service within a period of five years prior to the crucial date and a punishment of "Censure" imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including "Censure" imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment."

10. Relying upon the above, it is contended on behalf of the respondents that the punishment of black mark is a specific punishment for a Constable or a Head Constable and others, who are holding corresponding rank and only by virtue of the new enactment, the petitioner cannot be considered for promotion, as he has suffered a minor punishment of black mark, which will disable the petitioner to be considered for promotion for a period of one year.

11. However, it is relevant to extract Police Standing Order No.94(4) which reads as under:

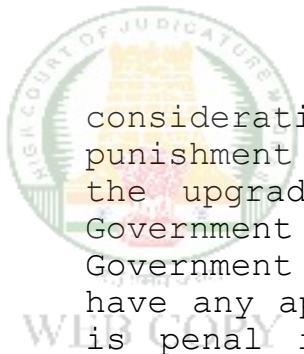
"PSO 94. Blackmark - Rules - The following rules regulate the system of punishment by blackmarks:-

(1) to (3)

(4). Blackmarks shall take effect from the date of the offence, unless otherwise stated.

(5)."

12. Admittedly, the punishment of postponement of increment was modified as that of punishment of blackmark by the 2nd respondent on 08.01.2015 and it is not in dispute that the date of delinquency committed by the petitioner was 11.08.2012. Therefore, under PSO 94 (4), it has been clearly contemplated that punishment of Blackmark shall take effect from the date of offence, unless otherwise stated. When that be so, as rightly contended by the learned counsel for the petitioner there was no embargo for consideration of the claim of the petitioner for upgradation as on 01.12.2013. The provisions of the new enactment extracted above will apply only in the matter of minor and major punishments that any punishment (other than "Censure") imposed on a member of service within a period of five years prior to the crucial date and a punishment of "Censure" imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. As regards the punishment of blackmark is concerned, as per PSO 94(4) extracted above, the punishment would take effect from the date of delinquency



consideration of the claim of the petitioner. Accordingly, after the punishment of blackmark was imposed, the petitioner is entitled to the upgradation with effect from 01.12.2013. Though the learned Government Counsel refers to the new enactment, namely, Tamil Nadu Government Servant (Condition of Service) Rules, 2016, which cannot have any application to the petitioner's case. Any provision, which is penal in nature, cannot be given retrospective effect unless there is express provision.

13. In view of the above discussion, the Writ Petition is allowed and the impugned orders passed by the 3rd respondent vide impugned proceeding in C.No.A3/2563/09/2016 (D.O.No.302/2016) dated 04.03.2016 and consequent order passed by the third respondent vide C.No.A2/058725/544/2018 dated 28.05.2019 are hereby set aside. The petitioner is entitled to get upgradation as Grade I Constable with effect from 01.12.2013 and as Head Constable with effect from 01.12.2018 on par with his batchmates and the consequential service benefits. The respondents are directed to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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