



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.11.2021**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P. (MD)No.4964 of 2018

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M.Kani Murugan

...Petitioner

/Vs./

1.The State represented by

The Additional Chief Secretary to Government,
Home Department,
Government of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai - 600 009.

2.The Director General of Police,

Office of the Director General of Police Tamil Nadu,
Mylapore,
Chennai - 600 004.

3.The Inspector General of Police,

Armed Police,
Dr.Radhakrishnan Salai,
Trichy.

4.The Deputy Inspector General of Police,

Armed Police,
Dr.Radhakrishnan Salai,
Trichy.

5.The Commandant,

Tamil Nadu Special Police XI Battalion,
Rajapalayam,

<https://hcservicerecordsonline.org/ser> District.



6.The Superintendent of Police,
Virudhunagar,
Virudhunagar District.

...Respondents

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PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents herein to upgrade the petitioner to the post of Grade I Police Constable and further to the post of Head Constable by placing him above his immediate junior with all other consequential attendant and monetary benefits.

For Petitioner : Mr.D.Sivaraman

For Respondents : Mr.V.Om Prakash

Government Advocate

ORDER

The petitioner has sought a mandamus directing the respondents, the State and Officers of the Police Department, to promote him to the post of Grade I Police Constable by placing him above his immediate juniors with all consequential benefits.

2.The petitioner was recruited and appointed to the post of Grade II Police Constable on 01.08.2002. He received a charge memo dated 23.04.2004 alleging misconduct in terms of Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, (Rules).

3.Pursuant to enquiry, an order came to be passed on 23.04.2004 by the Commandant dismissing him from service. The appeal filed by the petitioner challenging the aforesaid order was rejected by the fourth respondent, vide order dated 12.07.2004.

4.The petitioner thereafter filed a writ petition in W.P.(MD) No.9121 of 2006 challenging the proceedings that had culminated in his dismissal, and by order dated 09.05.2007, this Court set aside the dismissal and modified the punishment to stoppage of increment with cumulative effect for seven years.

5.The aforesaid order came to be challenged in appeal in W.A. (MD) No. 658 of 2007, wherein by order dated 12.03.2008, the

<https://hcservices.ecourts.gov.in/hcservices/>



Division Bench confirmed the setting aside of the dismissal order but opined that it was not for this Court to modify the punishment imposed by the authority so as to substitute its view in place of the officers imposing the punishment.

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6.The Bench expressed the view that the order of dismissal was disproportionate to the charge levelled, and thus set aside the order, issuing a direction to the Inspector General of Police, Armed Forces, to reconsider the punishment and pass fresh orders.

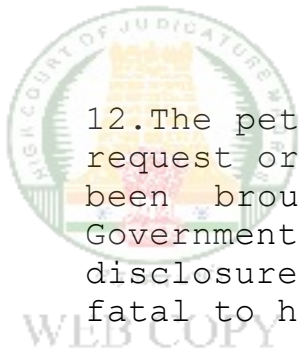
7.Pursuant thereto, the Director General of Police passed an order dated 24.07.2008 imposing punishment of postponement of increment for a period of one year with cumulative effect. He ordered that the out-of-employment period was to be treated as eligible leave including Extra Ordinary Leave (EOL) to the extent necessary and reinstated the petitioner into service.

8.Consequential orders came to be passed by the Commandant reinstating the petitioner in service and treating the out-of-employment period between 23.04.2004 to 23.07.2008 as eligible leave including EOL to the extent necessary.

9.As far as the settlement of suspension was concerned, vide order dated 24.10.2008, the Commandant held, in line with the order of Director General of Police aforesaid, that the period of suspension between 08.12.2003 and 22.04.2008 would be treated as eligible leave including EOL, to the extent necessary. The aforesaid orders have become final.

10.Proceedings were thereafter issued by the respondent authorities upgrading services of Grade I Police Constables upon completion of 10 years of their service to the category of Grade II Police Constable in line with G.O.Ms.No.15, Home (Pol.V) Department, dated 07.01.2010, with all consequential effect and benefits.

11.The petitioner was not a beneficiary of the said upgradation, in view of the restriction imposed under order dated 24.07.2008, wherein out-of-employment period was directed to be treated as leave. On 23.12.2013, the petitioner forwarded a request to the authorities seeking modification of order dated 24.07.2008, such that his suspension and out-of-employment be treated as 'on duty' for all purposes. This request has come to be rejected on 10.02.2014.



12.The petitioner has not disclosed the factum of rejection of his request or passing of the order dated 10.02.2014 and this fact has been brought to the notice of this Court only by learned Government Counsel. It remains to be seen whether the non-disclosure of order dated 10.02.2014 in this writ petition is fatal to his case.

13.The petitioner thereupon filed representation dated 21.06.2016 reiterating the same request and the rejection of the request was reiterated yet again on 20.07.2016 by the Commandant relying upon the earlier rejection dated 10.02.2014, the latter having been duly received and acknowledged by the petitioner on 08.03.2014.

14.The petitioner did not, however, give up and reiterated his request by way of yet another reiteration dated 16.06.2017, conceding that his plea was not for the disbursement of the monetary benefits but solely for the purpose of future promotion and service benefits. On 07.08.2017, the request came to be rejected by the Commandant citing order dated 10.02.2014 and berating him for his repeated requests.

15.On 11.08.2017, there was an upgradation of Grade I Police Constables to the post of Head Constables, and the petitioner's name does not figure in the aforesaid list as well. Vide representation dated 05.01.2018, the petitioner has pleaded before the Additional Chief Secretary to Government, Home Department/R1 for relief similar to what has been sought from this Court. This representation is admittedly pending till date.

16.It is the case of the petitioner that the original order of dismissal dated 23.04.2004 has been substantially modified by order passed on 24.07.2008 and thus, he should not be mulcted with the consequences of the same. He restricts his plea for modification qua service upgradation alone such as promotion, emphasizing that he does not seek any monetary benefits.

17.To crystallize, if the punishment imposed is allowed to run from date of original order, then, the period of ten (10) years would stand completed as on 23.07.2009. He would then hold the eligible and qualifying service for promotion to the higher posts in 2012 itself. The modification sought by way of mandamus is to advance the aforesaid cause.



18. Per contra, the respondents would state that the petitioner has suppressed material information from this Court, which renders him ineligible for the benefit sought. Order dated 10.02.2014 has clearly rejected the petitioner's plea for resettlement of suspension period and since the order has attained finality, there is nothing further to be stated in that regard. Both the petitioner and the authorities are bound by order dated 29.01.2014.

19. Having heard learned counsel in detail, I find that the issues that arise for resolution are (i) whether the petitioner is guilty of suppression of material particulars (ii) whether the non-challenging of order dated 10.02.2014 would stand irrefutably in the way of the relief sought and (iii) whether the petitioner should be given the benefit that he seeks. I now proceed to answer the issues raised, in seriatim.

20. It is a fact that order dated 10.02.2014 rejecting the request for resettlement of suspension period has not been disclosed. However, there is, in Memorandum dated 20.07.2016, a reference to the rejection order dated 10.02.2014 and the aforesaid memorandum is placed on record at pages 28 and 29 of the typed set accompanying the writ affidavit. However both order dated 10.02.2014 and subsequent endorsement dated 07.08.2017 rejecting the petitioner's request dated 16.06.2017 have been produced only by learned Respondent Counsel.

21. In my view, the fact that the petitioner has placed on record Memorandum dated 20.07.2016, referring to rejection order dated 10.02.2014, exonerates the petitioner from the allegation of suppression. However, no doubt, the petitioner as well as learned counsel, ought to have both ensured that the documentation before the Court was complete in all respects, particularly, when a cursory reading of Memorandum dated 20.07.2016 clearly reveals the existence of rejection order dated 10.02.2014. I am of the view that the non-disclosure of the documents as aforesaid only constitutes an error, though one that should have been avoided, not one that amounts to wilful non-disclosure or suppression.

22. Coming to the prayer sought, the same is liable to be rejected as, should I grant the mandamus, it would result in rewriting order dated 10.02.2014, which is an exercise that this Court cannot embark upon. The effect of granting the mandamus sought would be to substitute the discretion of the authority who imposed the punishment with that of the Court. This is clearly impermissible and I draw support from the order of the Division



Bench in W.A.(MD)No.658 of 2007 dated 12.03.2008 passed in the first round of litigation in this very case to this very effect.

23. At paragraph 5, the Division Bench considers the order of the learned Single Judge setting aside the order of punishment on the grounds that the order was non-speaking and did not consider the various contentions raised by the petitioner. While doing so, the learned judge had proceeded to modify the punishment of dismissal from service to stoppage of increment for seven years with cumulative effect.

24. In this context, the Division Bench, while approving the setting aside of the order by the learned Single Judge, states at paragraph 5 as follows:

"5. Having heard the learned counsels at length and having gone through the materials on record, we are of the considered opinion that the learned Single Judge, while exercising the jurisdiction under Article 226 of the Constitution of India, was not expected to come to any final conclusion either relating to the extent of guilt of the present respondent or relating to the punishment imposed and if the learned Single Judge was not satisfied with the reasonings given, the matter should have been remanded to the appropriate authority for fresh consideration. In the present case, we find that the appellate authority, in a very brief and laconic order, has rejected the appeal on the ground that no new point has been raised. Obviously, this cannot be considered as a reasoning in support of a quasi judicial order. Therefore, the conclusion of the learned Single Judge that the orders passed by the appellate authority and the revisional authority were not supported by reason is well founded. However, once such a conclusion is reached, in normal course, the matter is required to be remitted to such authorities for fresh consideration."

Thus, the substitution of the view of the Court upon the view of the punishing authority would not be appropriate and I hence desist from doing so.

25. I am also not inclined to permit the petitioner to challenge order dated 10.02.2014 at this juncture, bearing in mind the elapse of time between the date of order and today, being in excess of seven years. It is not that the petitioner was unaware of the aforesaid order as subsequent rejections of the petitioner's requests have been based upon that very order, cited



by the authority in the subsequent orders. Thus, there is no acceptable justification for condoning the elapse of time in the interim.

26. Coming to the representation filed by the petitioner before R1, learned counsel would rely upon Fundamental Rule (FR) 26 of the Fundamental Rules of Tamil Nadu, that deals with the conditions upon which the service put in, counts for increment in a timescale, drawing attention to Clause (bb) and the proviso below. FR 26, to the extent to which it is relevant is extracted below:

"26. The following provisions prescribe the conditions on which service counts for increments in a time-scale:-

.....

(bb) All leave except extraordinary leave taken otherwise than on medical certificate counts for increments in the time-scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave and would have continued to officiate but for his proceeding on leave. The period which counts for increments under this clause ie, however, restricted to the period during which the Government servant would have actually officiated in the post:

Provided that the Government shall have power in any case in which they are satisfied that the leave was taken for any cause beyond the Government servants control to direct that extraordinary leave shall be counted for increment under this clause."

27. Reference to the FR would be of no assistance to the petitioner, since, as per his categorical statements both in the representations as well as before me, the request of the petitioner is not in relation to increment, but only for upgradation, which does not form the subject matter of FR 26. It is perhaps for this reason that representation dated 03.01.2018 does not refer to this FR at all.

28. This Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

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/ /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

1.The State represented by

The Additional Chief Secretary to Government,
Home Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director General of Police,

Office of the Director General of Police Tamil Nadu,
Mylapore, Chennai - 600 004.

3.The Inspector General of Police,

Armed Police,
Dr.Radhakrishnan Salai, Trichy.

4.The Deputy Inspector General of Police,

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Dr.Radhakrishnan Salai, Trichy.

5.The Commandant,

Tamil Nadu Special Police XI Battalion,
Rajapalayam, Virudhunagar District.

6.The Superintendent of Police,

Virudhunagar, Virudhunagar District.

+1 CC to M/s.D. SIVARAMAN, Advocate (SR-35054[F] dated 18/11/2021)

+1 CC to M/s.SPL GP (SR-34939[F] dated 18/11/2021)

W.P. (MD)No.4964 of 2018

17.11.2021

TP(CO)

SB(10.12.2021) 8P 9C