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W.P(MD)No.20599 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.20599 of 2019

and

W.M.P(MD)No.17241 of 2019

M.Sundarapandian

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Home (Police V) Department,
Fort St. George, Chennai - 9.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai.

3.The Chairman,
Tamil Nadu Uniformed Services,
Recruitment Board,
No.4, 9th Cross Street,
Indira Nagar,
Adayar, Chennai - 20.

4.The Deputy Superintendent of Police,
Vigilance & Anti-Corruption City-II Detachment,
No.6, First Canal Cross Road,
Gandhi Nagar, Adayar,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed in Rc.No.154154/Rect.2(1)/2014, dated 26.06.2019 by the second respondent and quash the same and consequently direct the respondents to fix the seniority of the petitioner in the appropriate place in the list of candidates selected for appointed as Sub-Inspector of Police for the year 1997-1998 and disburse all service and monetary benefits.

For Petitioner : Mr.S.Chellapandian

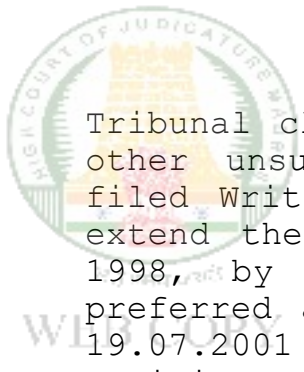
For Respondents : Mr.P.Subbaraj
Government Advocate

**ORDER**

The petitioner has filed the present Writ Petition, to quash the impugned order, dated 26.06.2019, passed by the second respondent and consequently to direct the respondents to fix the seniority of the petitioner in the appropriate place in the list of candidates selected as Sub-Inspector of Police for the year 1997-1998 and disburse all the service and monetary benefits.

2. According to the petitioner, the second respondent issued a Notification, dated 02.04.1998, calling for applications for the post of Sub-Inspector of Police for men and women. The second respondent notified the post Range wise. The petitioner participated in the selection process at Madurai and he was successful in physical test and written examination. Further, according to the petitioner, he has done well in the interview conducted by the Board of interview on 11.12.1998 at Police Training College, Chennai. The petitioner secured 75.68%. But, no appointment order was issued by the respondents.

3. The petitioner came to know that few IPS officers have been prosecuted before a Court of law for forgery and other offences. Hence, the Government ordered enquiry regarding irregularities committed during the course of selection process. Based on the complaint given by the third respondent, a case in Crime No.1/Ac/2002/CC.II, dated 28.02.2002, for the offences under Sections 120-B, 167, 468, 471 r/w 465 and 189 I.P.C and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, was registered against three named persons and some unnamed persons. The third respondent in his compliant has stated that the marks of some of the candidates were reduced and more marks were given to 70 candidates, so as to give appointment. The respondents fixed 78.50 as cut-off mark for Madurai Range in B.C Category and selected the candidates, who have secured more than 78.50 marks in Madurai Range. The said cut-off mark was over and above the cut-off mark fixed by all other ranges. At the same time, B.C candidates, who have secured below 78.50 in other ranges, have been selected, particularly, in Ramnad range, the cut-off mark was fixed as 65.18 and B.C candidates, who have secured over and above 65.18 were selected, but candidates in other ranges, who secured over and above 65.18 marks, were disqualified. The method adopted by the respondents was discriminative in nature. Hence, some unsuccessful B.C candidates, who were participated in the selection and secured more than 65.18 marks, filed O.A.No.9825 of 1998, before the Tamil Nadu Administrative Tribunal, challenging the Range level selection process. The Tamil Nadu Administrative Tribunal, by an order, dated 19.07.2001, directed the respondents to appoint the candidates, who have secured more than 65.18 marks. The said order was complied with by the respondents by appointing the candidates, who have approached the Tribunal. The petitioner and others filed O.A.No.207 of 2004 before the Tamil Nadu Administrative

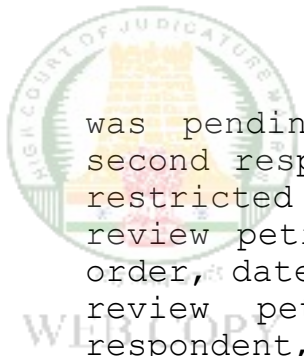


Tribunal claiming the same relief. On the other hand, some of the other unsuccessful candidates in different categories have also filed Writ Petitions before the Principal Bench of this Court to extend the order of Tribunal, dated 19.07.2001 in O.A.No.9825 of 1998, by following state-wise seniority. The respondents also preferred an appeal, challenging the order of the Tribunal, dated 19.07.2001 in O.A.No.9825 of 1998. O.A.No.207 of 2004 filed by the petitioner and other matters were transferred to the Principal Bench of this Court and taken up along with the similar Writ Petitions. The Division Bench of this Court, by an order, dated 25.02.2004, made in W.P.No.17639 of 2001 etc., batch [The State of Tamil Nadu, Rep. by its Secretary Vs. S.Mariappan and another], directed the respondents 1 and 3 herein to consider the case of the candidates, who have approached the Court within one year from the order of the Tribunal, dated 19.07.2001, in O.A.No.9825 of 1998 and rejected other cases on the ground of delay and laches. Challenging the same, the petitioner and others approached the Hon'ble Apex Court by filing S.L.P(C)No.21828 of 2006.

4.The Hon'ble Apex Court, by Judgment, dated 07.08.2014, in Civil Appeal No.7667 of 2014, held that the petitioner and others are entitled to be appointed as Sub-Inspector of Police based on their merits. But, the Hon'ble Apex Court fixed the seniority at the bottom of the regularly selected candidates as Sub-Inspector of Police as on the date of the order of the Hon'ble Apex Court, viz., 07.08.2014, recording the consent given by the learned counsel for the petitioner. According to the petitioner, the consent given by his counsel was without his knowledge. Based on the order of the Hon'ble Apex Court, the petitioner was appointed as Sub-Inspector of Police on 15.03.2015.

5.According to the learned counsel appearing for the petitioner, only the State Government can fix the seniority of selected candidates. The order of the Division Bench is of the year 2004 and the Hon'ble Apex Court passed the order only in the year 2014. The delay in deciding the cases by the Court will not be a ground for denying the seniority of the petitioner. As per the order of the Division Bench of this Court, dated 25.02.2004, the Government issued G.O(Ms)No.534, Home (Police-3) Department, dated 06.07.2009, granting seniority to 49 persons, based on their marks obtained in the final examination. The petitioner is also entitled to such benefit as that of his batch mates.

6.In such circumstances, the petitioner made a representation to the respondents on 24.05.2016, claiming seniority to be fixed along with 49 persons, who were given seniority, vide G.O(Ms)No.534, Home (Police-3) Department, dated 06.07.2009. The petitioner's representation was rejected by an order, dated 31.08.2016, by the second respondent. Challenging the same, the petitioner filed a Writ Petition in W.P(MD)No.19544 of 2016. While the said Writ Petition



was pending, he filed review petition on 06.08.2018 before the second respondent to review the earlier order, dated 31.08.2016 and restricted the prayer in W.P(MD)No.19544 of 2016, to dispose of his review petition and the said Writ Petition was disposed of, by an order, dated 05.10.2018, directing the respondents to dispose of the review petition within a period of two months. The second respondent, without considering the case of the petitioner, erroneously rejected the review petition on 26.06.2019. Challenging the said rejection order, the petitioner has come out with the present Writ Petition.

7.The respondents filed counter-affidavit extensively mentioning the facts relating to the case of the petitioner from the year 1998.

8.The learned Government Advocate appearing for the respondents submitted that the petitioner was appointed, as per the order of the Hon'ble Apex Court, dated 07.08.2014 in Civil Appeal No.7667 of 2014 and the seniority of the petitioner was fixed, as per the order of the Hon'ble Apex Court, wherein, it has been categorically stated that the petitioner and others will be placed at the bottom of the regularly appointed candidates as Sub-Inspector of Police on the date of the order of the Hon'ble Apex Court, viz., 07.08.2014. The candidates selected along with the petitioner have again filed Review Petition (C) Nos.2872 to 2876 of 2014 in Civil Appeal Nos.7668 to 7672 of 2014 for reviewing the common order, dated 07.08.2014. The Hon'ble Apex Court, by an order dated 06.05.2015, dismissed the review petitions. The learned Government Advocate further submitted that one V.Jeyabalan, similarly placed person, gave a representation, dated 25.04.2016 for the very same relief, as claimed by the petitioner. The said request was rejected on 31.08.2016 as that of the petitioner. Aggrieved by the said rejection order, the said V.Jeyabalan has filed W.P.No.44805 of 2016 before the Principal Bench of this Court and this Court, by an order, dated 03.01.2017, dismissed the said Writ Petition at the admission stage itself relying on the order of the Hon'ble Supreme Court.

9.The petitioner has submitted a representation on 24.05.2016 and also filed review petition on 06.08.2018 before the second respondent, wherein he requested to fix his seniority along with 1997-98 batch candidates. The seniority of the petitioner was fixed only based on the orders of the Hon'ble Apex Court. The Hon'ble Apex Court, by an order, dated 06.05.2015, dismissed the review petition (C)Nos.2872 to 2876 of 2014 filed by the individuals against the order of the Hon'ble Apex Court in Civil Appeal Nos.7668 to 7672 of 2014, dated 07.08.2014. In view of the same, the present impugned endorsement, dated 26.06.2019, has been passed by the second respondent, rejecting the review petition of the petitioner. The impugned endorsement is valid and legal, which is passed in



consonance with the order of the Hon'ble Apex Court and prayed for dismissal of the Writ Petition.

10. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the entire materials available on record.

11. From the above rival submissions and materials extracted above, the following are the admitted facts:-

The respondents issued Notification in the year 1998 for direct recruitment for the post of Sub-Inspector of Police and mentioned number of posts in different ranges. The petitioner participated in the selection process and obtained 75.68 marks. The respondents fixed cut-off marks in range wise. In Madurai range, cut-off mark was fixed as 78.50. The petitioner was not selected, as he obtained only 75.68 marks. For Ramnad range, cut-off mark for B.C candidate, was fixed at 65.18. The candidates, who have obtained 65.18 and above were appointed in Ramnad Range. The candidates, who have obtained more than 65.18 in other ranges were disqualified and who were not selected, filed O.A.No.No.9825 of 1998 before the Tamil Nadu Administrative Tribunal. By an order, dated 19.07.2001, the Tribunal allowed the said O.A and directed the respondents to appoint the applicants therein. The respondents implemented the order of the Tribunal. Some of the unsuccessful candidates filed O.A before the Tribunal and Writ Petitions before the Principal Bench of this Court seeking similar relief. The petitioner and others also filed O.A.No.207 of 2004, after three years of the order of the Tribunal. The respondents also filed Writ Appeal, challenging the order of the Tribunal, in O.A.No.9825 of 1998, dated 19.07.2001. All the O.As' pending before the Tribunal were transferred to the Principal Bench of this Court and all the matters were taken up together along with the Writ Petitions pending before the Principal Bench of this Court. The Division Bench of this Court held that as far as Original Applications and Writ Petitions filed by the unsuccessful candidates are concerned, the Division Bench granted the relief of appointment only those candidates, who have approached within one year from the date of order of the Tribunal, viz., 19.07.2001. The claim of the others, including the petitioner, were rejected on the ground of delay and laches by Judgment, dated 25.02.2004. The petitioner filed S.L.P(C)No.21828 of 2006 and 10 other similarly placed persons have also filed S.L.Ps. The Hon'ble Apex Court, by an order, dated 07.08.2014, disposed of all the S.L.Ps', directing the respondents to appoint the petitioner and others as Sub-Inspector of Police and



fix the seniority below all the regularly selected Sub-Inspector of Police, as on that date.

Now, the petitioner is seeking fixation of his seniority similarly on par with his batch mates of the year 1997-98.

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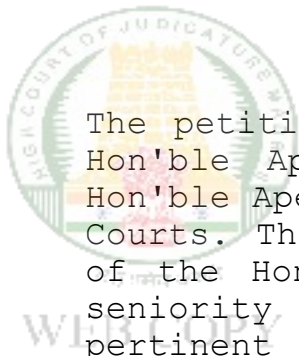
12.To decide this issue, it is relevant to refer the portion of the Judgment of the Hon'ble Apex Court in Civil Appeal No.7667 of 2014 (Arising out of SLP(C)No.21828 of 2006], dated 07.08.2014, with regard to the seniority. The said portion of the Judgment reads as follows:-

"During the course of hearing, a serious issue arose as to whether the above mentioned 11 persons, should be granted seniority with effect from the same date persons originally selected against the posts of Sub-Inspector (through the selection process for the years 1997-98] were appointed. Learned counsel for the above mentioned 11 appellants very fairly state, that they would have no objection if the appointment of these 11 appellants, were ordered to be made with immediate effect, in that, they would be extended the benefit of seniority at the bottom of the regularly appointed Sub-Inspectors as of today. Ordered accordingly."

From the above Judgment of the Hon'ble Apex Court, it is clear that the issue whether fixing seniority of the petitioner on par with their batch mates of 1997-98 was taken up for consideration, the learned counsel appearing for the petitioner and others consented for appointing the petitioner and others as Sub-Inspector of Police and placing them in the seniority list at the bottom of the regularly appointed Sub-Inspectors as on the date of the order of the Hon'ble Apex Court. The Hon'ble Apex Court recording the said consent and ordered accordingly.

13.The learned counsel appearing for the petitioner now submitted that the said consent was given without the knowledge of the petitioner. At this stage, it is pertinent to note that some of the candidates filed Review Petition (C)Nos.2872 to 2876 of 2014, to review the order fixing the seniority at the bottom of the Sub-Inspector of Police as on that date. The said review petition was dismissed on 06.05.2015, confirming the order, dated 07.08.2014 in Civil Appeal Nos.7668 to 7672 of 2014, placing the petitioner and others at the bottom of the seniority list of regularly selected Sub-Inspector of Police as on the order of the Hon'ble Apex Court.

14.In view of this fact, it is not open to the petitioner now to contend that consent was given before the Hon'ble Apex Court without his knowledge and therefore, the same is not binding on him.



The petitioner, in fact, is seeking to set aside the order of the Hon'ble Apex Court for fixing his seniority. The order of the Hon'ble Apex Court is binding on all the High Courts and Subordinate Courts. This Court has no power or competent to overrule the order of the Hon'ble Apex Court and direct the respondents to fix the seniority of the petitioner on par with his batch mates. It is pertinent to note that one V.Jeyabalan, similarly placed like the petitioner, gave a representation, dated 25.04.2016 and the said representation was rejected by the respondents on the same day, when the petitioner's representation was also rejected on 31.08.2016. This Court, by an order, dated 03.01.2017, referring to the order of the Hon'ble Apex Court in Civil Appeal Nos.7668 to 7672 of 2014, dated 07.08.2014, dismissed the Writ Petition filed by the said V.Jeyabalan. The petitioner also filed W.P(MD)No.19544 of 2016, challenging the order, dated 31.08.2016 and also filed a review petition before the second respondent to review the order of rejection, dated 31.08.2016. When the Writ Petition was taken up for hearing, the learned counsel appearing for the petitioner restricted the claim of the petitioner to dispose of the review petition in the said Writ Petition and by an order, dated 05.10.2018, the said Writ Petition was disposed of, directing the respondents to dispose of the review petition within a period of two months.

15.In view of the order of the Hon'ble Apex Court fixing the seniority of the petitioner and others at the bottom of the regularly appointed Sub-Inspectors as on the order of the Hon'ble Apex Court, viz., 07.08.2014 and dismissal of the Writ Petition in W.P.No.44805 of 2016, filed by one V.Jeyabalan, for the very same relief, there is no error in the impugned endorsement of the second respondent. Hence, the Writ Petition filed by the petitioner is devoid of merits and the same is liable to be dismissed.

16.In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

ps

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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Home (Police V) Department,
Fort St. George, Chennai - 9.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
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3.The Chairman,
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4.The Deputy Superintendent of Police,
Vigilance & Anti-Corruption City-II Detachment,
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Chennai.

+1 CC to M/s.S.CHELLAPANDIAN, Advocate (SR-21476[F] dated
07/07/2021)

+1 CC to M/s.SPL GP (SR-21504[F] dated 07/07/2021)

W.P (MD) No.20599 of 2019
06.07.2021

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