



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.20330 of 2021

A.K.Kuppusamy

... Petitioner

v.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Home Department,
Secretariat,
Chennai-600 009.

2.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.

3.The Commissioner of Police,
Trichirappalli City,
Trichirappalli District.

4.The Superintendent of Police,
Trichirappalli District,
Trichirappalli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent pertaining to its order bearing Rc.No.29077/NGB.III(2)/2017 dated 22.06.2019 and to quash the same and consequently direct the respondents to notionally promote the petitioner as Special Sub Inspector of Police on completion of 25 years of service as per G.O.Ms.No.15, Home Department dated 07.01.2010 and in the light of the Division Bench judgment rendered in W.A(MD)No.1506 of 2011 etc., batch dated 17.06.2013 together with all consequential monetary and service benefits forthwith.

For Petitioner : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.S.Shaji Bino,
Special Government Pleader

**ORDER**

This writ petition has been filed by the petitioner challenging the order passed by the second respondent dated 22.06.2019 and for a direction to the respondents to notionally promote the petitioner as Special Sub-Inspector of Police on completion of 25 years of service as per G.O.Ms.No.15, Home Department, dated 07.01.2010 and in the light of the Division Bench Judgment rendered in W.A(MD)No.1506 of 2011 etc., batch dated 17.06.2013.

2. The case of the petitioner is that he was appointed as Grade-II Police Constable in the year 1976 and after serving 35 years of service in the Tamil Nadu Police Department, he retired from service as Special Sub-Inspector of Police on 31.05.2011. As per the Government Order in G.O.Ms.No.844, Home (Pol.V) Department, dated 03.06.1997, the petitioner is liable to be promoted as Special Sub-Inspector of Police on completion of 25 years, however, it has not been provided to the petitioner. According to the petitioner, placing reliance upon the above said Government Order and the Government Order in G.O.Ms.No.15, Home Department, dated 07.01.2010, similarly placed persons like that of the petitioner have filed writ petitions before this Court in W.P(MD)No.331 of 2011, etc., batch and the same were ordered on 30.06.2011. Challenging the said order, the Government has filed appeals in W.A(MD)Nos.1506 of 2011 etc., batch. The Division Bench of this Court, by order dated 17.06.2013, extended the benefit of G.O.Ms.No.844 Home (Pol.V) Department, dated 03.06.1997 to all police personnel, who have completed 25 years of service. The petitioner is also entitled for that relief as that of the similarly placed other persons and therefore, he made a representation to the authorities on 04.07.2015, but the same was not considered. Therefore, he filed a writ petition before this Court in W.P(MD)No.3347 of 2017 for a mandamus directing the respondents to consider his representation dated 04.07.2015 for notional promotion and retirement benefits in the light of the G.O.Ms.No.844, Home Department, dated 03.06.1997 and G.O.Ms.No.15, Home Department, dated 07.01.2010.

3. This Court, by order dated 14.03.2019, disposed the writ petition without expressing any opinion on the merits of the petitioner's claim, by directing the second respondent to consider the representation of the petitioner, dated 04.07.2015 and to pass appropriate orders on merits and in accordance with law within a period of eight weeks.

4. Accordingly, the second respondent / Director General of Police dated 22.06.2019, has passed an order, rejecting the petitioner's claim, which is impugned in this writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and also perused the order impugned in this writ petition.



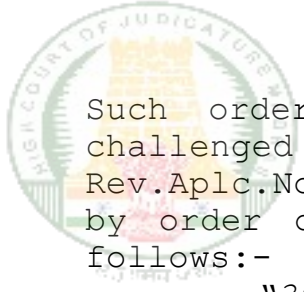
6. Considering the problem of stagnation of police personnel, without promotion, the Government had introduced a scheme of up-gradation in a phased manner vide G.O.Ms.No.1681, Home Department (Pol.V) Department, dated 12.10.1992 and as per which, up-gradations were made as follows:-

Year	No. of Gr.II Posts to be upgraded as Gr.I Posts	No. of Gr.I Posts to be upgraded as HC Posts
1992-93	9000	500
1993-94	4000	700
1994-95	4000	700
1995-96	4000	800
Total	21,000	2,700

The upgradation was ordered to be done once a year in October. It was further ordered that promotion to these upgraded posts should be based on the prescribed tests and that the direct recruitment of Gr.I PCs be filled up through promotions only. This GO does not specify automatic upgradation at the end of specified number of years of service.

7. Thereafter, time bound promotion has been provided vide G.O.Ms.No.844 Home (Pol.V) Department, dated 3.6.1997 that Grade-II Police Constables, who had completed 10 years of service, are promoted as Grade-I Police Constables and those who have completed total 15 years of service as Grade-I Police Constables are promoted as Head Constable. Vide G.O.Ms.No.937, Home (Pol.III) Department dated 21.07.1998, the scheme of upgradation has been extended upto Special Sub-Inspector of Police on condition that the Head Constables, who had completed 10 years of service, with a total service of 25 years, are upgraded as SSI of Police subject to the conditions that they should not have any punishment in the preceding 5 years and should not be facing any charge under Rule 3(b). This power of upgradation was also delegated to the Superintendent of Police and Commissioner of Police vide G.O.Ms.No.15, Home (Pol.V) Department, dated 07.01.2010 to upgrade Grade-II Police Constables as Grade-I Police Constables on completion of 10 years of service from the first of the month succeeding the date of completion of ten years and to upgrade Grade-I Police Constables as Head Constables on completion of 5 years of service in the rank of Grade-I Police Constable from the 1st of the month succeeding the date of completion of 5 years.

8. However, certain false representations have been made before this Court that on completion of 25 years of service, a police constable is entitled to be promoted as SSI and based on that, this Court has also passed some orders, which were referred to by the petitioner in his representation as well as in this writ petition.



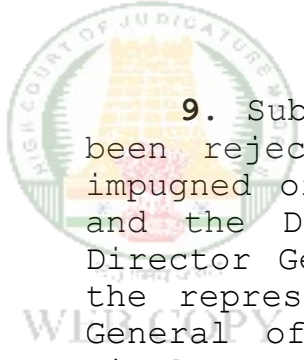
Such orders, which were passed on wrong representations, were challenged before this Court and Review Applications in Rev.Aplc.No.72 of 2015 etc., batch came to be filed and this Court by order dated 22.03.2017 has rectified the mistake and held as follows:-

"30. ...We have already held that since the Government orders in question cannot have retrospective effect and that the writ petitioners cannot claim that the benefit of "deemed promotion" by reckoning the date of their initial entry into police service to claim the promotion to the post of Special Sub Inspector of Police much earlier.

31. In the facts and circumstances of the present case in the light of the Government orders operating the field and materials placed before us by the learned Special Government Pleader, we are of the categorical view that the writ petitioners cannot claim deemed promotion to the post of Special Sub Inspector of Police and the attendant service and monetary benefits. We, therefore, left with no other option but to respectfully disagree with the decision rendered by the earlier Division Bench of this Court in similar batch of writ petitions.

32. We wish to point out that we passed the common order dated 23.04.2015 in W.A(MD)No.348 to 357 of 2015 batch of cases on the submission made by the learned counsel that the issue involved is covered by the earlier Division Bench decision dated 17.06.2013 made in W.A(MD)No.1506 of 2011. The niceties of the legal issues and the real import and purport of the Government Orders were omitted to be brought to our notice. We reiterate that it was only on the ground and in this manner that several police Constables, most of them retired from service long back, reaped monetary benefits that was not legitimately due to them under the Government Orders concerned. In such circumstances, we cannot blindfold ourselves by the earlier Division Bench decision to allow the claim of the present writ petitioners. We are thoroughly convinced in the facts and circumstances of the case that the Government has made out sustainable grounds for reviewing our earlier common order dated 23.04.2015 in W.A(MD)No.348 to 357 of 2015.

In the result, while set aside the common order, dated 28.11.2013 passed by the learned Single Judge in W.P(MD) No.15078 of 2010 etc., batch of writ petitions, we allow all the Review Applications and the writ appeals filed by the Government. There will be no order as to costs. Consequently connected miscellaneous petitions are also closed."



9. Subsequent to this judgment, several such other claims have been rejected by this Court, which is also incorporated in the impugned order. 25 such rejection orders passed by the Writ Court and the Division Bench of this Court were incorporated by the Director General of Police, in the impugned order, while rejecting the representation of the petitioner. The Office of the Director General of Police can reject the petitioner's representation by simply saying that he is not entitled for the relief as per the Government Orders of upgradation and that the issue was also settled by this Court that those orders are prospective and not retrospective. Instead, they have taken efforts, passed the impugned order running to pages and have also referred to 25 orders passed by the Division Bench as well as Single Bench of this Court rejecting such requests.

10. Reasoning is a basic requirement for any order. Any order passed without assigning reasons is like body without a soul. In fact, most of the orders that are tested before this Court are passed in a cryptic manner without assigning any reasons and that is the reason why, the Courts are entertaining the litigations. Here, in the case on hand, a well reasoned order was passed by the second respondent and this Court, though feels that the reasoning / explanation could have been reduced to some extent, is satisfied with the same.

11. In such view of the matter and in view of the settled position of law, this Court is not inclined to entertain this petition and the same is liable to be dismissed in the admission stage itself.

12. Admittedly, a mistake has crept-in while passing the orders in W.A.(MD)No.1103 of 2012, etc., batch, dated 17.06.2021, which paved the way for the petitioner to file this writ petition. This mistake was accepted and rectified by the Division Bench of this Court, in the aforesaid review application. While allowing the review application, the Division Bench has quoted the observation of another Division Bench of this Court as follows:-

"35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in A.R.Antulay v. R.S.Nayak, AIR 1988 SC 1531. It was observed that in the said decision that in rectifying an error, no personal inhibitions should debar the Court because no person should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by Writ Petitions getting allowed at the stage of admission, and (2) by getting those



Orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the Scale of Pay to be granted for Selection and Special Grades....."

13. But, the Court alone cannot be held responsible for the mistake. Courts are taking a decision based on the submissions / facts / materials put forth before it by the respective Counsels. Therefore, the Counsel, who appeared in those writ petitions, including the Government Counsels, are also liable to take the responsibility. As an officer of the Court, every Advocate, irrespective of their designation, whether private Counsel or Government Counsel, is expected to place the correct facts before the Court.

14. If any false representation is made before the Court by any of the Counsel, action can be initiated as against them and the matter can even be referred to the Bar Counsel for taking appropriate action. However, we are not extending our arms to such extent, which is being taken as an advantage by some Counsel.

15. In the case on hand, an attempt was made to get the relief by referring the orders passed in W.A.(MD)No.1506 of 2011, etc., batch, dated 17.06.2013. But the fact remains that the orders which were passed based on W.A.(MD)No.1506 of 2011 were reviewed and also got set aside in Rev.Aplw.Nos.70 of 2015, etc., batch, dated 22.03.2017. This review application order and 25 subsequent rejection orders passed by this Court were referred by the Director General of Police in the impugned order of rejection itself.

16. Without even verifying those orders, the writ petition came to be filed in a mechanical manner. The petitioner may not be aware of the legal position and the orders passed by this Court, which were referred in the impugned order. His colleagues, who are similarly placed, have got the benefits and therefore, he is attempting to get the same. He may even attempt to get the relief by tweaking the facts. But, a Counsel, a learned Advocate, is to verify the same and provide a proper advise to his client. A duty is cast upon the Counsel not only to his / her client, but to the Court as well. In this regard, a Full Bench of this Court, **In Re First Grade Pleader, Vellore**, reported in **AIR 1931 Madras 422**, has observed as follows:

"It is not the duty of a legal practitioner blindly to follow every instruction of his client. That is an entire misapprehension of the duty of a legal practitioner. He has not only got a duty towards his client but he has got a duty towards the Court, and it is his duty to see that the case is fairly and honestly conducted. He must not trick or deceive the Court or attempt to gain for his client an

advantage by dishonest means."

17. This Court hopes and trusts that the Counsel understand the responsibility cast upon them and discharge their duty diligently. They should come with proper petition and proper prayer. The Bar Council of Tamil Nadu and Puducherry is expected to issue necessary circulars sensitizing the learned Advocates of their responsibility and the need to do their homework before filing any petition.

18. The mistake lies not only on the part of the Courts and Advocates, but also on the Department. A Division Bench of this Court, in **State of Tamil Nadu, Rep. by Secretary, Department of School Education v. M.Ruby and Another [CMP(MD)No.2892 of 2020 in W.A. (MD)No.SR67917 of 2019, dated 06.11.2020]**, in a condone delay petition, wherein Myself was a party to the order, has held as follows:

"8. In fact, the trend of filing the appeal belatedly, now-a-days, has become a habit on the part of the officials for the reasons best known to them, even though the Government has to pay heavy costs in case the delay is condoned or to spend huge money by implementing the order passed by the Courts. Sometimes, contempt petitions are also filed and the order passed in the writ petition itself would not have been brought to the notice of the authority, who is required to comply with the order. Only at the eleventh hour, if the order is brought to the notice of the concerned authorities, who are required to comply with the same, at the stage of contempt, they would eventually comply with the order, fearing order in the contempt petition, even though the order requires a re-consideration in the appeal. It is learnt that a few unscrupulous corrupt elements, in the Department itself, by deliberate design with the connivance of the litigants, get the orders implemented, which are required to be assailed in the appeal (emphasis supplied), without filing the appeal in time and bringing to the notice of the higher officials only when orders in contempt petitions are to be passed."

19. By borrowing the words of the Hon'ble Division Bench, this Court reiterates that the correctness of the institution lies only in its courage and ability to correct its mistakes. Therefore, this Court would like to call for a report from the respondents as to the steps / action, if any, taken by them pursuant to the order made in Rev.Aplc(MD)Nos.72 of 2015, etc., batch, dated 22.03.2017, as regards the persons / beneficiaries who were granted the benefit based on the judgment in W.A.(MD)No.1506 of 2011, etc., batch, which was passed on a misplaced representation and as regards the officials of the Department who have sanctioned such benefits without obtaining any opinion.

20. In the result, this writ petition stands dismissed. For the



report of the respondents, let the matter be listed in the **third week of January, 2022.**

Sd/-

Assistant Registrar (CS I)

// True Copy //

WEB COPY

/ /2022

Sub Assistant Registrar(CS)

am/gk

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 Secretary,
Government of Tamil Nadu,
Home Department,
Secretariat, Chennai-600 009.
- 2.The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai-600 004.
- 3.The Commissioner of Police,
Trichirappalli City, Trichirappalli.
- 4.The Superintendent of Police,
Trichirappalli District, Trichirappalli.
- 5.The Secretary,
Bar Council of Tamil Nadu & Puducherry,

Copy to:

The Section Officer, Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to SPL.GP(SR.No.35355)

W.P(MD)No.20330 of 2021
19.11.2021

MGJ(03.01.2022) 8P 8C