



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.02.2021

CORAM:

WEB COPY

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL**

W.A(MD)NO.691 OF 2017
and
C.M.P(MD)No.5402 of 2017

1.The Government of Tamil Nadu,
represented by its Secretary to Government,
Home Department, Fort St.George,
Chennai - 600 009.

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

3.The Commissioner of Police,
Madurai City.

:Appellants/Respondents

.vs.

S.Chandrasekaran

: Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.18657 of 2013, dated 26.11.2013.

PRAYER IN WP(MD). 18657/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, in the nature of writ to direct the Respondents to fix the seniority and give the notional promotion with monetary benefits, including revision of salary and Pensionary benefits to the petitioner.

For Appellants : Mr.K.P.Narayanakumar
Special Government Pleader

For Respondent : Mr.K.M.Boopathy, Advocate

JUDGMENT

[Judgment of the Court was made by PUSHPA SATHYANARAYANA,J.]

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This Writ Appeal is filed by the Government against the order passed by this Court in W.P(MD)No.18657 of 2013, dated 26.11.2013.



2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The issue in the Writ Petition relates to the claim of upgradation of Grade-I Police Constable and Special Sub-Inspector on the basis of the Government Orders governing them. There seems to have been batch of Writ Petitions which were disposed of by the learned Single Judge by allowing the Writ Petitions with a direction to the respondents to comply with the norms reiterated in W.A(MD) No.1506 of 2011 etc., batch, dated 17.6.2013, in the light of the Government Orders referred to above and the subsequent promotion as well as the seniority of the Petitioners. Aggrieved by the same, the present Writ Appeal is filed. In the mean-while, a batch of Writ Petition was dealt with by the Division Bench itself in W.P.No.3552 of 2011 etc batch, wherein, a common order was passed on 23.10.2019, as follows:

'4. Considering the very same issue, the Division Bench of this Court in W.A.Nos.47 to 51 of 2014 etc batch by an order, dated 30.8.2019, has held that the Government Orders concerned are not to be applied with retrospective operation. Further, the Division Bench has held as follows:

'11. The Government Orders must contain a clear indication for giving it retrospective operation. It would not be possible to give an interpretation to the Government Orders by treating it as one giving retrospective effect, unless there is a clear recital with regard to such retrospectivity. There is no question of bringing the theory of deemed retrospective operation of a Government Order, when the relevant order is crystal clear that the intention is only to give effect prospectively. The interpretative process could not be undertaken to give a different meaning or effect to the Government Orders.

12. The Honourable Supreme Court in Union of India .vs. Shankar Law Soni and another (2010(3) Scale 774), observed that a decision to grant a certain concession or a certain benefit and the conditions for their grant are a matter for the administrators alone and the Court should not interfere in the matter on the premise that it was of the opinion that some of the conditions imposed were not justified.

13. The Policemen are claiming promotion as Grade-I Police Constable, Head Constable and Special Sub-Inspector of Police immediately on completion of



10, 15 and 25 years of service. There was no indication in any of the Government Orders, more particularly, in G.O.Ms.No.15, Home (Pol.V) Department, dated 7.1.2010 to claim deemed up-gradation or retrospective up-gradation. The policemen are interpreting the Government Orders as if there was a decision in their favour to grant retrospective up-gradation by counting the entire service, right from the intitial entry. The Government made it very clear in the relevant orders referred to above that in order to claim up-gradation as Special Sub-Inspector of Police, Police men must have completed 10 years of service in the rank of Head Constable. The policemen wanted the Government Orders to be interpreted in such a way that upon completing a fixed period, they would get up-gradation as Grade-I Constable automatically and thereafter, as Special Sub-Inspector of Police. No such indication is found in any one of the Government Orders extracted above. We are therefore of the view that the appellants are correct in their contention that the Writ Court committed a fundamental error while interpreting the Government Orders and the same resulted in allowing the writ petitions filed by the respondents.

14.We fully concur with the views expressed by the Madurai Bench of this Court in its order in Review Application(D)Nos.70 of 2015 etc., batch.

15.The intra Court appeals filed by the State are allowed. The connected appeals filed by the police men are dismissed. No costs.

5.Challenging the said order, some of the Writ Petitioners have filed Special leave Petitions in S.L.P.Nos.6980 to 6996 of 2018, which are pending consideration before the Apex Court. However, the review applications filed by some of the Petitioners are yet to be taken on file.

6.All the learned counsels appearing for the respective parties are in agreement that the aforesaid judgment would govern these cases also. However, the learned counsels appearing for the petitioners submitted that liberty may be given to file review applications, if the Special Leave Petitions, which were filed on the similar issue, are allowed in favour of the Petitioners therein. A further request has been made that in the event, the review applications being allowed involving the same issue, the Petitioners will have to be given an opportunity to file review applications.



7. We find that the submissions made by the learned counsel appearing for the Petitioners merit acceptance while holding that the relief sought for in all these Writ Petitions is covered by the order of the Division Bench of this Court in W.A.Nos.47 to 51 of 2014 etc., batch, referred supra. Accordingly, while dismissing the Writ Petitions, we make it clear that subject to the result of either Special Leave Petitions or Review Applications, the Petitioners are at liberty to file Review Applications before this Court within a period of eight weeks from the date of receipt of copy of such an order. If those applications are filed within the aforesaid time, the Registry is directed to number them without insisting the application for condonation of delay.''

4. The learned Special Government Pleader informs this Court that Special Leave Petitions are still pending. Therefore, the order passed by the earlier Division Bench, in W.P.Nos.3552 of 2011 and batch of cases, dated 23.10.2019 would enure to the present Writ Appeal also and the liberty that is given to the Writ Petitioner to proceed further, subject to the outcome of the Special Leave Petition would stand. It is also stated that only this Writ appeal is singled out which has been filed against the order made in W.P(MD)No.18657 of 2013. The other Writ Appeals filed by the Government were disposed of and few of them were transferred to the Principal Bench and the same are said to be pending.

5. In the light of the above, the Writ Appeal is disposed of following the earlier passed in W.P.Nos.3552 of 2011 and batch of cases, dated 23.10.2019. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

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represented by its Secretary to Government,
Home Department, Fort St.George,
Chennai - 600 009.

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

3.The Commissioner of Police,
Madurai City.

+1. C.C. to SPECIAL GOVERNMENT PLEADER SR.No.3076

JUDGMENT MADE IN
W.A(MD) NO.691 OF 2017
and
C.M.P(MD) No.5402 of 2017
01.02.2021

vsn

TK/SAR/10.02.2021/5P/5C