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W.A.Nos.30 of 2022 etc.,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.10.2022

Judgment Pronounced on : **20.10.2022**

CORAM :

**THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.Nos.30, 40, 54, 53, 48, 41, 49, 51 and 45 of 2022
& C.M.P.Nos.469, 470, 490, 489, 413, 414, 518, 520, 488, 487, 475, 477,
511, 510, 508, 507 and 468 of 2022

W.A.No.30 of 2022:

1. The Principal Secretary to Government,
Home Department, Secretariat,
Fort St.George,
Chennai - 9.
2. The Director General of Police,
Chennai - 600 004. .. Appellants

Versus

S.John Benjamin .. Respondent

Prayer in W.A.No.30 of 2022 : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 16.10.2019 in W.P.No.13873 of 2009.



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For Appellants : Mr.P.Kumaresan,
(in all Appeals) Additional Advocate General
Assisted by Mr.M.Rajendran,
Additional Government Pleader

For Respondent : Mr.K.Ravi Anantha Padmanabhan
(in all Appeals)

COMMON JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

The respondents/writ petitioners, who were given appointment as Sub-Inspectors of Police in the year 2000, claimed seniority along with their batch mates, who were selected pursuant to the selection of the year 1994-1995. The said claim is allowed by the learned Single Judge by an order, dated 16.10.2019 by allowing the Writ Petitions filed by the respondents/writ petitioners. Aggrieved by the same, the state authorities are in appeal in these proceedings.

2. The uncontroverted factual background of these cases is as follows:-

In the year 1993-1994, a notification was issued calling for applications to fill up 500 vacancies in the cadre of Sub-Inspector of Police by way of direct recruitment. Subsequently, by a letter of Government,



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dated 01.09.1995, the vacancies were increased to 1100. After the process of recruitment, 2921 candidates were found eligible for viva voice test. Taking into account the total number of vacancies, being 1100 and in additional 20% thereof i.e., 220, for the possibility of candidates failure in medical test, Police verification etc., a total number of 1320 candidates were called for medical examination and Police verification. But, however, after completion of the process of the 1320 candidates, 114 candidates were found unfit, leaving 1206 candidates being fit for appointment. Of the 1206 candidates, the top ranking 8 candidates belonging to S.C, S.T communities were adjusted against backlog vacancies. Of the balance of 1198 candidates, a gradation list, based on their communal rotation, was drawn up and accordingly, 1092 candidates were appointed . Thus, the entire 1092 vacancies were filled up.

3. Of the candidates who were selected, initially, appointment orders were issued for 500 candidates which included the 8 candidates, who were selected against the backlog vacancies and were sent for training as the first batch on 01.03.1996 and the remaining 600 candidates were sent for



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training in the second batch on 02.06.1997. Thus, the remaining 98 candidates were not appointed.

4. The said candidates which included the respondents/writ petitioners filed O.A.Nos.989 of 1998 etc., and the Tamil Nadu Administrative Tribunal dismissed all the Original Applications filed by them by a judgment, dated 10.09.1998. After the judgment of the Tamil Nadu Administrative Tribunal had become final, considering the request of the Director General of Police, dated 10.07.1999, the Chief Minister of Tamil Nadu made an announcement while moving the Police demand for the year 1999-2000 on the floor of the Assembly on 10.05.1999 that those 98 candidates, who were left out during 1994-1995 selection, would be given appointment during the next recruitment by relaxing age, rules etc., wherever necessary.

5. Pursuant thereto, the Secretary to Government, Home (Police. III) Department vide G.O.MS.No.1281, dated 22.09.1999, directed that the 98 candidates, who had been selected during the year 1994-1995 as Sub-Inspectors of Police, in excess of notified vacancies of 1100, be appointed



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as Sub-Inspectors of Police by relaxing the Rules relating to age, communal rotation, sports quota and 30% reservation for women as one time measure.

Paragraph No.5 of the said G.O further reads as follows:-

" 5. *These 98 candidates shall be subject to Police verification again. **There seniority will be reckoned by placing them below the 1000 sub-Inspectors of Police candidates selected during the 1997-98 recruitment.** They will be sent for training in may, 2000 along with the second batch of Sub-Inspectors candidates selected during the 1997-98 recruitment.*"
(emphasis supplied)

6. Pursuant thereto, an undertaking was obtained from those 98 candidates that they will not claim seniority along with their batch mates of the selection of the year 1994-1995. It is pertinent to state here that the notification of the subsequent selection was issued in the year 1997-98 and after selecting 1000 Sub-Inspectors of Police, 500 persons were sent for training with effect from 16.04.1999 and the rest of 500 were sent for training on 22.05.2000. The writ petitioners were also sent along with this batch of 22.05.2000 and thereafter they joined service and are working.

7. While so, in the year 2008, these 98 Sub-Inspectors of Police made a joint representation for granting *inter-se* seniority along with their batch



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mates. The said request was rejected by a letter, dated 12.02.2009. At this stage, the petitioners, totally 20 in number, filed these Writ Petitions challenging the above letter, dated 12.02.2009, whereby their request for re-fixation of seniority was rejected and also the original G.O.MS.No.1281, dated 22.09.1999, by which, they were appointed inasmuch as it directs fixation of seniority below the year 1997-1998 batch, to quash the said orders and to re-fix the seniority by placing them along with their batch mates in the year 1994-1995.

8. Some of the batch-mates, similarly situated as that of the respondents/writ petitioners, also filed W.P.Nos.3497 to 3499 of 2010 and when the same came up for hearing and after hearing the parties, a learned Single Judge dismissed the said Writ Petitions, by an order, 26.06.2010 holding that the petitioners therein cannot claim any seniority of the year in which they were not even appointed. Further, they had also given solemn undertaking that they would not claim any seniority other than what was fixed. Their appointment itself was a gesture shown by the Government. The demand for seniority was made 9 years after their entry into service and therefore, is a stale issue. On the said findings, the Writ Petitions were



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dismissed. Therefore, the present batch of Writ Petitions were resisted by the authorities by filing counter-affidavits duly quoting the said earlier order of this Court.

9. It is in these circumstances, these batch of Writ Petitions came up for hearing before the learned Single Judge on 28.08.2009 and after hearing the parties, by a judgment, dated 16.10.2019, the learned Single Judge allowed the Writ Petitions. The learned Single Judge framed four questions in the Writ Petitions as to whether the Writ Petitions are liable to be dismissed for the delay and laches; whether the Writ Petitions are liable to be dismissed on the ground of *res judicata*; whether the petitioners can claim seniority based on their selection during 1994-1995, after having given an undertaking that they will not claim such a seniority and whether the petitioners are entitled for fixation of their seniority below their batch mates selected during 1994-1995 batch and answered all the four questions in favour of the Writ Petitioners. Aggrieved by the same, the present Writ Appeals are laid before this Court.



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10. Heard *Mr.P.Kumaresan*, learned Additional Advocate General appearing on behalf of the appellants and *Mr.K.Ravi Anantha Padmanabhan*, learned Counsel appearing on behalf of the respondents.

11. *Mr.P.Kumaresan*, the learned Additional Advocate General, took this Court firstly to the order of the Tamil Nadu Administrative Tribunal, dated 10.09.1998, by which, the Original Applications filed by the Writ Petitioners and the other similarly situated persons were dismissed and demonstrated that the claim of the petitioners that they were selected is incorrect and they were only found fit for appointment. However, they did not come within the zone of consideration of the 1092 vacancies. Thereafter, the learned Additional Advocate General took this Court through G.O.MS.No.1281, dated 22.09.1999 to demonstrate that it was only an extraordinary gesture shown by the Government upon announcement of the Chief Minister of Tamil Nadu in the floor of the Assembly and the gesture was shown with a condition that they cannot claim seniority along with their batch mates, by taking into account that there was a subsequent notification and selection of 1000 Sub-Inspectors of Police. The appointment of the petitioners itself was conditional on such seniority by



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placing them below the 1000 Sub-Inspectors of Police, selected during the year 1997-1998 recruitment.

12. The learned Additional Advocate General, thereafter, took this Court through the counter-affidavit filed in these Writ Petitions, thereby, drawing the attention of this Court in paragraph No.11 of the counter-affidavit, whereunder, the earlier judgment of another learned Single Judge in the connected Writ Petitions in W.P.Nos.3497 to 3499 of 2010 was extracted. Therefore, the learned Additional Advocate General would submit that in this case, the respondents/writ petitioners were not entitled to claim seniority along with their batch-mates and therefore, would pray that these Writ Appeals be allowed. The learned Additional Advocate General also relied upon the judgment of the Hon'ble Supreme Court of India in ***K.Meghachandra Singh and Ors. Vs. Ningam Siro and Ors.***¹, more specifically relying upon paragraph No.28, to submit that the respondents/writ petitioners cannot claim seniority from a date in which they were not even borne into service.

¹ (2020) 5 SCC 689



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13. Per contra, *Mr.K.Ravi Anantha Padmanabhan*, learned Counsel appearing on behalf of the writ petitioners, by placing reliance on the tabular column submitted by him, would submit that in the year 1994-1995, selection was made for 1100 vacancies and the first batch of the 500 persons were sent for training on 01.03.1996 and the remaining 600 persons were sent for training on 02.06.1997. Even among the said persons sent for training, only 474 and 550 turned up for training, thus, leaving out 74 vacancies. Without appointing the 98 candidates who were selected, which included writ petitioners, fresh recruitment was called for in the year 1997-1998 for selection of 1000 Sub-Inspectors of Police. It is, at this juncture, even though the Original Applications filed by the petitioners were dismissed, considering the genuineness of the claim of the petitioners, the Government, thought it fit to appoint them.

14. Once the petitioners are appointed, only the statutory rule which would come into play as far as the fixation of seniority is concerned. The statutory rule which is applicable in this case is Rule 25(a) of the Tamil Nadu Police Subordinate Service Rules, which is extracted hereunder for ready reference:-



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"25(a). The seniority of a person in any class or category of the service shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the appointing authority, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority unless he has been appointed temporarily under sub rule (d) of rule 10 or sub rule (b) of rule 15 as the case may be.

Provided that in the case of Sub Inspectors (recruited direct) (category 2 of class I) the seniority shall be fixed on the basis of the marks obtained by them in the final examination in the Police Training College, Vellore.

Provided further that in respect of direct recruitment made in the years 1976 and 1979 to the posts of Sub Inspectors of Police, Reserve Inspectors of Police by the Tamil Nadu Public Service Commission, the seniority shall be fixed with reference to the rank assigned by the Tamil Nadu Public Service Commission in the list of selected candidates communicated by it.

Provided further that all directly recruited Assistant Sub Inspectors selected for direct recruitment as Sub Inspectors shall be placed as a block above the fresh direct recruits but interse again they shall retain their original seniority in the list of Assistant Sub Inspectors.

Provided further that in the case of Reserve Sub Inspectors (category 4 of class I) the



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seniority shall be fixed on the completion of training with the Special Armed Police instead of at the time of selection but such seniority shall be liable to revision by the Deputy Inspector General of Police concerned, if he considered it necessary, before the completion of probation.

Provided also that the required number of Head Constables fit for promotion to the post of Sub Inspector shall be included in the order of merit on the basis of the result of the examination specified in clause (ii) of the sub rule (e) of rule 18 and re-arranged in the order of seniority in the post of Head Constable.

This sub rule shall apply to any member of the service other than Sub Inspectors appointed on or after 1st January 1962. It shall also apply to Sub Inspectors appointed on or 25.3.1965."

Therefore, once the writ petitioners are borne into the cadre, their seniority has to be fixed based on the marks obtained by them in the final examination in the Police Training College with reference to their batch of selection.

15. He would submit that the contention that the petitioners were appointed belatedly or sent to the training belatedly is unsustainable as the law has been now settled that even if for any reason, the selected candidate is sent for training belatedly, the seniority may be with reference to his batch of selection. This position has been laid down by the Hon'ble



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Supreme Court of India in *A.Raghu, son of Rajaiah Vs. Govt. of Andhra*

*Pradesh & Ors.*², more specifically in paragraph No.16 and it is useful to extract the relevant passage which reads as follows:-

" *The selection process having been joint, and in furtherance of the same Notification dated 22-1-1991 (issued by the Recruitment Board), it is inevitable for us to conclude, that the candidates deputed to the two different courses of training (on 15-7-1991 and 14-6-1992) were essentially candidates belonging to a singular batch, who were selected through a common process of selection. In fact, the instant inference, insofar as the issue of inter se seniority is concerned, is inevitable, as the dates on which the candidates were deputed for training, are inconsequential, so far as Rule 15 is concerned. Rule 15 leaves no room for any doubt, that even the merit position in the selection process is not to be taken into consideration, while determining the inter se seniority of candidates selected from a common process of selection.*

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*The seniority of candidates, who are selected from a common process of selection, is to be determined on the basis of the final aggregate marks obtained by them, during the course of their training, at the police training college(s) in the State of Andhra Pradesh. That being the mandate of the Rule, we are of the considered view, that **for candidates who had participated in***

² (2015) 14 SCC 221



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a common process of selection, irrespective of the dates on which they were deputed for training, their inter se seniority is liable to be determined, on the basis of the aggregate of marks obtained by them, at the final examination at the police training college concerned. This interpretation placed by us on Rule 15 of the Service Rules, satisfies the underlying principle given effect to in the Rule, namely, that the candidates appointed against the posts of Sub-Inspector of Police, were to be arranged in the seniority list, not on the basis of the marks obtained in the process of selection, but according to the aggregate marks obtained by them, at the culmination of the training processes. Additionally, the instant interpretation would result in a uniform determination of the three separate considerations dealt with by us."

(emphasis supplied)

16. This apart, a Division Bench of this Court in W.A.No.1581 of 2010 has considered the very issue in respect of yet another candidate who was selected from the same batch and has categorically laid down and it is useful to quote paragraph No.8 which reads as follows:-

" 8. In view of the above, for the purpose of fixation of seniority of the respondent, the relevant date must be the date of which he was selected and not otherwise. For the purpose of refixing the seniority on the date of selection, the marks obtained by the respondent shall also be taken into consideration."



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17. Apart from the above, the learned Counsel also took this Court through the various Government Orders, by which, repeatedly, the Government had given retrospective seniority from the respective dates of selection in respect of various other candidates. Therefore, he would submit that the learned Judge was right in allowing the Writ Petitions. He would submit that since, for the first time, the representation made was rejected by the impugned order and since the Writ Petitions were filed immediately, the Writ Petitions cannot be said to be hit by laches or delay. He would submit that the condition imposed in the Government Order was not opposed at the relevant time because at that point of time, they were out of employment and were not in an equal position to contend or bargain with Government. In any event, there can be no waiver of the rights conferred on them by the statutory rule and therefore, the non-objection to the clause in the Government Order or submitting a declaration form cannot non-suit the Writ Petitioners. Therefore, he would pray that the Writ Appeals be dismissed.

18. We have considered the rival submissions made on behalf of either side and perused the material records of the case. We are of the



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considered view that the order of the learned Single Judge is unsustainable for the following reasons:-

(i) By allowing the prayer of the respondents/writ petitioners, the writ petitioners would become seniors to about 1000 persons who were selected pursuant to 1997-1998 selection and any order of grant of relief of seniority cannot be passed without hearing the persons likely to be affected by the said order. In the Writ Petitions filed, the Secretary to the Government and the Director General of Police alone are shown as the respondents. Therefore, the order of the learned Judge, granting the relief, is erroneous in law;

(ii) Secondly, arising out of the self-same selection, when already another learned Judge had passed an order, dated 26.02.2010 in W.P.Nos.3497 to 3499 of 2010, there was no occasion for the learned Judge to take a contrary view. Even if the views were not to be accepted, propriety demands that the matter should be placed before the larger bench and therefore, the learned Judge erred in allowing these Writ Petitions;

(iii) Thirdly, there can be no quarrel over the proposition as laid down by the Hon'ble Supreme Court of India in *A.Raghu, son of Rajaiah* (cited supra) and the earlier Division Bench of this Court in W.A.No.1581 of 2010



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that if for any reason, a '**selected**' candidate is belatedly appointed or sent for training, still seniority has to be granted to the selected candidate only as per Rule 25A i.e., as per the marks in the final examination and placing the candidate properly among the batch of persons with whom the candidate was selected. Even in the relevant passage of the earlier Division Bench and the Hon'ble Supreme Court of India is extracted above, it can be seen that the candidates were '**selected**'. If only the candidate is 'selected', then such an argument would arise. Whereas, in this case, when selection was conducted pursuant to the notification, total number of vacancies were 1092. These 98 persons, even though were successful in the written examination and were called for viva-voice and Police verification, ultimately were 'not selected' since they did not come within the zone of merit. They even challenged their non-selection by filing Original Applications before the Tamil Nadu Administrative Tribunal in O.A.Nos.989 of 1998 etc., which also came to be dismissed on 10.09.1998. It is only by an extraordinary gesture, the Government has shown an act of benevolence to them vide G.O.MS.No.1281, dated 22.09.1999. The said benevolence came with a condition that the appointees cannot claim seniority vis-à-vis their batch i.e., 1994-1995 and that they will be kept



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below the persons who are selected in the year 1997-1998. Therefore, when any extraordinary gesture *dehors* the rules is shown by the Government and if that gesture is coupled with a condition, the acceptance of the writ petitioners of the G.O.MS.No.1281, dated 22.09.1999 would estop the writ petitioners from challenging the very same G.O thereafter. The petitioners cannot be permitted to approbate and reprobate.

19. Further, the Writ Petitioners also executed an undertaking voluntarily pursuant to the condition in the said G.O.MS.No.1281 and they did not question the Government Order until the year 2009. Therefore, there was no question of any statutory right being violated by the Government Order. If only the petitioners were 'selectees' i.e., if only the petitioners who are within the 1092 candidates like the respondent *J.Pratap Prem Kumar* in the earlier judgment of the Division Bench in W.A.No.1581 of 2010, the petitioners can press into Service Rule 25A and that their seniority should be along with their batch mates. In this case, they are not the batch mates of 1994-1995 as they did not come within the zone of consideration. It is on sympathetic consideration *dehors* the law, the Government has appointed them vide G.O.MS.No.1281 and if the



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sympathetic consideration comes with a condition, the writ petitioners have to abide by the condition and as a matter of fact, they have also complied with it by executing an undertaking. In all the other cases cited, including the decided cases or the Government Orders conferring the benefit of retrospective seniority along with batch mates, it can be seen that the respective candidates would have been selected in the batch. But, however, the appointment has been belatedly given pursuant to administrative delay or any error of rejection on the basis of Police verification, certificate verification etc., which was corrected later. The distinguishing feature in this case is that writ petitioners were never 'selected' in the year 1994-1995.

20. In the result, these Writ Appeals stand allowed. Consequently, the Writ Petitions in W.P.Nos.8575, 11527, 11788, 13872, 13873, 22051, 22052, 26354 and 26355 of 2009 shall stand dismissed. Consequently, connected miscellaneous petitions are closed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(P.U., J.) (D.B.C., J.)
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