



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN  
AND  
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.177 of 2022

- 1.The Director General of Police,  
Chennai - 600 004.
  - 2.The Deputy Inspector General of Police,  
Kanchipuram Range,  
Kanchipuram District.
  - 3.The Superintendent of Police,  
Kanchipuram District.
- ... Appellants

Vs

E.Abraham Amalanathan ... Respondent

Prayer:Writ appeal is filed under clause 15 of the Letter Patent praying to to set aside the Order dated 23-06-2021 made in W.P.No.34648 of 2012.

Prayer in W.P.No.34648 of 2012:

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the impugned order passed by the 2nd respondent in C.No.B1/9426/2011 dated 25.4.2012 and quash the same and consequently direct the respondents herein to pay the arrears in the post of Special Sub-Inspector of Police for the period from 1.1.2011 to 30.9.2011 to the petitioner.

For Appellants : Mr.JC.Durairaj

Additional Government Pleader



## JUDGMENT

S.VAIDYANATHAN, J.  
&  
MOHAMMED SHAFFIQ, J.

Instant writ appeal is directed against the order dated 23.06.2021 made in W.P.No.34648 of 2012.

2. It is the case of the writ petitioner in the affidavit that he was working as a Head Constable in Grade-I and was eligible to be promoted as a Sub Inspector of Police. However, a charge memo was issued on 11.02.2005 and the same was questioned before this Court in W.P.No.12561 of 2005. This Court quashed the said charge memo on 07.04.2011 and thereafter the writ petitioner was issued with an order of upgradation and that the petitioner has joined the post on 30.09.2011. According to the appellants in terms of FR 27 (17), in case, where a Government servant has been overlooked for promotion/appointment, his case can be considered only from the date of assumption of charge of office in the said post. For the sake of convenience Rule 27 (17) of the Fundamental Rules is extracted below.

(17) In case where a Government Servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September 1981 arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date assumption of charge in the higher post in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

3. The learned Additional Government Pleader submitted that as per FR 27(17), the arrears of pay and allowances consequent to fixation of pay shall be admissible only with effect from the date of assumption of charge in the higher post and the learned Judge has completely given a go-by to the said Rule and granted the relief to the writ petitioner which is not sustainable.



4. Heard the learned Additional Government Pleader appearing for the appellants.

5. In the present case on hand, the petitioner has not been considered for promotion on account of pendency of the charge memo. Once the charge memo has been quashed by this Court, the writ petitioner will have to be necessarily put back to the original position to be considered for promotion/appointment and the delay cannot be said to be directly attributable on the part of the writ petitioner in acquiring the said post. If the contention of the appellants is accepted then the Department can issue a charge memo and postpone the promotion to any person according to their whims and fancies by simply quoting Rule 27 (17) of Fundamental Rules. Once a charge memo has been interfered with by this Court, the charge itself is non-est in the eye of law which means the case of the employee has got to be considered from the date he was eligible. The learned single Judge has rightly considered the said rule (extracted supra) and held that the employee would be entitled to the benefits as observed in paragraph No.5 of the order of the learned single Judge dated 23.06.2021 which is extracted below:-

"5. In this case, I do not find much delay because the order was passed only on 20.09.2011 and the petitioner has joined the post on 30.09.2011 within 10 days. The order takes effect from 01.01.2011 as specified therein. Therefore, the impugned order passed by the 2nd respondent in C.No.B1/9426/2011 dated 25.04.2012 denying the monetary benefits is not sustainable and accordingly set aside."

6. We find no reason to interfere with the order of the learned Single Judge. FR 27(17) is not a restoration of seniority, but it is an upgradation and therefore, the writ petitioner is entitled to all the monetary benefits from the date of upgradation, as there is no charge in the eye of law as on date.

7. Accordingly the writ appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dpq



To,

1.The Director General of Police,  
Chennai - 600 004.

2.The Deputy Inspector General of Police,  
Kanchipuram Range,  
Kanchipuram District.

3.The Superintendent of Police,  
Kanchipuram District.

+1 cc to Government Pleader Sr.NO. 8032

W.A.No.177 of 2022

SPD(CO)

A.SK(11/03/2022)