



WEB COPY



W.P.No.988 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.01.2022

Delivered on: 09.03.2022

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.988 of 2009

1. S.Rajendran
2. R.Vairamoorthy ... Petitioners

Vs.

1. The Director General of Police,
Mylapore, Chennai-4.
2. T.H.Manidurai,
Inspector of Police, A.R., Salem Range.
3. R.Palani Kumar,
Inspector of Police, AR, Madurai Range. ... Respondents

PRAYER: Writ petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorari Mandamus to call for the records of the first respondent pertaining to the 'C' list of Sub Inspectors (AR) fir for promotion as Inspectors of Police in proceeding No.Rc.No.232600/ NGB.1(1)/2007 dated 29.08.2008 and quash the same in so far as second and third respondent are concerned and direct the first respondent to include the petitioners names at the appropriate place in the 'C' list of Sub Inspectors (AR) fit for promotion as Inspectors of Police (AR) for the year 2008 with all consequential benefits.

For Petitioners : Mr.M.S.Soundararajan

For Respondents : Mr.P.Anandakumar, Govt. Adv. for R1
R3- No Appearance



W.P.No.988 of 2009

WEB COPY

ORDER

Challenge in this writ petition is to the order of the first respondent dated 29.08.2008, in and by which, the first respondent had appointed the respondents 2 and 3 as Inspectors of Police, Salem and Madurai Range and direct the first respondent to include the petitioners' name at the appropriate place in the 'C' list of Sub Inspectors (Armed Reserve-AR) fit for promotion as Inspectors of Police (AR) for the year 2008 with all consequential benefits

2. The case of the petitioner in brief, is as follows:

2.1. The first petitioner was appointed as Grade-II Police Constable on 25.10.1984 at Nagapattinam (Armed Reserve) and he was promoted as Head Constable on 27.07.1993 and then promoted as Sub Inspector of Police on 01.08.2000 in the Thanjavur Range. The second petitioner was enlisted as police constable on 17.11.1988 and promoted as Head Constable on 09.02.1995 and then promoted as Sub Inspector of Police on 01.08.2000.



W.P.No.988 of 2009

WEB COPY

2.2. The Director General of Police has drawn the 'C' list of Sub Inspectors of Police (Armed Reserve - AR), dated 29.08.2008 fit for promotion as Inspector of Police AR, for the year 2008, in which the petitioners names were not included. The above 'C' list has been drawn based on the Range Wise Seniority and not on the State Wise Seniority, which is contrary to the Rules.

2.3. In Thanjavur range, Sl.Nos.1 and 3 in the 'C' list of Sub Inspectors had retired from service and Sl.No.2 was already promoted as Inspector of Police and Sl.No.4 expired. Therefore, even according to the respondent, the first and second petitioners, who are in Sl.Nos.5 and 6 shall be considered, but their names were not included in the 'C' list.

2.4. In Madurai Range, Head Constables were promoted as Sub Inspector of Police and seniority list was drawn as per the marks obtained in the Range promotion Board, but the respondent failed to re-arrange this seniority, as per the feeder category seniority, in accordance with rules. In Madurai Range, one Palanikumar name was included as Serial No.3, who is junior to the petitioners.



W.P.No.988 of 2009

WEB COPY

2.5. According to the petitioners, the date of 'B' list of both the petitioners and the above Palanikumar is one and the same i.e. 01.08.2000 and hence, inter-se seniority should have been fixed according to their seniority in the feeder category, viz., Head Constable. The first respondent did not prepare the 'C' list in accordance with the Special Rules for Tamil Nadu Police Subordinate Service Rules [in short TNPSS Rules"] by preparing Statewise Seniority. Therefore, challenging the 'C' list drawn on 29.8.2008, this writ petition has been filed.

3. The first respondent has filed a counter affidavit denying the averments made in the writ petition by stating as follows:

3.1. There are 12 ranges and 7 Cities in Tamil Nadu Police Department. As per the provisions in Rule 3(b)(ii)(b) of the TNPSS Rules, intra Range promotion Boards in all ranges and cities are being conducted annually, for promotion as Sub Inspector of Police, in the order of their seniority in the post of Head Constable, within the range. As such, seniority of rank-promotee Sub Inspectors of Police vary from one range to another, irrespective of date of their enlistment as Grade II Police Constable.



W.P.No.988 of 2009

WEB COPY

3.2. Further, as per the provisions in Rule 3(b)(ii)(b) of TNPSS and as per the Police Standing Orders 37 and 38, State Promotion Board is being conducted annually for promotion of Sub Inspectors as Inspectors, in the order of seniority in the rank of Sub Inspector of Police. A combined State wide seniority list of rank promotee Sub Inspector of Police, who have reached zone of consideration for promotion as Inspector of Police, is being drawn up and the eligible senior most Sub Inspectors from the combined State Wide Seniority list, are included in the 'C' list.

3.3. To form a combined State wide seniority list of Sub Inspector of Police, the seniority of rank-promotee Sub Inspectors of Police of different ranges is being determined in the order of their placement in the list prepared by the appointing authority. (i.e. the order of their placement in the 'C' list of Head Constables fit for promotion as Sub Inspector of Police drawn up by the Range Deputy Inspectors General Police/ City Commissioners of Police). Then, No.1's in the 'C' list of Head Constables fit for promotion as Sub Inspector of Police of all 19 ranges in Tamil Nadu Police Department are first taken into account. Since the date of



W.P.No.988 of 2009

WEB COPY

declaration of 'B' list (date of promotion as Sub Inspector of police) is common for all the 19 first ranking candidates of different ranges, the seniority among these 19 first ranking candidates is arranged according to their date of birth. Similarly, seniority of successive candidates in No.2's and 3's, etc. in the approved list (C list) are arranged in the above manner for preparing combined State wide Seniority list of rank-promotee Sub Inspector of Police, who have reached zone of consideration for promotion as Inspector of Police. Thereafter, the senior most eligible Sub Inspector of Police are being promoted as Inspector of Police, depends upon the estimate of vacancy, that arise in the rank of Inspector of Police in that particular panel year.

3.4. The second respondent T.H.Manidurai was ranked at Sl.No.03/1999-2000 in Coimbatore 'C' list of HC (AR) fit for promotion as Sub Inspector of Police (AR). Likewise the third respondent R.Palanikumar was ranked at Sl.No.4/1999-2000 in Madurai Range 'C' list of HC (AR). But the first and second petitioners were ranked at Sl.No.5 and 6/1999-2000 respectively in the Thanjavur Range 'C' list of HCs (AR) fit for promotion as SI (AR). Since the order of placement/ 'C'



W.P.No.988 of 2009

WEB COPY

list ranking of the second and third respondents in the category of SI (AR), prevailed over and above the petitioners, their names were included in the C list of Subs Inspectors (AR) fit for promotion as Inspectors of Police (AR) for the panel year 2008 at Sl.Nos.33 and 31 respectively. The estimate of vacancy in the category of Inspector of Police (AR) for the panel year 2008 was arrived at 50. The last person i.e. 50th candidate included in the panel 2008 was ranked at Sl.No.4/1999-2000 in Coimbatore City 'C' list of HC (AR) fit for promotion as Sub Inspectors of Police (AR). Therefore, the petitioners did not reach the zone of consideration for promotion as Inspectors of Police (AR) for the panel year 2008 and their names were not included in the 'C' list for the year 2008, and not promoted as Inspector of Police (AR) during the panel year 2008. Therefore, the writ petition is liable to be dismissed.

4. Mr.M.S.Soundararajan, learned counsel for the petitioner made the following contentions:

4.1. 'C' list of Sub Inspectors of Police (AR) fit for promotion as Inspector of Police(AR) was drawn for the year 2008 by the Director General of Police [DGP] in Memorandum RC No.232600/



W.P.No.988 of 2009

WEB COPY

NGB.1(1)/2007 dated 29.01.2008 and the petitioners are senior to the respondents 2 and 3, but their names were not included in the “C” list and on the other hand, the first respondent, without following the Special Rules for TNPSS Rules, included the names of juniors and granted promotion as Inspector of Police Armed Reserve.

4.2. All eligible Sub Inspectors of Police from various Ranges/Cities have to be combined and one combined state seniority has to be drawn and based on the service seniority, promotion should be given.

4.3. As far as promotion to the rank of Inspector of Police (AR) is concerned, the feeder category i.e. Sub-Inspector of Police alone has to be taken into account and further going down i.e. date of promotion as Head Constables/date of enlistment cannot be done and the rule does not prescribe that state seniority should be followed in the rank of Head Constables, as the seniority varies from district to district according to the availability of vacancies upto the rank of Sub-Inspector of Police in the respective Ranges/Cities and therefore one cannot claim parity over the



W.P.No.988 of 2009

WEB COPY

promotion as Head Constable in another District or promotion as Sub Inspector of Police in another District.

4.4. Nowhere in the Special Rules for TNPSS Rules, it has been stated that the promotion to the post of Inspector of Police (AR) should be given based on the range seniority and the respondents have failed to follow State Seniority for drawing 'C' List for Inspectors of Police and followed Range Seniority, which is contrary to the Rules and the respondents have not followed the procedure contemplated under Police Standing Order 38.

4.5. While preparing list of Sub Inspectors of Police (AR) fit for promotion to the post of Inspector of Police (AR) every year, the names of retired and dead persons will not be included by District Superintendent of Police. Since two seniors retired from service, one senior was promoted out of turn basis and one person died before preparing the 'C' list at Thanjavur Range and even according to them, the petitioner are Nos.1 & 2 in their range and therefore non-inclusion of their names in the "C" list of Inspector of Police is illegal and contrary to rules.



W.P.No.988 of 2009

WEB COPY

The learned counsel for the petitioner, in support of his submissions, has placed reliance on the following decisions:

(i) D.Sriramulu & Others v. The Registrar and Others [CDJ 2003

MHC 595]

(ii) Order dated 12.07.2011 passed in W.P(MD)No.9035 of 2005

[P.Justice Saroja v. The Registrar, Manonmaniam Sundaranar University, Tirunelveli District and Others]

(iii) Order dated 20.01.2021 passed in W.P.(MD)No.229 of 2013

[S.Ravikumar v. The Principal Secretary and Commissioner of Revenue Administration, Chennai-5 and Others].

5. Mr.P.Anandakumar, learned Government Advocate for the first respondent has drawn the attention of this Court to the counter affidavit and additional counter affidavit filed by the first respondent, wherein the first respondent has placed reliance on Sections 40(1) and (2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and Rule 35(a) of the General Rules for the Tamil Nadu State and Subordinate Services and Rule 25(a) of Special Rules for TNPSS Rules



W.P.No.988 of 2009

WEB COPY

and stated that the estimate of vacancy in the category of Inspectors of Police (AR) for the panel year 2008 was arrived at 50 and the last person i.e., 50th candidate included in the 2008 panel and was ranked / placed at SL.No.04/1999-2000 in Coimbatore City list of Head Constable (AR) fit for promotion at Sub Inspector of Police (AR) but according to the estimate of vacancy for the panel year 2008 and their order of placement / 'C' list ranking in the category of Sub Inspector of Police (AR) while drawal of 'C' list of Sub Inspectors (AR) fit for promotion was Inspectors of Police (AR) for the panel 2008 and hence, the petitioners name were not included in the 'C' list for the year 2008 and not promoted as Inspector of Police (AR) during the panel year 2008 and therefore, prays for dismissal of this writ petition.

6. Though notice has been served to the third respondent, none appeared for the third respondent. According to the learned counsel for the petitioner, the main contesting respondent is the third respondent herein and he is not seeking any remedy as against the second respondent.

7. This Court has considered the submissions made by both parties and perused the materials placed before it.



W.P.No.988 of 2009

WEB COPY

8. The point for consideration is whether the first respondent has followed combined State wise Seniority while preparation of 'C' List for promotion to the post of Inspector of Police (AR) for the year 2008?

9. Before proceeding to the point of consideration, it is relevant to quote the following provisions :

Special Rules for the Tamil Nadu Subordinate Service Rules:

Rule 1(2) – 'Approved Candidates' - Approved candidates means a candidate whose name appears in an authoritative list of candidate approved for appointment to any class or category of the service.

Rule 2- Seniority: 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.

Rule 3 – Method of Appointment and Promotion:

(a) (i) Appointment to the several cases and categories shall be made as indicated in Annexure-I

(ii) Persons who were already included in the 'C list' for a particular year but not promoted before the expiry of the validity of the said list be considered for higher place in the list drawn in the subsequent year on merits of each case



W.P.No.988 of 2009

WEB COPY

in preference to other persons included in the 'C list'

(b) (i) Promotion to the under mentioned posts shall be made on grounds of merit and ability seniority being considered only where merit and ability are approximately equal.

(ii) Such promotion shall be made from a list of qualified candidates suitable for promotion prepared and finalised by

(a) **The State Promotion Board constituted by the Director General of Police subject to the appointment of the Government from time to time in the case of promotion to the post of Inspectors, Reserve Inspectors and Senior Reporters, Shorthand Bureau, Madras from the ranks of Sub-Inspectors, Reserve Sub Inspectors and Junior Reporters respectively.**

.....

.....

(e) **All other promotions shall subject to the provisions of rules 14 and 15, be made in accordance with seniority unless:-**

(1) The promotion of a member has been withheld as a penalty; or

(2) A member is given special promotion for conspicuous merit and ability.

(f) No member of the service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his period of promotion in that category."

Police Standing Orders:

PSO 38. Promotion to the post of Reserve Inspectors in the Armed Reserve:- Superintendents of Police will prepare and submit annually to their Deputy Inspectors –General, lists



W.P.No.988 of 2009

WEB COPY

of Reserve Sub Inspectors in order of seniority who are to be considered for promotion to the rank of Reserve Inspectors. These lists, which should be treated as confidential, will be accompanied by the Defaulter Sheets and up-to-date Personal Files of the Officers concerned. The Deputy Inspectors-General will scrutinize these recommendations and submit them by 1st November to the Office of the Director-General of Police where they will be processed and placed before the State Promotion Board for consideration. The recommendations of the State Board will finally be placed before the Director-General of Police, for his orders approving suitable persons in the 'C' list for promotion.”

10. Admittedly, in the State of Tamil Nadu, there are 12 Ranges and 7 cities in Tamil Nadu Police. The first ranking Sub Inspectors of Police in the seniority of various Ranges/Cities are first taken into account. There will be 19 (12+7) Sub Inspectors of Police ranking as No.1. The seniority of 19 first ranking Sub Inspectors of Police is ranged according to their date of birth. The next process is second ranking Sub-Inspectors of Police in the Ranges/Cities, whose seniority is taken into account and then seniority is arranged according to their date of birth and so on. As far as promotion to the rank of Inspector of Police is concerned, the feeder category i.e. Sub Inspector of Police alone has to be taken into account and further going down i.e. date of promotion as Head Constables/date of enlistment cannot be done. The Special Rules for



W.P.No.988 of 2009

WEB COPY

TNPSS Rules does not prescribe that State wise seniority should be followed in the rank of Head Constables as the seniority varies from district to district according to the availability of vacancies upto the rank of Sub-Inspector of Police in the respective Ranges/Cities and therefore one cannot claim parity over the promotion as Head Constable in another District or promotion as Sub Inspector of Police in another District.

11. In the Special Rules for TNPSS Rules, no where it is stated that the promotion to the post of Inspector of Police AR should be given based on the range seniority and as per Rule 3(e) of Special Rules for Tamilnadu Police Subordinate Service **“All other promotions shall subject to the provisions of rules 14 and 15, be made in accordance with seniority...”**.

12. The primordial contention of the learned counsel for the petitioners is that the first respondent had failed to follow combined State Wise seniority for drawing “C” list for Inspector of Police (AR) and followed Range wise seniority, which is contrary to Rule 3(e) of the Special Rules for TNPSS Rules.



W.P.No.988 of 2009

WEB COPY

13. In the case on hand, admittedly, the first petitioner entered into service as Grade II Police Constable on 25.10.1984 and whereas one Mr.S.Palanikumar / third respondent herein, who is placed at Sl.No.31 in the 'C' list of Sub Inspectors (AR) fit for promotion as Inspectors of Police (AR) joined the service on 25.10.1986 as Grade II Police Constable on 25.10.1986 and they got promotion as Sub Inspector of Police on 01.08.2000 and 09.10.2000 respectively. At the time of preparation of panel for promotion as Sub Inspector of Police, by following Range Wise Seniority from the feeder category of Head Constable, one Mr.S.Palanikumar / third respondent herein, ranked as Sl.No.1 in Madurai Range and whereas the petitioners 1 and 2 ranked as Sl.Nos.4 and 5 in the Thanjavur Range at the relevant point of time and based on the said yardstick, the said S.Palanaikumar, was brought into the 'C' List for promotion to the post of Inspectors of Police(AR) for the year 2008 by virtue of his ranking No.1 in Madurai Range and placed at Sl.No.33 in the 'C' list and whereas the petitioners, who are seniors to the said S.Palanikumar, as per the date of enlistment/initial appointment were not included in 'C' list.



W.P.No.988 of 2009

WEB COPY

14. The PSO 38 clearly states the procedure to be followed for drawing 'C' list for the post of Inspector of Police, by which combined State Wise Seniority List in the cadre of Sub Inspectors of Police (AR) is the main criteria for drawing 'C' list for promotion as Inspectors of Police (AR). In the case on hand, the said procedure has not been followed. Therefore, this Court has no hesitation to hold that the preparation of 'C' list for promotion to the post of Inspector of Police (AR) was not done on the basis of combined State Wise seniority and the same has been done in violation of procedures prescribed under Police Standing Orders.

15. The second contention of the learned counsel for the petitioner is that combined State wise seniority had not been drawn during the year 2008, at the time of preparation of 'C' List for promotion to the post of Sub-Inspector of Police (AR). As per Rule 3(e) of the Special Rules for TNPSS Rules, ***“all promotions shall be subject to the provisions of Rules 14 and 15, be made in accordance with seniority unless (i) the promotion of a member has been withheld as a penalty; or...”*** If the combined State wise seniority list was prepared at the time of drawal of



W.P.No.988 of 2009

WEB COPY

'C' List, the first petitioner, who is senior to the said Palanikumar/third respondent herein, would have come within 'C' List, since his date of enlistment / entry into service is much earlier to the said S.Palanikumar / third respondent herein.

16. It is stated in the counter affidavit that the second respondent / Manidurai, was ranked No.3 in Coimbatore City 'C' List of Head Constable (AR) fit for promotion as Sub Inspector of Police (AR). Likewise third respondent / Palanikumar was ranked Sl.No.4 in Madurai Range 'C' list of Head Constable (AR) fit for promotion as Sub Inspector of Police (AR), but the petitioners herein were placed at Sl.Nos.5 and 6 respectively in Thanjavur Range 'C' list of Head Constables (AR) fit for promotion as Sub Inspectors (AR) and hence, by invoking 25(a) of the Special Rules for TNPSS Rules, the respondent 2 and 3 prevailed over the petitioners herein in seniority and hence, the names of the respondent 2 and 3 were included in the 'C' List of Sub Inspector (AR) fit for promotion as Inspectors of Police (AR) for the year 2008 at Sl.Nos.33 and 31 respectively. This Court is unable to accept the said stand on the ground that the feeder category for promotion to the post of Inspectors of



W.P.No.988 of 2009

WEB COPY

Police (AR) is the Sub Inspectors of Police (AR) and therefore, taking in to consideration, the ranking which they possess in their respective Ranges in the cadre of Head Constable (AR) at the time of preparation of 'C' List for promotion as Inspectors of Police (AR) is totally unjustifiable.

17. It is brought to the notice of this Court by the learned counsel for the petitioners that while preparing the list of Sub-Inspectors of Police (AR) fit for promotion for the post of Inspectors of Police (AR) every year, the names of retired and dead persons will not be included by District Superintendent of Police and since, two seniors retired from service, one senior was promoted out of turn basis and one person died before preparing 'C' list at Thanjavur Range and therefore, the petitioners comes under Ranking Nos.1 and 2 in their range and on that ground, they are entitled to be included in the 'C' List for promotion as Inspectors of Police (AR).

18. As regards the second petitioner, namely Thiru R.Vairavamoorthy, he did not come within the zone of consideration for



W.P.No.988 of 2009

WEB COPY

promotion as Inspector of Police (AR) while drawal of the panel for the year 2008 and his name was not recommended for inclusion in the panel year 2009 due to a pendency of charge under Section 3(b) of the TNPSS (D&A) Rules and subsequent currency of punishment of 'Reduction in Time Scale of Pay' by two stages for two years with cumulative effect and after the completion of the above punishment period, his name was included in the 'C' list of Sub-Inspectors of Police (AR) fit for promotion as Inspector of Police for the panel year 2012 at Sl.No.2. Therefore, nothing requires for adjudication in respect of the claim of the second petitioner.

19. As regards first petitioner, this Court has already held in foregoing paragraphs that combined State wise Seniority List has not prepared in the light of PSO 38, while drawing the 'C' List for promotion to the post of Inspectors of Police [AR] and if the combined State Wise Seniority List has been prepared, the first petitioner would have fallen under the zone of consideration. It is to be noted at this juncture that at the time of filing the writ petition in the year 2009, the first petitioner was aged about 46 years and now he is left with one more year of service,



W.P.No.988 of 2009

WEB COPY

on account of fixing the retirement age as 60 by the Government of Tamil Nadu.

20. In the light of the reasons assigned above, the ***Writ Petition stands Allowed*** and the impugned 'C' List of Sub-Inspectors (AR) fit for promotion as Inspectors of Police on the file of the first respondent in Proceedings in Rc.No.232600/NGB.1(1)/2007 dated 29.08.2008 is set aside insofar as the third respondent is concerned and the first respondent is directed to include the name of the first petitioner at the appropriate place in the 'C' list of Sub Inspectors (AR) fit for promotion as Inspectors of Police (AR) for the year 2008 and to consider his promotion on par with his immediate senior and confer all other monetary benefits. No costs.

09.03.2022

Index : Yes/No

Internet: Yes/No

Jvm



WEB COPY



W.P.No.988 of 2009

D.KRISHNAKUMAR, J.

Jvm

To
The Director General of Police,
Mylapore, Chennai-4.

Order in
W.P.No.988 of 2009

09.03.2022