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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7817 of 2018
(Through Video Conference)

S.Asaithambi

...Petitioner

-Vs-

1. State of Tamil Nadu,
Rep. by its Principal Secretary to
Home(Police III) Department, Secretariat,
Fort St.George, Chennai 600 009

2. The Director General of Police,
(Law & Order),
Mylapore, Chennai 600 004

...Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents culminating in the second respondent's order - Memorandum Ref.No.Rc.No.044636/Rect.II (1) 2016, dated 27.04.2017 (which was despatched to the petitioner vide endorsement Ref.No.C.No.A1/See/ 1332/2017 dated 07.06.2017 / 09.06.2017) rejecting the petitioner's representation seeking conversion for being posted as S.I. Police (Taluk Police) quash the same and direct the respondents to grant conversion to the petitioner for being posted as S.I.Police (Taluk Police) within a stipulated time frame that may be fixed by this Court.

For Petitioner : Mr.P.Wilson, Senior Counsel
For Mr.R.Ayyappan

For Respondents: Mr.E.Veda Bagath Singh

O R D E R

The Government of Tamil Nadu in their order in G.O.(Ms). No.1512, Home (Pol.3) Department, dated 09.10.1996 has reserved 10% of vacancies under Direct Recruitment Quota of Sub Inspectors of Police (Taluk) for conversion from Sub-Inspector of Police (Armed Reserve). By citing the qualifications prescribed in G.O.Ms.No.1512, the impugned Memorandum, dated 27.04.2017 has been passed stating that the petitioner has



crossed the age limit of forty years as on 01.07.2017. The other reasons cited in the impugned Memorandum is that, if the petitioner desires for conversion from Armed Reserve to Tamil Nadu Special Police (TSP), he would be treated as an 'Havildar' and placed in the general line. Apart from this, the Memorandum also expresses that there are sufficient Sub Inspectors in the Taluks and therefore, there is no shortage of Sub Inspectors.

2. The main reason cited in the impugned Memorandum seems to be erroneous. The Memorandum was passed on 27.04.2017 and the petitioner, who was born on 15.05.1977, had not crossed the age of forty years as on the date of consideration of Memorandum. However, the second respondent seems to have taken a prospective date of 01.07.2017 and stated that the petitioner has crossed the age limit of forty years, which is impermissible. As such, the second reason assigned for rejecting the petitioner's request for conversion, is also erroneous.

3. Insofar as the Memorandum stating that the petitioner would be placed under general line and treated as an 'Havildar' for the purpose of conversion is concerned, the Hon'ble Division Bench of this Court in the case of Damodaran and others vs. Paul and others reported in 1991 Writ LR 436 had held that, as such, the procedure is impermissible, in the following manner:-

"17. This case is quite different on facts. If the principles stated therein are applied, it has to go against the writ petitioners-respondents. The rule is not in doubt. The moment there is any attempt to deny the benefit of a position in the rank held by a certain person, Articles 14 and 16(1) of the Constitution are attracted. The case on hand is quite different. Herein, it was not the fault of the respondents-appellants Inspectors that they earned their promotion in their specialist category. They earned, because they were found qualified for such promotions. It appears that they earned substantively, and that is why they were given promotion to higher ranks as well. We also find from the rules aforementioned that promotion from one cadre to another in the service is not a routine promotion and is not dependent upon seniority only. The rule envisages that promotion is given on merit, and thus seniority is only one of the considerations. Having earned their respective promotions, when the respondents-appellants Inspectors came to the rank of Sub Inspector Armourer, they could not have been left to stagnate, and since the rule envisaged a common pool, and they were thus put in the common pool, they could not



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have been placed below those, or in anticipation of those, who were in a lower rank without being promoted. They must be placed for the purpose of inter se seniority in the rank of Sub Inspector either effect from the date they became Sub Inspectors. That inter se seniority in the lower rank will have no effect on the inter se seniority in the superior rank is such a well settled principle that no authority for that purpose is needed.

18. The above view finds support from a judgment of the Supreme Court in A.K. Ghosh v. Union of India. In that case, the petitioners were shown as being seniors to respondents in the time scale of Class I Postal Service. They were selected for promotion to the grade of Directors of Postal Services. The respondents were also later on appointed to such posts. The Government sought to disturb the order of seniority in the grade of Directors to the prejudice of the petitioners^ the ground that their seniority while in the time scale was wrongly determined. The Supreme Court held that though the Government could justifiably revise their seniority in timescale of Class I service, it could not so revise their order of seniority in the grade of Directors and that such an action by the Government was arbitrary and liable to be struck down as violating Article 16 of the Constitution. Thus, the appellants who had earned their promotion and become Sub Inspectors Armourer, merely because they were juniors as Constables at their initial appointment in the service cannot be made junior to those who became Sub Inspectors in due course, but after the appellants had become Sub Inspectors. There is bound to be some play in the points as in the course of service, not on fortuitous, but on account of the system that has been evolved, some may receive better opportunities of promotion and some may suffer, for want of vacancies or otherwise availability of the avenue of promotion. The case pleaded before us by the writ petitioners-respondents, if accepted, will give rise to either of the two consequences, viz., that the Sub Inspector Armourer will have no opportunity of being promoted as Inspector in the service or a Constable opting for the service as Armourer will earn all promotions upto the level of Sub Inspector in the category or group of Armourer, but shall wait for his promotion until a Constable in the general line



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who was senior on account of his earlier recruitment as Constable also becomes Sub Inspector and is considered for promotion. We have already noticed the rules. We have no hesitation in holding that for the purpose of promotion to the post of Inspector, the special category of Sub Inspector Armourer has been merged with the category of Sub Inspector in the general category. A Sub Inspector Armourer thus has been provided with the avenue of promotion as Inspector in the general category. This alone will ensure that those who opted for the special category of Armourer are not made to stagnate as Sub Inspectors, while in all other categories, a further promotion as Inspector is available. Any interpretation otherwise will be violative of [Article 16\(1\)](#) of the Constitution of India. We also do not subscribe to the view that since the Sub Inspector Armourer has to be considered for promotion as Inspector in the General category, the original seniority as Constable should alone be adhered to between the general category Sub Inspectors and the Sub Inspector Armourer. This will not only make the specialisation a cause of loss of seniority to the Sub Inspector Armourer, but also deny to him his right to be considered for promotion as Inspector at least until such time any junior to him is still below the rank of Sub Inspector in the general category. A rule which shall cause harm instead of good, a rule which shall deny instead of promoting, cannot be accepted as a rule of justice. Thus viewed Sub Inspector Armourer must rank interchangeably with Sub Inspector in general category and reckon seniority in the order of continuous officiation as Sub Inspector, whether in general category or in the specialist category of Sub Inspector Armourer. We are not impressed by the argument that there will be denial of equality of opportunity, if Sub Inspector Armourer is not made to wait until those in the general category who were senior to him also become Sub Inspectors, and until then they are considered for promotion, he is not considered for promotion. We have already noticed that there was equal opportunity, are so long the rules hold the field, there shall be equal opportunity to exercise the option after recruitment as constable, and those who avail the opportunity and go to the special category thus do not in any manner cause any discrimination. It is well-settled that starting from a common point in service, employees may take two different routes until they



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again meet at a further point and from there proceed together. The rule that we have noticed exactly conforms to this method of treating persons recruited in the service together or one after the other."

4.Above all, the petitioner seems to have given his application, seeking for conversion, way back on 08.05.2015 and after about more than two years, the present impugned Memorandum has been passed. While that being so, quoting the reason that, they have sufficient Sub Inspectors of Police in the Taluk, after two years of delay, cannot be accepted.

5.For all the foregoing reasons, the impugned Memorandum Ref.No.Rc.No.044636/ Rect.II (1) 2016, dated 27.04.2017 is set aside and the petitioner's representation is remitted back to the second respondent for fresh consideration. The second respondent shall endeavour to consider the petitioner's request favourably and pass appropriate orders, atleast within a period of six(06) weeks from the date of receipt of a copy of this order. The Writ Petition stands Allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Secretary to
Home(Police III) Department, Secretariat,
Fort St.George,Chennai 600 009
2. The Director General of Police,
(Law & Order),
Mylapore,Chennai 600 004

+1cc to Mr.R.Ayyappan, Advocate, S.R.No.2077

+1cc to the Government Pleader, S.R.No.1963

W.P.No.7817 of 2018

RSV(CO)
RGA(31/01/2022)