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W.P.No.9951 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9951 of 2019

N.Natesh Kumar

... Petitioner

Vs.

The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to pass orders on the representation made by the petitioner dated 12.01.2019 for fixation of seniority of the petitioner along with those who were recruited in the year 2003 within a reasonable time.

For Petitioner

: Mr.K.Venkatramani
Senior Counsel
For Mr.M.Muthappan

For Respondent

: Mr.S.Rajesh
Government Advocate



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ORDER

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The relief sought for in the present writ petition is to direct the respondent to pass orders on the representation made by the petitioner on 12.01.2019 for fixation of seniority of the petitioner along with those who were recruited in the year 2003.

2. The writ petitioner participated in the process of selection for appointment to the post of Grade-II Police Constable for the year 2001-2003. During the verification of the character and antecedents, the competent authorities found that the petitioner had involved in a Criminal Case registered in Crime.No.9/144 of 2003 on the file of the Anna Nagar Police Station for the offences under Sections, 144, 147, 323 and 502 Part-II I.P.C. Thus, the petitioner was not appointed along with the selected candidates. Meanwhile, the selected candidates were appointed into services in December 2003, but the petitioner was not appointed due to his involvement in the Criminal Case, which was found by the competent authorities at the time of verification of characters and antecedents.



3. The learned Senior Counsel appearing on behalf of the petitioner made a submission that there was a delay on the part of the authorities in verifying the nature of the Criminal Case and its status. The Criminal Case was closed as a 'mistake of fact' and regarding the registration of Criminal Case, the petitioner himself has stated in the application. Thus, there was no suppression on the part of the petitioner and the delay was on the part of the competent authorities to complete the verification process and the petitioner was belatedly appointed in the year 2005 and consequently he lost his seniority on par with his batch mates.

4. The learned Senior Counsel appearing on behalf of the petitioner is of an opinion that the on account of the delay on the part of the authorities in conducting a verification, the petitioner should not be made to suffer and thus, the petitioner filed a writ petition before the Madurai Bench of Madras High Court in W.P.MD.No.11392 of 2008 and the final order was passed on 15.04.2013, which reads as under:

“9. In that view of the matter, the writ petition is disposed of by directing the second respondent to submit appropriate proposal to the first respondent for the purpose of restoring the



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petitioner's seniority along with his batch-mates 2001-2003. Before submitting such proposal to the first respondent, the second respondent shall issue notice to the candidates who are likely to be affected, hear their objections and then forward the proposal to the first respondent. On receipt of such proposal, the first respondent shall take a decision in accordance with law within a period of three months thereafter. While doing so, the first respondent shall take into consideration that the criminal case, which was filed against the petitioner was referred as 'mistake of fact' much prior to the petitioner participating in the recruitment process and the petitioner also disclosed the said fact in his application at the time of recruitment. No costs. Consequently, the connected Miscellaneous Petition is closed.

5. Pursuant to the order of the High Court, the Commissioner of Police, Madurai City passed an order in proceedings dated 02.05.2014, which is not in consonance with the direction issued by the High Court in the said writ petition. Thus, the petitioner preferred further representation to the Director General of Police, which was not responded and thereafter, the



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present writ petition is filed for a direction to pass orders on the representation submitted by the writ petitioner to the respondent.

6. The learned Government Advocate appearing on behalf of the respondent objected the contention raised by the petitioner by stating that the verification of antecedents and character is the process of selection and though the petitioner has stated about the registration of a Criminal Case, the verification took time, in view of the fact that the Criminal Case was subsequently found as a 'mistake of fact' and thereafter, the authorities have reconsidered the case of the writ petitioner and appointed him in the year 2005. Thus, there was no delay on the part of the authorities. It is the process which is mandatory, and during the said process, the delay occurred and the said delay cannot be construed as an administrative delay. It is a delay, occurred for completion of the process of verification of antecedents and characters of the petitioner.

7. Thorough verification is required for appointment to the post of Grade-II Police Constable. In the present case, no doubt there was a delay in concluding the verification process, which resulted in appointing the writ



petitioner as Grade-II Police Constable. However, the fact remains that the petitioner was appointed as Grade-II Police Constable in the year 2005.

8. Question arises, whether a person, who is not even appointed into the services can claim seniority for the period in which he was not in service. If there was no appointment, question of fixing seniority would not arise at all. The seniority is attached with the service of an employee and the seniority can be fixed only, if a person is appointed and in service.

9. In the present case, the learned Senior Counsel appearing on behalf of the petitioner contended that the petitioner was selected and there was a delay in issuing the order of appointment. The delay occurred on verification of character and antecedents, since a Criminal Case was registered against the against the writ petitioner. However, the fact remains that the petitioner was appointed only in the year 2005 and he was not appointed with retrospective effect. When the petitioner was not appointed retrospectively from the date on which his batch mates were appointed, question of retrospective seniority would not arise at all.



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10. Mere selection would not confer any right on the candidate. No doubt, during selection, ranking lists were provided, but the case of the writ petitioner was not considered along with other candidates for selection and appointment. His selection itself was withheld and the selection was cleared only after the completion of verification of character and antecedents. Thus, the petitioner cannot be construed as a selected candidate, since his selection was withheld during the relevant point of time for want of further verification in respect of the Criminal Case registered against him. The authorities after conducting verification decided to consider the case of the petitioner and thereafter, appointed the petitioner in the year 2005. Thus, it is not the case, where the petitioner was not appointed along with his batch mates. He was not selected on account of the pending Criminal Case and only after getting clarification with reference to the Criminal Case registered against him, his selection was cleared and thereafter, he was appointed. While so, question of grant of retrospective seniority would not arise at all.

11. That apart, the petitioner earlier filed a writ petition before the Madurai Bench of Madras High Court in W.P.MD.No.11392 of 2008, which was disposed on 15.04.2013. Based on the said judgment, the Commissioner



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of Police, Madurai City in proceedings dated 02.05.2014, rejected the claim of the writ petitioner. The said order has not been challenged by the writ petitioner. Contrarily, he preferred further representation to the Director General of Police.

12. This Court is of the considered opinion that once the issues are decided by the High Court in a writ proceeding, and the authority passed an order and thereafter, preferring an appeal before higher authorities would not arise at all. Since the issues were considered by the High Court, the Director General of Police would not be in a position to reconsider the issues and in this view of the matter, this Court do not find any acceptable reason for the purpose of considering the relief.

13. Accordingly, the Writ Petition stands dismissed. No costs.

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Index : Yes

Speaking order



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To
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S.M.SUBRAMANIAM, J.

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