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W.P.No.12775 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12775 of 2019

C.Senthil Kumar

...Petitioner

Vs.

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

..Respondent

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to pass orders on the representation made by the petitioner at 28.01.2019 for fixation of seniority of the petitioner along with those who were recruited in the year 1999 i.e., from 24.05.1999 within a reasonable time.

For Petitioner : Mr.K.Venkat Ramani
Senior Counsel
For Mr.M.Muthappan

For Respondent : Mr.S.Rajesh
Government Advocate

ORDER

The relief sought for in the present writ petition is for a direction to direct the respondent to pass orders on the representation made by the



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petitioner on 28.01.2019 for fixation of seniority of the petitioner along with those who were recruited in the year 1999 i.e., from 24.05.1999 within a reasonable time.

2. The petitioner participated in the process of selection for appointment to the post of Grade-II Police Constable. He came out successful in all stages of selection and his name was included in the provisional list. Though the petitioner was selected, he was not appointed into service on the ground that a Criminal Case was pending against him in connection with Crime No.584/1996 on the file of Otteri Police Station. The petitioner paid a fine of Rs.100/- on 06.05.1996 for offence under Section 75 of Madras City Police Act pending on the file of V Metropolitan Magistrate Court, Chennai. The petitioner states that he neither appeared before any Court nor paid the fine amount.

3. The petitioner challenged his non-selection before the Tamil Nadu Administrative Tribunal in O.A.No.7107 of 1999. The Tribunal directed the Recruitment Board to issue an appointment order. The order was not implemented and the petitioner filed Contempt Petition in C.P.No.72 of 2001, seeking for a direction to appoint him as Grade-II Police Constable



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with retrospective effect from 21.05.1999, the date on which, the other candidates were selected along with him and commenced their training. The Administrative Tribunal by an order dated 05.11.2001, issued a direction to the Commissioner of Police to give posting order to the petitioner and send the petitioner for training. Finally, the petitioner was issued with an appointment order dated 21.09.2006 and he was sent for training. The petitioner was subsequently transferred to Chennai City Police and upgraded as Grade-I Police Constable in September 2016 and now he is working in Taluk Police establishment.

4. The grievance of the writ petitioner is that he was selected in the process of selection conducted in the year 1999. The individuals selected along with the petitioner were sent for training on 24.05.1999. But, the petitioner was sent for training after a delay of 4 ½ years and he was appointed in service only on 21.09.2006. The delay occurred at the instance of the Police Department despite the directions of the Court. Meanwhile, the batch mates of the petitioner completed the services of about 4 years and therefore, the petitioner sent a representation to fix his seniority along with his batch mates.



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5. The learned Senior counsel appearing on behalf of the petitioner mainly contended that the petitioner was selected in the recruitment process and he was not appointed on the ground that a Criminal Case was pending against him. After verification of character and antecedents and regarding the pendency of the Criminal Case, the respondent has not considered the case of the writ petitioner. Thus, the petitioner approached the Tribunal and there was a delay in implementing the orders of the Tribunal and the said delay, which is a volition of the respondent cannot be a ground to deprive the right of the petitioner from getting his seniority on par with his batch mates.

6. In this regard, the learned Senior counsel appearing on behalf of the petitioner referred the orders of the Hon'ble Supreme Court of India in the case of ***State of Haryana & Ors Vs. Dinesh Kumar in Appeal (Civil) No.84 of 2008 dated 08.01.2008*** and the relevant paragraph is extracted hereunder:

“31. In the result, the Civil Appeal arising out of SLP (C).1840 of 2007 is dismissed, while the Civil Appeal arising out of SLP (C).No.14939 of 2007 is allowed. The Judgment of the High Court dated 22nd September 2005, impugned in the said appeal, is set aside and the concerned respondents are



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directed to take steps to issue appointment letters to the appellants in the said appeals subject to fulfillment of other conditions by them. It is also made clear that the appellants will be deemed to have been appointed as Constable-Drivers with effect from the date, persons lower in merit to them were appointed. However, while they will be entitled to the notional benefits of such continuous appointment, they will be entitled to salary only from the date of this judgment on the basis of such notional benefits.”

7. This Court is of the considered opinion that the said orders passed by the Hon'ble Supreme Court of India are with reference to the facts established. However, in the case of **Commissioner of Police vs. Raj Kumar [2021 (9) Scale 713]**, the Hon'ble Supreme Court of India been held as follows:~

“26. Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts-decision suspect to the charge of trespass into executive power of determining suitability of an



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individual for appointment. This was emphasized by this court, in M.V.Thimmaiah v. Union Public Service Commission [(2008) 2 SCC 119] held as follows:

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...

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30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for



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the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection.”

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29. Public service ~ like any other, pre~supposes that the state



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employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in bona fides.

30. The High Court's approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of



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behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the concerned public employer, through its designated officials~ more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to

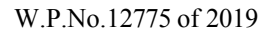


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*inspire public confidence is a
bulwark to society's security.”*



9. Therefore, this Court cannot form an opinion that there was an administrative delay in issuing an order of appointment. The delay occurred on account of the fact that during the verification of the character and antecedent, the authorities found that a Criminal Case was registered against the petitioner and thereafter, they found that the petitioner is not suitable and accordingly, not issued the appointment order. The petitioner approached the Tamil Nadu Administrative Tribunal and pursuant to the directions issued by the Tribunal, he was appointed. Therefore, one cannot form an opinion that petitioner's appointment was delayed at the instance of the respondent.

<https://www.mhc.tn.gov.in/judis>



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Selection Committee. The decision of the competent Selection Committee is final and if there was a delay on account of the fact that there was an assessment, which took sometime since there was a Criminal Case registered against the petitioner. Thus, this Court do not find any infirmity in respect of the actions of the respondents in conducting thorough verification. The selection is for Uniformed services. Verification of antecedents are of paramount importance.

11. The learned Senior counsel appearing on behalf of the petitioner further referred the order passed by this Court in W.P.No.33749 of 2016 dated 02.09.2021. However, this Court is of the considered opinion that the facts cannot be compared. The facts placed before this Court in the present case is to be taken into consideration. Thus, those judgments are of no avail to the writ petitioner.

12. 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 into service.



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13. 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 due to verification of character and antecedents, since a Criminal Case was registered against the against the writ petitioner.

14. However, the fact remains that the petitioner was appointed only in the year 2006 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 granting retrospective seniority would not arise at all.

15. In view of the facts and circumstances, the claim of the writ petitioner for retrospective appointment is untenable. That apart, the petitioner had earlier approached the Tamil Nadu Administrative Tribunal and his order of appointment was issued based on the order passed by the Tribunal. The issues were settled long back. The Tribunal has not considered the case of the petitioner for grant of retrospective appointment on par with the batch mates of the writ petitioner or to grant seniority. When



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the Tribunal had not considered the case of the petitioner for retrospective appointment and the petitioner was subsequently sent for training and appointed, now after this length of time, the petitioner cannot claim seniority with retrospective effect on par with his batch mates. During the relevant point of time, he was not appointed and not even served in the Department. Thus, the said period cannot be reckoned for the purpose of seniority.

16. Accordingly, the writ petition fails and stands dismissed. No costs.

01.12.2022

Index : Yes
Speaking order: Yes
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To
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S.M.SUBRAMANIAM, J.

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