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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3835 of 2014

B.Subramanian ...Petitioner

Vs.

1.The Secretary to Government,
Home (Police V) Department,
Fort St.George, Chennai – 9.

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

3.The Superintendent of Police,
Trivellore District. ..Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection with the impugned order passed by him in RC No.147537/NGBIII(2)/2012 dated 21.11.2012 and quash the same in so far as the petitioner is concerned and further direct the respondents to consider the claim of the petitioner for upgradation as Special Sub-Inspector by taking into consideration the total service rendered by him from 11.1.1978 to 31.7.2009 and upgrade him as Special Sub-Inspector and grant him all consequential service and monetary benefits.

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For Petitioner : Mr.K.Venkataramani
Senior Advocate

For Respondents [For R1 to R3] : Mr.P.Kumaresan
Additional Advocate General
Assisted by
Mrs.S.Anitha
Special Government Pleader

ORDER

The order of rejection dated 21.11.2012, rejecting the claim of the writ petitioner for upgradation to the post of Special Sub-Inspector of Police is under challenge in the present writ petition.

2. The petitioner was entered into the service as Grade-II Police Constable in Chennai City Armed Reserve on 11.01.1978.

3. During the year 1984, he was transferred to Taluk Police. The petitioner was upgraded as Grade-I Police Constable in the year 1984 with effect from 31.07.1984 and further, upgraded as Head Constable with effect from 01.08.1999. The petitioner reached the age of Superannuation and retired from service on 31.07.2009.

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4. On 25.03.2010, the petitioner made a detailed representation to the respondents to consider his entire services of more than 30 years and relax the Norms in respect of upgradation as Special Sub-Inspector of Police and accordingly, upgrade him as Special Sub-Inspector of Police. As there was no response even after receiving the representation by the respondents, the petitioner filed Writ Petition in W.P.No.19788 of 2012 and this Court passed an order dated 26.07.2012, directing the respondents to consider the claim made by the petitioner based on the Government orders. Pursuant to the orders of the High Court, the representation was disposed of by rejecting the claim of the writ petitioner in proceedings dated 21.11.2012. Challenging the same, the petitioner is constrained to move the present writ petition.

5. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the petitioner has served more than 10 years in the Feeder category of Head Constable. He served as Head Constable for more than 10 years. When the petitioner has served more than 10 years in the post of Head Constable, he is entitled for upgradation as per the Government orders in force. The Government orders stipulates 10 years

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of service as Head Constable for grant of upgradation to the post of Special Sub-Inspector of Police. However, the authorities have erroneously taken a decision that the period of 10 years is to be reckoned from the crucial date, which is perverse.

6. The learned Senior Counsel appearing on behalf of the writ petitioner further contended that there is no concept of crucial date for upgradation. No such crucial date has been contemplated under the scheme of upgradation. While so, there is no reason to reject the case of the writ petitioner since the petitioner had already been completed 10 years of service in the post of Head Constable and thus, he is entitled for the relief of upgradation to the post of Special Sub-Inspector of Police.

7. The learned Special Government Pleader appearing on behalf of the respondents objected the said contentions by stating that up to the year 1992, the Police personnel were promoted to the next rank on seniority basis as per the availability of vacancy and by conducting tests i.e., Senior promotion Test and Junior Promotion Test. Thereafter, an upgradation Scheme was introduced by the Government in G.O.Ms.No.1681, Home

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(Pol.V) Department dated 12.10.1992 in order to remove the stagnation of promotion in the Constabulary rank. Under the Scheme 21,000 Grade-II Police Constables and 2,700 Grade I Police Constables, who have put in several years of service and not able to get even a single promotion to the next rank as Grade I Police Constables were ordered to be upgraded without conducting tests as Grade I Police Constables and Head Constables in a phased manner, stretched over a period of 5 years with effect from 1992-1993.

8. Under the upgradation Scheme in the second phase, the petitioner was upgraded as Grade I Police Constable on 22.07.1994 and as per the G.O.844, he was upgraded as Head Constable on 22.07.1999 on completion of 5 years of service as Grade I Police Constable.

9. The Government in G.O.Ms.No.937, Home (Pol.V) Department dated 21.07.1998 have ordered to upgrade the Head Constables, those who had completed 10 years of service in the post of Head Constable and also put in a total service of 25 years, as Special Sub-Inspector of Police. The crucial date for consideration for upgradation as Special Sub Inspector of

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Police has been fixed as 1st June of every year. The Range Deputy Inspector Generals of Police / Commissioners of Police has to prepare the list of eligible persons as per the norms for upgradation as Special Sub Inspector of Police as on 1st June of the year and sent it to Government through the Director General of Police and the Government will issue orders for upgradation as Special Sub Inspector of Police. The crucial date for the upgradation of Special Sub Inspector of Police for the year 2009 was fixed as 01.06.2009. At that time, he did not completed 10 years of service as Head Constable. He completed 10 years of service as Head Constable only on 21.07.2009. Thus, the petitioner was not eligible for upgradation as Special Sub Inspector of Police for the year 2009 as per the Government orders in G.O.(Ms).No.937, Home (Pol-III) Department, dated 21.07.1998, which was in force at that point of time.

10. The judgments of this Court on the issue have been narrated in the counter affidavit filed by the respondents, which reads as under:

> *"(8) Further, it is informed that the Hon'ble Madras High Court/ Madurai Bench of Madras High Court have dismissed the Writ Petitions and Writ Appeals filed by petitioners seeking notional upgradation with retrospective*

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effect and allowed the Writ Appeals filed by the State in favour of Department are as follows:-

i. The Hon'ble Division Bench of Madurai Bench of Madras High Court in its Common Order dated: 22.03.2017 in Review Application Nos.70 to 79, 81, 82 and 90 to 92 of 2015, and W.A.Nos.49 to 51, 635, 730 to 740, 774 to 784, 793 to 797, 800 to 830 and 849 to 851 of 2015 and Connected Miscellaneous Petitions, has allowed the Review Applications and Writ Appeals in favour of Department as follows:

"31. In the facts and circumstances of the present case, in the light of Government Orders operating the field and materials placed before us by the learned Special Government Pleader, we are of the categorical view that the writ petitioners cannot claim 'deemed promotions' to the post of Special Sub-Inspector of Police and the attendant service and monetary benefits. We, therefore, left with no other option but to respectfully disagree with the decision rendered by the earlier Division Bench of this Court in similar batch of writ petitions.

32. We wish to point out that we passed the common order dated 23.04.2015 in WA.(MD).No.348 to 357 of 2015 batch of cases on

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the submission made by the learned counsel that the issue involved is covered by the earlier Division Bench decision dated 17.06.2013 made in WA. (MD) No.1506 of 2011. The niceties of the legal issues and the real import and purport of the Government Orders were omitted to be brought to our notice. We reiterate that it was only on the ground and in this manner that several Police Constables, most them retired from service long back, reaped monetary benefits that was not legitimately due to them under the Government Orders concerned. In such circumstances, we cannot blindfold ourselves by the earlier Division Bench decision to allow the claim of the present writ petitioners. We are thoroughly convinced in the facts and circumstances of the case that the Government has made out sustainable grounds for reviewing our earlier common order dated 23.04.2015 in WA. (MD) No.348 to 357 of 2015.

In the result, while set aside the common order, dated 28.11.2013 passed by the learned single Judge in W.P. (MD) No.15078 of 2010, etc. batch of writ petitions, we allow all the Review Applications and the Writ Appeals filed by the Government. There will be no order as to costs.

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Consequently, connected Miscellaneous Petitions are also closed."

ii. The Hon'ble Division Bench of Madras High Court in its Order dated: 30.08.2019 in W.A.Nos.47 to 51 of 2014 and others batch and W.A.(MD Nos.772 and others batch, have allowed the Writ Appeals in favour of Department as follows:-

13. The policemen are claiming promotion as Grade I Police Constable, Head Constable and Special Sub Inspector of Police, immediately on completion of 10, 15 and 25 years of service. There was no indication in any of the Government orders, more particularly in G.O.Ms.No.15, Home(Pol.V) Department, dated 07.01.2010 to claim deemed upgradation or retrospective upgradation. The policemen are interpreting the Government orders as if there was a decision in their favour to grant retrospective upgradation by counting the entire service, right from the initial entry. The Government made it very clear in the relevant orders referred to above that in order to claim upgradation as Special Sub Inspector of Police, policemen must have completed 10 years of service in the rank of Head Constable. The policemen wanted the Government orders to be interpreted in such a way that upon completing a fixed period, they would get upgradation as Grade I Police constable automatically and thereafter, as Head Constable and ultimately as Special

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Sub Inspector of Police. No such indication is found in any of the Government orders extracted above. We are therefore of the view that the appellants are correct in their contention that the writ Court committed a fundamental error while interpreting the Government orders and the same resulted in allowing the writ petitions filed by the respondents.

14. We fully concur with the views expressed by the Madurai Bench of this court in its order in R.A.(MD) Nos.70 of 2015 etc. batch.

15. The intra court appeals filed by the State allowed. The connected appeals filed by the policemen are dismissed.

iii. While on hearing a similar case on 20.12.2019 in W.A.No.3748 of 2019, the Hon'ble First Bench of High Court of Madras, took notice of the fact that the Division Bench of High Court of Madras in their orders dated

iv. 22.03.2017 in R.A.Nos.70 of 2015 and other batch took different view than the earlier Division Bench order made in W.A.(MD).Nos.1506 of 2011 and other batch dated 17.06.2013. Hence, the Hon'ble First Bench of High Court of Madras decided to refer the judgment to a Larger Bench for an authoritative pronouncement. Accordingly, the Hon'ble First Bench framed the following questions and referred to a larger bench.

(i) As to whether the judgement dated

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22.03.2017 in the case of V.Ramachandran (delivered in favour of department), that has taken a view contrary to the earlier judgement in V.Samy (delivered in favour of petitioner) deserves to be resolved by a Larger Bench, as directed conflict has been noticed by the subsequent Division Bench on the ground that the Government orders had been misconstrued while delivering the earlier judgment.

(ii) Whether the law has been laid down correctly in the case of V.Ramachandran(supra), or in the earlier decision in V.Samy(supra).

v. Recently, the Larger Bench, Hon'ble High Court of Madras by their order dated 04.02.2022 in W.A.No.3784 of 2019, etc. have dismissed bunch of batch cases of similar Review Applications, Writ Appeals and Writ Petitions filed by several petitioners on the ground that as follows:

"We hold that the Division Bench in V.Samy case did not lay down the law correctly and we uphold the law laid down in V.Ramachandran case to the extent that there is no deemed upgradation or deemed promotion contemplated in the relevant Government orders and the benefit of upgradation/promotion to the next level can be granted/claimed only on completion of the

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qualifying service in each level/rank as prescribed in the relevant Government Orders. At the risk of repetition, insofar as understanding the expression "retrospective operation" is concerned, we hold that The Government Orders operate prospectively but it imposes/grants new results in respect of a past event. In other words, the Government Order operates forward but it looks backward and in that it attaches new consequences for the future to an event that took place before the Government Order was issued. If the Government Orders are understood in this perspective, there is no need to get into the issue of "retrospective operation. Thus, we are of the view that the Division Bench while rendering the judgment in V.Ramachandran case has dealt with the Government orders in its proper perspective and the judgment in V.Samy case is hereby overruled".

11. This Court is of the considered opinion that the Government order issued in G.O.Ms.No.937 dated 21.07.1998 itself stipulates the crucial date as 1st June of every year. When the crucial date has been contemplated under the Government order for upgradation, the said date is to be scrupulously followed. In the present case, as on the crucial date for the year

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i.e., 01.06.2009, the petitioner had not completed 10 years of service in the post of Head Constable.

12. That apart, the upgradation is also to be construed as a promotion to the higher post. The promotion rules were not strictly followed. On account of the policy decision taken by the Government to remove the stagnation of many Police personnel in the same post for several years, while formulating the policy, the period of 10 years experience has been fixed in the post of Head Constable and the list of eligible persons, who have completed 10 years of service is to be prepared based on the crucial date fixed in the Government order i.e., 1st June of every year. Therefore, the crucial date being an important factor to be considered and for fixation of eligibility, crucial date is vital.

13. The arguments advanced on behalf of the writ petitioner that there is no crucial date fixed is incorrect and untenable.

14. The concept of crucial date is to ensure uniformity and equality in the matter of upgradation, promotion, etc., For preparation of a panel or list

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of eligible candidates for grant of upgradation or for promotion, such crucial date is an important factor to be taken into consideration for the purpose of uniformity and to avoid discrimination in the matter of considering the names of eligible persons. When the year wise panel or upgradation are prepared, a crucial date plays an important role. The concept of crucial date is implemented mainly on the ground that year wise panel is prepared or the panel is prepared, whenever required in a particular year. This being the factum, the importance of crucial date and the Government order issued in G.O.Ms.No.937 contemplates crucial date for upgradation, the order of rejection passed by the respondents are in consonance with the settled principles and there is no infirmity as such.

15. Accordingly, the writ petition stands dismissed. No costs.

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S.M.SUBRAMANIAM, J.

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