



W.P.No.28725 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28725 of 2019

V.Sethupathy

... Petitioner

Vs.

The Superintendent of Police,
Tiruppur District,
Tiruppur.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 23.02.2018 made in C.No.A4/35219/2016 passed by the respondent, quash the same consequently direct the respondent to regularize the petitioner's promotion in the post of Head Constable in the existing permanent vacancy from the date of his temporary promotion as Head Constable from 21.09.2011 by considering his representations dated 13.10.2016, 21.03.2017, 24.04.2017, 09.06.2017, 06.04.2018 and 16.07.2019

For Petitioner

: Mr.M.S.Soundara Rajan

For Respondent

: Mr.S.Rajesh
Government Advocate



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ORDER

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The order of rejection, rejecting the claim of the writ petitioner to regularize the temporary service rendered by him in the post of Head Constable is under challenge in the present writ petition.

2. The petitioner states that he was appointed as Grade-II Police Constable and pursuant to the constitution of new Tiruppur District, the petitioner was redeployed to the newly formed Tiruppur District by order dated 28.09.2010 passed by the Superintendent of Police, Coimbatore District.

3. On formation of the new District, the Government issued G.O.Ms.No.765, (Home Department) dated 27.08.2010 and new posts were sanctioned for Armed Reserve. In view of the administrative exigency and considering the fact that the District was formed newly, the petitioner was promoted as Grade-I Police Constable on temporary basis on 18.08.2011. Again, the petitioner was promoted to the post of Head Constable on temporary basis on 21.09.2011 and he continued as such.



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4. It is not in dispute that the petitioner was initially promoted to the post of Head Constable on temporary basis. Subsequently, the name of the writ petitioner was included in the 'C' List of Grade-I Police Constable fit for promotion to the post of Head Constable as per proceedings dated 01.08.2014. Later on, the petitioner was regularly promoted as Head Constable in proceedings dated 24.08.2016. The services of the writ petitioner was regularized with effect from the date on which he was regularly posted in proceedings dated 24.08.2016. The petitioner submitted an application to the authorities competent to regularize his services in the post of Head Constable from the date of his temporary promotion on 21.09.2011. The said application was rejected in proceedings dated 23.02.2018 and therefore, the petitioner is constrained to move the present writ petition.

5. The learned counsel for the writ petitioner mainly contended that though the temporary promotion was granted in the year 2011, it was not actually temporary, since promotions were granted against available vacancy in sanctioned posts. Since Tiruppur District was newly formed District, the



petitioner was temporarily promoted in a sanctioned post. Thus, there is no impediment for considering the case of the writ petitioner for regularizing his services in the post of Head Constable from the date of temporary promotion. Case of one Mr.K.Arasu, Head Constable, was considered on similar circumstances and the temporary services rendered by him was regularized and therefore, the said benefit is to be extended to the writ petitioner also. The similar procedures are followed in Tiruppur District and in some other Districts. Thus, the similar benefits are to be extended to the writ petitioner also.

6. The learned Government Advocate appearing on behalf of the respondents objected the said contentions by stating that there is no provision for grant of temporary promotion to the post of Head Constable under the Rules. In the absence of any specific rules for grant of temporary promotion, the Superintendent of Police ought to have obtained prior permission, if at all there is any emergency circumstances prevailed for grant of temporary promotion. However, in the present case, no such prior permission was obtained for grant of temporary promotion and therefore, in any angle, such promotion would not confer any right on the petitioner to



seek regularization from the date of temporary promotion. When the temporary promotion was irregular, regularization is not permissible. There is an established procedure under the rules available for filling up of the vacancies on regular basis. Therefore, no such special treatment could be given to the petitioner by granting the benefit of retrospective regularization from the date of temporary promotion as Head Constable.

7. Regarding the reliance placed on by the petitioner about the case of one Mr.K.Arasu, Head Constable, the respondents have stated in paragraph 9 of the counter affidavit, which reads as under:

“9. The representations of the petitioner were forwarded to the office of Deputy Inspector General of Police, Coimbatore Range for consideration. By the reply dated 19.12.2019, office of Deputy Inspector of Police, Coimbatore Range, has stated that the list of seniority for Armourer and Armed Reserve were separately maintained, so one could not be basis for another for consideration. In the said reply, it was further stated that in Erode District, there was only one Armourer namely Arasu, so he was given temporary promotion and since no one reported within two years from the date of temporary promotion, the said service of Arasu was regularized. Further, the reply states that since Arasu was the only person in Erode District, who has



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completed training in Armoury and the post of Head Constable was vacant in Erode District, he was promoted on temporary basis and after completion on probation, his post was regularized. So it cannot be a basis for the promotion of the petitioner. I humbly submit that in the memorandum of the office of Director General of Police, Chennai in Na.Ka.No.194502/NGP 4(1)/2017 dated 22.12.2017, it was stated that temporary promotion could not be granted without the permission of the office of Director General of Police, Chennai. Being so, regularisation from the year 2011 instead of year 2014 and 2016 would not arise.”

8. Promotion *per se* cannot be claimed as an absolute right. In the present case, the promotions were not granted by following the procedures as contemplated under the rules. The provision for temporary promotion is made available only to meet out the administrative exigencies and therefore, such promotion would not confer any right on the promotees. All temporary promotions are made on account of certain emergency circumstances or due to administrative reasons. Thus, such temporary promotions would not confer any right on the promotees and they cannot claim any retrospective regularization.



9. As far as the post of Head Constable in Police Department is concerned, promotions are to be granted by preparing 'C' List of eligible candidates fit for promotion to the post of Head Constable. The 'C' List of persons eligible are to be prepared by following the procedures and in the order of seniority in the feeder category. Necessary verification of Service Records are to be made before grant of promotion.

10. However, in the present case, the petitioner was promoted on temporary basis to the post of Head Constable merely on the ground that the Tiruppur District was newly formed and there were no adequate Head Constables available in the force. Thus, such emergency promotions granted on temporary basis cannot provide a right to the petitioner to claim retrospective regularization in the post of Head Constable. In the event of considering retrospective promotion on regular basis, the same would have certain repercussions in the Department, more so in the matter of fixation of seniority and to grant further promotions to the post of Special Sub-Inspector of Police or to the post of Sub-Inspector of Police. The future implications are also to be considered, while granting such retrospective regularization merely based on temporary promotions granted. Undoubtedly,



retrospective regularization from the date of temporary promotion would affect the seniority and prospects of other persons, who may be working in other areas or in other Districts, since for promotion to the post of Sub-Inspector, range seniority is followed. Thus, the repercussions in this regard are to be considered, more so, the temporary promotion was granted in the absence of any rules and without following the procedures as contemplated. Thus the temporary promotions cannot be construed as regular promotion and such promotions would not confer any right on the promotees, who secured such temporary promotions.

11. In the present case, the writ petitioner was regularly promoted as Head Constable in proceedings dated 24.08.2016 and his services in the cadre of Head Constable was regularized from the said date and therefore, his seniority is to be fixed based on the regular promotion to the post of Head Constable and for further promotion or otherwise.

12. This being the settled principles, this Court is of an opinion that the petitioner is not entitled for the relief of retrospective regularization in the post of Head Constable, since he was promoted temporarily in the absence



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of Rules and without following the procedures and on account of certain administrative exigencies.

13. Thus, this Court do not find any infirmity in respect of the order impugned passed by the respondent in the present writ petition. Accordingly, the writ petition stands dismissed. No costs.

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Index : Yes

Speaking order: Yes

To

The Superintendent of Police,
Tiruppur District,
Tiruppur.



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S.M.SUBRAMANIAM, J.

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