



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.04.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

WEB COPY

W.P. (MD)No.6618 of 2020

&

WMP (MD)No.5968 of 2020

V.Krishnan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by the Principal Secretary,
Home Department,
Fort St.George, Secretariat,
Chennai-600 009.

2. The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai-600 004.

3. The Superintendent of Police,
Trichy District,
Trichy.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned orders passed by the 3rd respondent in Na.Ka.No.A3/21765/2019, dated 29.07.2019 and Na.Ka.No.A3/8183/2020, dated 17.04.2020 quash the same and consequently direct the 3rd respondent to promote the petitioner as special Sub Inspector with effect from 01.06.2018 onwards along with all attendants benefits.

For Petitioner

: Mr.P.Saravana Kumar

For R1 to R3

: Mr.AK.Manickkam

Special Government Pleader

ORDER

The order of rejection rejecting the claim of the writ petitioner for promotion to the post of Special Sub Inspector is under challenge in the present writ petition.

2.The petitioner was appointed as Grade-II Constable and thereafter upgraded to the post of Head Constable on 09.06.2008.



3.The learned counsel for the petitioner made a submission that the charge framed against the writ petitioner under Section 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, was disposed of and the petitioner was fully qualified for promotion to the post of Special Sub-Inspector. Despite the fact that the departmental disciplinary proceedings ended with an order of punishment, promotion to the post of Special Sub-Inspector was denied to the writ petitioner. The writ petitioner made several representations and the said representations were rejected by the authorities stating that the petitioner was declared as deserter, as he was unauthorizedly absent for about 388 days and therefore, he cannot be considered for promotion to the post of Special Sub Inspector.

4.The learned Special Government Pleader appearing for the respondents made a submission that the petitioner was declared as deserter, as he was absent without prior permission or intimation for the period of 506 days and the petitioner suffered the punishment of removal from service and the said punishment was subsequently modified and he was reinstated in service.

5.The details regarding the disciplinary actions and other service particulars are narrated in Paragraph No.6 of the counter affidavit, which reads as under:

"6.... the petitioner who was upgraded as Head Constable on 09.06.2009 was due to be considered for up-gradation as Special Sub-Inspector of Police on 01.07.2019 as per G.O.Ms.No.15, Home (Pol.V) Department, dated 07.01.2010. But, he had absented from duties unauthorizedly for more than 21 days from 01.09.2010 and committed the offence of desertion during his service as Head Constable for which he was dealt with on a charge u/r 3(b) in PR No.01/2011 of TNPSS (D&A) Rules. In P.R.1/2011, u/r 3(b), he was awarded with a punishment of "Removal from service" which was modified into that of "Postponement of his next increment for a period of one year which shall not operate to postpone his future increments" by the 2nd respondent (DGP, Tamilnadu) on 22.12.2017 and accordingly, his annual increment due on 25.04.2012 was postponed for one year. Moreover, the settlement of desertion period of 388 days from 25.02.2011 to 19.03.2012 was treated as Extraordinary leave without pay (LWP(P)) by the 3rd respondent vide his leave orders in D.O.No.928/2014 in C.No.K3/LR25842/2014 dated 11.12.2014. The above period was not taken into consideration for the calculation of qualifying service. As such, the 10 years of qualifying service as Head Constable in respect of the petitioner is worked out as detailed below:



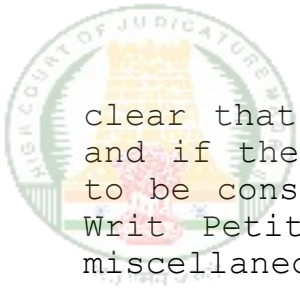
Period	:	Year	Month	Days
09.06.2009 to 30.06.2009	:	-	-	22
01.07.2009 to 24.02.2011	:	1	07	24
25.02.2011 to 19.03.2012	:	LWP (P) 388 days		
20.03.2012 to 31.03.2012	:	-		12
01.04.2012 to 02.07.2020	:	8	3	2
Total qualifying service	:	9	10	60

The petitioner was upgraded as Head Constable with effect from 09.06.2009 and he had completed 10 years of qualifying service as Head Constable on 02.07.2020 after excluding the period of desertion and out of employment taken by the petitioner from 25.02.2011 to 19.03.2012, which were settled as LWP(P). Thus, he was due for upgradation as Special Sub Inspector of Police on 01.08.2020. But, he was dealt with on a charge u/r 3(b) in PR No.69/2020 in which charge memo was served on him on 09.06.2020. The punishment Roll in PR No.69/2020 is pending against him for passing final orders by the disciplinary authority on the due date for upgradation as Special Sub Inspector of Police. The Government guidelines issued for promotion/upgradation in Schedule-XI, Part A, II (8&11) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which is now in force is as follows:-

"(8) Pendency of charges framed under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list."

6.The learned Special Government Pleader appearing for the respondents further brought to the notice of this Court that the petitioner is eligible for promotion to the post of Special Sub-Inspector on 01.08.2020. However, a charge memo was issued under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules on 09.06.2020 in P.R.No.69 of 2020 and the same is pending.

7.Therefore, as of now, the said charge memo is pending and thus, the petitioner is not eligible for promotion. It is made



clear that only after the disposal of the disciplinary proceedings and if the petitioner is found eligible for promotion, his case is to be considered on merits and in accordance with law. Hence, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions is closed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ns

To

- 1.The Principal Secretary,
Home Department,
Fort St.George, Secretariat,
Chennai-600 009.
2. The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai-600 004.
3. The Superintendent of Police,
Trichy District,
Trichy.

+1 CC to M/s.SPL.GP. (SR-19770[F] dated 20/04/2022)

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SS/12.05.2022 : 4P/5C