



W.P(MD)No.7511 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7511 of 2020

and

W.M.P(MD)Nos.6988, 6990 & 6991 of 2020

P.Sekar

... Petitioner

Vs

- 1.The State represented by
Its Secretary to Government,
Home Department,
Secretariat,
Chennai.
- 2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore,
Chennai – 8.
- 3.The Director General of Police,
Mylapore,
Chennai – 600 009.
- 4.The Additional Director General of Police,
(Armed Police) Head Quarters,
Kilpauk,
Chennai – 600 010.



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5.The Inspector General of Police,
Trichy Range,
AP Head Quarters,
Kilpauk,
Chennai – 600 010.

6.The Commandant,
TSP 6th Battalion,
Reserve Line,
Madurai – 14.

7.Martin Rathanaraj,
Sub-Inspector of Police,
TSP XIVth Battalion,
Palani,
Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to impugned order passed by the fifth respondent vide his proceedings in Rc.No.Estt.I(1)/30142-II/2020 dated Nil.03.2020 insofar as it relates to seventh respondent is concerned and the rejection order passed by the third respondent vide his proceedings Rc.No.398485/Rect.1(2)/2020 dated 09.06.2020 and quash the same as illegal and consequently to direct the third respondent to fix the seniority of the petitioner taking into consideration of the marks secured by him in the Recruit School in conformity with the Rule 24 of the Tamil Nadu Special Police Subordinate Service rules, 1978 and consequentially to consider the petitioner for promotion to the post of Inspector of Police (General) within a period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates



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For Respondents : Mr.A.K.Manikkam
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. The writ petitioner joined the Police Department as Grade-II Police Constable in the year 1992. Thereafter, he became Grade-I Police Constable and then a Head Constable. Now he is holding the post of Sub Inspector of Police (Selection Grade). The issue raised in this writ petition is regarding the fixation of the petitioner's seniority. The case of the petitioner is that it should be fixed based on the marks secured by him in the Police Recruitment School (PRS). Unfortunately, the petitioner's seniority was fixed based on marks secured by him in the examination conducted by The Tamil Nadu Uniform Service Recruitment Board (TNUSRB).

3. When the petitioner made a request for revision of his seniority it was rejected by the impugned order. Questioning the same, the present writ petitioner has been filed.



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4. The respondents are filed a counter affidavit. The learned Special Government Pleader took me through its contents and called for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. The issue on hand is no longer *res integra*. A learned Judge of this Court order dated 24.08.2021 in W.P(MD)No.14410 of 2020 had dealt with the issue elaborately after taking note of the rule position as well as the earlier case laws. Paragraph No.17 to 23 of the said order read as follows:

“17. Though this above clarification has been issued in the context of Rule 25 of the Special Rules for Tamil Nadu Police Subordinate Service, it is applicable even in the context of Rule 24 of the Tamil Special Police Subordinate Service Rules, 1978 which reads as under:-

Rule 24. Seniority. - (a) The seniority of a person in a category shall, unless he has been reduced to a lower ranks as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the appointing authority subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.



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Provided that the seniority of a person recruited direct to the category of Sub-Inspector shall be determined on the basis of the marks obtained by him in the final examination held at the end of the training.

Provided that the seniority of the Sub-Inspectors directly recruited from among the members of this service and the members in the Tamil Nadu Police Subordinate Service shall be fixed above the direct recruits selected from open market in the same year.

(b) The transfer of a person from one category to another category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of a person so transferred shall be determined with reference to the rank the category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority.

(c) Where a member of the service is reduced to a lower category, he shall be placed at the top of the latter, unless the authority ordering such reduction directs that he shall take rank in such lower category next below any specified member thereof.

(d) The seniority of Police Constables who are appointed on or after 1-7-77 according to rule of reservation shall be determined with reference to the marks obtained by them in the final examination conducted at the recruits schools. In the case of those secured same marks, the seniority shall be decided with reference to their date of birth.

(e) The Inter-se-seniority of those appointed by more than one method of recruitment and if their date of appointment to the category happens to be one and the same shall be decided with reference to their age.



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(f) Any person serving in any post in specialist category (other than regular line) may opt for transfer to general category (regular line). On transfer to the General Category, such person shall take his seniority immediately above his junior serving in any post in general category, if he is otherwise qualified to hold the post. For determining the seniority for this purpose, the seniority at the time of entry into the Tamil Nadu Special Police Subordinate Service shall be taken into account. A person in the specialist category shall not have any advantage in the general category by virtue of the promotion, if any, earned by him in the specialist category in the event of his transfer or reversion from specialist category to general category either at his option or otherwise.

*18. Rule 24 of the Tamil Special Police Subordinate Service Rules, 1978 is similar to Rule 15 of the Andhra Pradesh (Civil) Subordinate Service Rules which fell for consideration in **A.Raghu Vs Government of Andhra Pradesh and others, 2015 (14) SCC 2021** and Rule 25 of the Special Rules for the Tamil Nadu Police Subordinate Service.*

19. The seniority among the in-service candidates is to be determined based on the marks secured by them in the Police Recruit School as per these rules. In the light of the above, it stands concluded that inter-se seniority was to be determined based on the marks secured by the petitioners in the Police Recruit School and not based on the marks secured by them at the time of initial selection.



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20. Therefore, this Writ Petition deserves to be allowed notwithstanding the fact that the exercise that is to be carried out by the respondent may result in a out flow of finance which was not contemplated earlier. The respondents have failed to maintain inter-se seniority among the petitioners contrary to Rule 24(d) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 which is applicable to the petitioners.

21. If wrong fixation of seniority has resulted in excess payment to some of the personnel, the respondents may issue appropriate notice to those personnel and recover the excess payment in accordance with law and well settled principles in **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others**, (2015) 4 SCC 334.

22. The respondents are therefore directed to give effect to this order within a period of twelve weeks from the date of receipt of a copy of this order with consequential benefits to persons who scored higher marks in the Police Recruit School than the persons who were earlier promoted based on the marked obtained by them at the time of their initial selection. The respondents are also directed to notionally promote the petitioners with effect from the date on which their batch mates were promoted as Sub-Inspectors of Police in the year 2008.

23. Accordingly, this Writ Petition is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.”



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Respectfully adopting the very same approach, the order impugned in the writ petition is set aside and the writ petition is allowed. The third respondent shall fix the petitioner's seniority by considering the marks obtained by him in the Police Recruitment School as per Rule 24 of of the Tamil Nadu Special Police Subordinate Service Rules, 1978. The petitioner will also be entitled to the consequential benefits. The entire exercise shall be completed by the third respondent within a period of twelve weeks from the date of receipt of a copy of this order.

7. This writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

11.10.2022

Index : Yes / No
Internet : Yes/ No
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Note: Issue Order Copy on 18.10.2022.

To

1.The Secretary to Government,
Home Department,
Secretariat,
Chennai.



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2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore,
Chennai – 8.

3.The Director General of Police,
Mylapore,
Chennai – 600 009.

4.The Additional Director General of Police,
(Armed Police) Head Quarters,
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G.R.SWAMINATHAN, J.

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